

Griffon Loring LLC. v Amethyst Alt Asset Fund 2016 LLC.
2019 NY Slip Op 32111(U)
July 19, 2019
Supreme Court, New York County
Docket Number: 154292/2019
Judge: Paul A. Goetz
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTYPRESENT: HON. PAUL A. GOETZ

PART

IAS MOTION 47EFM

Justice

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INDEX NO.

154292/2019

GRIFFON LORING LLC.,

MOTION DATE

N/A

Petitioner,

MOTION SEQ. NO.

003

- v -

AMETHYST ALT ASSET FUND 2016 LLC.,

DECISION + ORDER ON
MOTION

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 49, 50, 51, 52, 53, 54, 55, 56, 57, 75, 76, 77, 78, 79, 80, 81, 82, 83

were read on this motion to/for

PARTIES - ADD/SUBSTITUTE/INTERVENE

In this proceeding, petitioner Griffon Loring LLC seeks a declaration that it is the rightful owner of certain properties it allegedly purchased at a sheriff's sale of a judgment lien held on December 12, 2012 and that any lien held by respondent Amethyst ALT Asset Fund 2016 LLC and by non-party DLJ Mortgage Capital has been extinguished by the sale. Verified Petition, ¶ 21. Non-party Stout Street Fund I, L.P. now moves pursuant to CPLR 1012 and 1013 to intervene in this action based on its interest in seven of the properties at issue.

Some background is helpful to understand this dispute. Stout's interest in the seven properties arises from the mortgages loans it made to Halifax Group LLC on February 25, 2010. Affirmation of Joshua N. Howley dated June 24, 2019, ¶ 6. After Stout made these mortgages, but before the clerk recorded them, non-party DLJ commenced a fraudulent conveyance action in New York County captioned *DLJ Mortgage Capital, Inc. v. Kontagiannis*, Index No. 104675/2010. In that action, DLJ alleged that defendants fraudulently conveyed certain real estate securing DLJ mortgages, including the seven properties at issue. On December 9, 2011,

DLJ obtained a judgment against Halifax in that action which directed Halifax to transfer the properties back to Loring Estates for DLJ's benefit. Howley Aff., Exh. C.

Around the same time, on November 4, 2011, Stout commenced a foreclosure action against Halifax and DLJ in Kings County, captioned *Stout Street Fund I, LP v. Halifax Group, LLC*, Index No. 25128/2011. On November 17, 2011, by its third-amended complaint, DLJ added Stout as a defendant in the New York County fraudulent conveyance action. However, by so-ordered stipulation dated April 16, 2012, DLJ and Stout agreed that the priority of liens issues between them would be litigated in Stout's foreclosure action which is still pending in Kings County. Affirmation of Jonathan B. Schwartzman dated July 5, 2019, Exh. 5.

Thereafter, on December 12, 2012, DLJ executed a sheriff's sale of the judgment lien it was granted in the New York County fraudulent conveyance action. Verified Petition, ¶ 4. Petitioner Griffon attended the sale and allegedly purchased 21 properties. Id. ¶¶ 5, 8. Although the sheriff subsequently issued a corrected deed which showed a conveyance of only 12 properties, petitioner Griffon claims that it is the rightful owner of all 21 properties, including the 7 properties in which Stout has an interest in. Non-party Stout seeks to intervene in this action, arguing that it holds mortgages on certain of the properties in this lawsuit and thus its rights may be adversely impacted by the court's decision in this case.

Pursuant to CPLR 1012(a)(3), a person is permitted to intervene in an action as of right when "the action involves the disposition or distribution of, or the title or a claim for damages for injury to, property and the person may be affected adversely by the judgment." In addition, pursuant to CPLR 1013, a court, in its discretion, may permit a person to intervene "when the person's claim or defense and the main action have a common question of law or fact." "Whether intervention is sought as a matter of right under CPLR 1012(a), or as a matter of

discretion under CPLR 1013, is of little practical significance, since intervention should be permitted where the intervenor has a real and substantial interest in the outcome of the proceedings.” *Global Team Vernon, LLC v. Vernon Realty Holding, LLC*, 93 A.D.3d 819, 820 (2d Dep’t 2012) (internal quotations and citations omitted).

Although it is not spelled out in Stout’s papers, it is evident that proposed-intervenor Stout has a real interest in the outcome of this litigation. Contrary to petitioner Griffon’s argument, this proceeding does not merely seek to stop respondent’s sale of these properties. Rather, Griffon seeks a declaration as to the parties’ rights and title to certain properties, including those properties that Stout has an interest in, therefore Stout may be adversely affected by a judgment in this action. For example, if the court determines that Griffon did in fact purchase these properties at the sheriff’s sale, DLJ may then argue in the foreclosure action that since its sale of these properties was deemed valid, it had the right to sell these properties and its priority of liens with respect to these properties has been determined. Finally, Griffon’s argument that this court is bound by the March 12, 2019 order in the foreclosure action denying Stout’s motion to stay the sale of the properties is unpersuasive because this action does not merely seek to stop respondent’s sale of the properties but rather seeks a declaration as to the parties’ rights with respect to these properties. Accordingly, it is

ORDERED that the motion to intervene is granted and that Stout Street Fund I, L.P. be permitted to intervene in the above-entitled action as a respondent; and it is further

ORDERED that the petition in the above-entitled action be amended by adding Stout Street Fund I, L.P. thereto as respondent and listing same as the last respondent in the caption; and it is further

ORDERED that the proposed intervention pleading setting forth the defenses, counterclaim and cross-claim of the movant that accompanied the motion shall be deemed to have been served upon service of a copy of this order with notice of entry; and it is further

ORDERED that the attorney for the intervenor shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to amend their records to reflect such change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

7/19/19
DATE *ny ny*


PAUL A. GOETZ, J.S.C.

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

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☐

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

☐

DENIED

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☐
☐

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☐

OTHER

☐

REFERENCE