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| Gantt v Vanick Equities LLC |
| 2019 NY Slip Op 32609(U) |
| January 24, 2019 |
| Supreme Court, Queens County |
| Docket Number: 370/2013 |
| Judge: Carmen R. Velasquez |
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

FILED
FEB - 5 2019
COUNTY CLERK
QUEENS COUNTY

OS

Present: HONORABLE CARMEN R. VELASQUEZ IA PART 38

JOANNE GANTT,

Plaintiff,

-against-

VANICK EQUITIES LLC, ET AL.,

Defendants.,

X

Index Number 370/2013

Motion

Date October 29, 2018

Motion Seq. No. 14

The following papers read on this motion by defendant Central Mortgage Company for an order quashing and/or granting a protective order with respect to the subpoena duces tecum dated July 17, 2018, served by plaintiff on TD Bank US Holding Company.

| | <u>Papers Numbered</u> |
|--|----------------------------|
| Notice of Motion-Affirmation-Exhibits..... | 1-4 |
| Opposing Affirmation-Exhibits..... | 5-6 |
| Reply Affirmation-Exhibits..... | 7-8 |

Upon the foregoing papers the motion is determined as follows:

Plaintiff Joanne Gantt alleges that she was the victim of a mortgage fraud scheme orchestrated primarily by defendant Vito Grippo and his various business entitled, for which Grippo was criminally charged, pled guilty and was sentenced in New Jersey in federal court. In the within action Gantt seeks a declaration setting aside a deed dated January 7, 2010, transferring title to the real property known as 116-33 217th Street, Cambria Heights, New York, from the plaintiff to defendant Anthony Ferraiuolo, an alleged straw buyer, and all subsequent deeds and encumbrances including a mortgage made by Ferraiuolo dated January 7, 2010, and to recover damages from Grippo, his companies and others who she alleges participated in the fraudulent scheme. Defendant Central Mortgage Company is the alleged assignor and successor in interest to First Residential Mortgage Services Corporation, the originator of the mortgage at issue.

Defendant Central Mortgage Company served an answer and interposed affirmative defenses, counterclaims and cross claims. Defendant First Residential Mortgage Services Corporation served an answer and interposed affirmative defenses and cross claims. The action and all cross claims against defendant The Law Offices of George Stavropoulos, P.L.L.C., sued herein as Law Office of George Stavropoulos, PC, have been discontinued with prejudice, pursuant to a stipulation filed with the court in October 29, 2018. Default judgements have been granted against defendants Vanick Equities LLC, Vanick Holdings Corp., Vanick Property Management LLC, Anthony Ferraiuolo, 11663 217 Cambria Heights LLC and Kristin Kowalski.

On May 24, 2018, defendant Central Mortgage Company filed a note of issue without first complying with the terms of the court's order of December 21, 2015. On June 2, 2018, defendant Jeffrey Rosenberg filed a motion to vacate the note of issue, or in the alternative for allowing additional discovery and extending the time to move for summary judgment. Central Mortgage Company opposed the motion to the extent that it sought to vacate the note of issue, but did not oppose the request to conduct additional discovery provided that the court set a date for the completion of discovery. Defendant Rosenberg's motion was resolved pursuant to a so ordered stipulation dated July 9, 2018, and entered on July 13, 2018, whereby the motion to vacate the note of issue was withdrawn; the note of issue was not vacated; Rosenberg was granted an additional 60 days from the date of said order in which to conduct additional discovery; the parties time in which to move and serve a motion for summary judgment was extended to December 12, 2018; and Central Mortgage Company reserved its right to move to quash the subpoena seeking the deposition of defendant Vito Grippo, with any such motion to be made on or before July 29, 2018. Defendant Rosenberg conducted a deposition of Grippo which concluded on September 6, 2018.

On July 17, 2018, plaintiff served a New Jersey subpoena duces tecum on non-party TD Bank U.S. Holding Company, which sought documents from the account held by Quick Title Search, LLC, and from the account held by Vanick Equities, LLC. The subpoena had a return date of August 8, 2018. Quick Title Search LLC is alleged to be the title company that received the proceeds of the mortgage and was responsible for distributing said proceeds and Vanick Equities LLC, a defendant herein is alleged to be an entity through which the mortgage and deed fraud were perpetuated. In an email dated July 20, 2018, TD Bank notified plaintiff that it would comply with the subpoena and would be mailing the requested documents to the noticed address in lieu of appearing and testifying.

On August 2, 2018, defendant Central Mortgage Company served the within motion to quash the subpoena and/or for a protective order on the grounds that plaintiff issued and

served the subpoena without having first sought or obtained permission to conduct post-note of issue discovery. On August 8, 2018, plaintiff received the subpoenaed documents from TD Bank.

Prior to serving the New Jersey subpoena on the nonparty TD Bank, plaintiff did not move pursuant to 22 NYCRR 202.21 (e) to vacate the note of issue within 20 days after its service, nor did plaintiff move pursuant to 22 NYCRR 202.21 (d) for permission to conduct post-note of issue discovery on the ground that “unusual or unanticipated circumstances” had developed after the filing of the note of issue (22 NYCRR 202.21 [d]). These are the only two methods available to a party who seeks to obtain disclosure after the filing of a note of issue (see *Singh v Finneran*, 100 AD3d 735, 736 [2d Dept 2012]; *Tirado v Miller*, 75 AD3d 153, 156 [2d Dept 2010]; *Audiovox Corp. v Benyamini*, 265 AD2d 135, 138 [2d Dept 2000]).

Plaintiff’s counsel caused, pursuant to the New Jersey Rules of Court (R:4:11-4[b]), the TD Bank subpoena to be issued in New Jersey directing TD Bank to appear for deposition and produce the sought-after documents at a New Jersey address, on August 8, 2018. Rule 4:11-4(b)(1) of the New Jersey Rules of Court provides that whenever the deposition of a person is to be taken in New Jersey pursuant to the laws of a foreign state for use in connection with proceedings in the foreign state, an out-of-state attorney or party may submit a foreign subpoena along with a New Jersey subpoena, in the name of the Clerk of the New Jersey Superior Court, to an attorney authorized to practice law in New Jersey or to the Clerk of the Superior Court or designee. Under Rule 4:11-4(b)(6) of the New Jersey Rules of Court, a motion or application to the court for a protective order or to enforce, quash or modify a subpoena issued by the attorney authorized to practice in New Jersey or by the Clerk of the Superior Court under section (b) of Rule 4:11-4 must be submitted to the court in the county which discovery is to be conducted, or the deponent resides, is employed or transacts business.

Plaintiff’s counsel has offices in New York and New Jersey, and a member of said law firm, authorized to practice law in New Jersey, signed the subpoena. Thus, pursuant to the Rules of Court of New Jersey, any motion by defendant Central Mortgage Company to quash the TD Bank subpoena should have been made to the court in Camden County, New Jersey (see New Jersey Rules of Court Rule 4:11-4[b][6]; see also *Phoenix Grantor Trust v Exclusive Hospitality, LLC*, 59 Misc 3d 1231[A], 2018 NY Slip Op 50808[U] [Sup Ct, Queens County 2018]; *Matter of Aerco Intl., Inc. [Precision Machining & Stamping Inc.]*, 40 Misc 3d 571[Sup Ct, Westchester County 2013]). Moreover, even if this court had jurisdiction to quash the New Jersey subpoena, such relief is no longer available, as said subpoena has been complied with (see *Matter of Brunswick Hosp. Center v Hynes*, 52 NY2d at 339). Therefore, that branch of the motion which seeks an order quashing the New Jersey subpoena, is denied.

Defendant, however, has demonstrated that it is entitled to a Protective Order with respect to the documents obtained by plaintiff from TD Bank. Contrary to plaintiff's assertions, the fact that defendant Central Mortgage Company agreed to the limited post-note of issue discovery on the part of defendant Rosenberg as set forth in the so-ordered stipulation, is not inconsistent with this defendant's position herein. Plaintiff's counsel chose not to participate in the motion practice resulting in said order, and chose to chart his own course, rather than complying with the court rules. Plaintiff has not demonstrated the existence of "unusual or unanticipated circumstances" which would justify its issuance of the New Jersey subpoena, without first obtaining this court's permission to engage in post-note of issue discovery. Plaintiff was aware of Quick Title Search LLC and Vanick Equities LLC from the outset of this litigation, and offers no reason why she could not have requested the documents sought from TD Bank prior to the filing of the note of issue, or why she failed to seek the court's permission to obtain post-note of issue discovery.

As this court has the inherent authority to control its calendar (*see Tirado v Miller*, 75 AD3d at 161; *Schreiber-Cross v State of New York*, 57 AD3d 881, 884 [2d Dept 2008]), that branch of the motion which seeks a protective order with respect to the documents obtained by plaintiff from TD Bank pursuant to the New Jersey subpoena, is granted and plaintiff is prohibited from disseminating these documents and from presenting them at the trial of this action, or in connection with any motion for summary judgment.

Dated: January 24, 2019


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CARMEN R. VELASQUEZ, J.S.C.

