

**Champion Mtge. Co. v Antoine**

2019 NY Slip Op 34957(U)

July 29, 2019

Supreme Court, Queens County

Docket Number: Index No. 712860/2018

Judge: Laurence L. Love

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This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Laurence L. Love IAS PART 43  
Justice

CHAMPION MORTGAGE COMPANY,

Plaintiff,

-against-

Index No.: 712860/2018  
Motion Submitted: 5/30/19  
Seq. No.: 001  
Cal. No.: 04

MARLENE ANTOINE; MARJORY ANTOINE;  
VELOCITY INVESTMENTS, L.L.C.; CITY OF NEW  
YORK DEPARTMENT OF FINANCE PARKING  
VIOLATIONS BUREAU; CITY OF NEW YORK  
ENVIRONMENTAL CONTROL BOARD; JOHN DOE #  
1-5 AND JANE DOE #1-5 these last ten names being  
fictitious and unknown to the plaintiff, the persons or  
entities intended being the tenants occupants, person or  
corporations, if any, having or claiming an interest in or lien  
upon the property described in the complaint,

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AUG 28 2019

COUNTY CLERK  
QUEENS COUNTY

Defendants.

The following papers numbered EF 27-38, EF 40-50 and EF 52-65 read on plaintiff's motion for an Order granting plaintiff leave to amend its complaint pursuant to CPLR R. 3025(b) and defendant's cross-motion seeking dismissal of plaintiff's complaint, declaring that the mortgage taken by Wells Fargo Bank, N.A., plaintiff's predecessor in interest be deemed null and void, seeking sanctions against plaintiff and vacating and discharging any and all recorded Notices of Pendency failed against the subject property;

Papers  
Numbered

Notice of Motion, Affirmation, Exhibits.....EF 27-38  
Notice of Cross-Motion, Affirmation, Exhibits.....EF 40-50  
Affirmations in Opposition, Exhibits.....EF 52-63  
Affirmations in Reply, Exhibits.....EF 64-65

Upon the foregoing papers, it is ordered that this motion is determined as follows:

Plaintiff commenced the instant action by the filing of a summons and verified complaint, dated August 20, 2018. As described in the complaint, plaintiff commenced the instant action

seeking to reform an alleged October 29, 2009 deed transferring a premises known as 13916 Laurelton Parkway, Rosedale, New York 11422 from Marlene Antoine and Marjory Antoine, as joint tenants with rights of survivorship to Marlene Antoine, individually, to include Marjory Antoine's signature. In the alternative, declaring an equitable lien/constructive trust be imposed on Marjory Antoine's one half interest in the property based upon her unjust enrichment or declaring an equitable lien/constructive trust imposed on Marjory Antoine's one half interest in the property as plaintiff is equitably subrogated to the rights, remedies and interests of all prior lienholders whose liens against the subject property were paid off with plaintiff's predecessor in interest's funds. The complaint further alleges the following facts: By a Bargain and Sale Deed dated, August 18, 2007, Max A. Arnoux and Marlene Antoine transferred ownership of the property to Marlene Antoine and Marjory Antoine (her daughter) as joint tenants with rights of survivorship. Said deed was recorded under CRFN 2008000012423 on January 10, 2008. On October 29, 2009, a deed was prepared transferring the property to Marlene Antoine, individually. Said deed was not signed by Marjory Antoine and was never recorded. Due to a "mutual mistake" at the closing, Marjory Antoine failed to execute the deed. At the same time, Marlene Antoine gave a reverse mortgage to Wells Fargo, N.A., to be secured by a lien against the property. Said mortgage was also never recorded. Of the loan proceeds disbursed, \$74,940.96 of the funds were used to satisfy all outstanding encumbrances of record on the property. On August 9, 2018, Wells Fargo Bank, N.A. assigned the Mortgage to plaintiff.

Plaintiff now seeks to amend the complaint pursuant to CPLR R. 3025(b) to remove Marlene Antoine as a party defendant due to her death on December 24, 2011 and remove the first cause of action, seeking reformation of the deed as Marjory Antoine now owns 100% of the property by operation of law. Defendant, Marjory Antoine, cross-moves for dismissal of this action pursuant to CPLR R. 3211(a)(7) and (5).

"On a motion to dismiss pursuant to CPLR R. 3211(a)(7), the court must afford the pleadings a liberal construction, accept the allegations of the complaint as true, and provide the plaintiff the benefit of every possible favorable inference. The test to be applied is whether the complaint "gives sufficient notice of the transactions, occurrences, or series of transactions or occurrences intended to be proved and whether the requisite elements of any cause of action known to our law can be discerned from its averments." JP Morgan Chase v J.H. Electric of NY, 69 A.D.3d 802.

Plaintiff's case rests upon the validity of the subject reverse mortgage after the death of Marlene Antoine and whether the surviving defendant is bound by the terms of said mortgage. As discussed in Smith v. Bank of America, N.A., 103 A.D.3d 21 (2d. Dept. 2012), a mortgage is merely a lien against a property and does not act to sever a joint tenancy. Upon the death of the mortgagor, the mortgage ceases to exist and the decedent's interest passes to the surviving owner free and clear of the mortgage. In the instant action, the mortgage documents signed by Marlene Antoine do not sever the joint tenancy relationship between her and Marjory Antoine. As conceded by plaintiff's motion, Marlene Antoine is deceased and as such sole title to the subject property is vested in Marjory Antoine, free and clear of the mortgage.

In opposition, plaintiff argues that a reverse mortgage is distinguishable from the lien described in Smith, alleging that unlike a traditional mortgage which is a "mere lien against the

subject property” that does “not transfer legal title to the lender,” a reverse mortgage ultimately culminates in the lender being repaid from the sale of the property upon the death of the borrower as described in McKinney’s Real Property § 5A:19. Plaintiff therefore argues that for all practical purposes, a reverse mortgage does transfer title in the underlying property to the lender. While the practical effect of the death of a borrower is generally the sale of the subject property, the reverse mortgage in no way legally transfers title and as such the practical effects are irrelevant. Plaintiff further argues that by executing a deed to herself, Marlene Antoine unilaterally severed the joint tenancy pursuant to Real Property Law § 240-c(1)(b), which provides that a joint tenancy may be severed by “Execution of a written instrument that evidences the intent to sever the joint tenancy, including a deed that names the severing tenant as the direct grantee of the severing tenant’s interest.” Not only does plaintiff ignore that the subject deed does not comply with those requirements, the statute further provides in section that “No severance of a joint tenancy pursuant to subdivision one of this section shall terminate the right of survivorship of any non-severing joint tenant or tenants as to the severing tenant’s interest unless the deed or written instrument effecting the severance is recorded, prior to the death of the severing tenant, in the county where the real property is located.” As said deed was never recorded, plaintiff’s argument is without merit. As such, defendant is entitled to dismissal of this action.

Defendant is also entitled to dismissal of this action as plaintiff’s action is time barred by the applicable statutes of limitation. Plaintiff’s first cause of action seeks reformation of the deed signed by Marlene Antoine on October 29, 2009. In Johnson v Broder, 112 A.D.3d 788 (2d. Dept. 2013), the Court noted “A cause of action seeking reformation of an instrument on the ground of mistake is governed by the six-year statute of limitations pursuant to CPLR 213(6), which begins to run on the date the mistake was made.” As said alleged mistake was made on October 29, 2009, any action to reform said deed must have been filed before October 29, 2015. Plaintiff’s second and third causes of action seeking the imposition of an equitable lien/constructive trust are time barred. As discussed in Morando v Morando 41 A.D.3d 559 (2d Dept. 2007), “A cause of action to impose a constructive trust or equitable lien is subject to a six-year limitations period” (see CPLR 213 [1]; Mazzone v. Mazzone, 269 A.D.2d 574, 574-575, 703 N.Y.S.2d 282) that “commences to run upon the occurrence of the wrongful act giving rise to a duty of restitution” (Ponnambalam v. Ponnambalam, 35 A.D.3d 571, 829 N.Y.S.2d 540). As the alleged wrongful act is the representation by Marlene Antoine that she would be the sole owner of the property and/or the payment of all outstanding encumbrances of record on the property on October 29, 2009, those causes of action are likewise time-barred.

Plaintiff’s motion is denied in its entirety. Defendant’s motion is granted to the following extent: The sections of plaintiff’s motion seeking dismissal of plaintiff’s complaint pursuant to CPLR R. 3211(a)(7) and (5) are granted. The section of plaintiff’s motion seeking sanctions pursuant to § 130-1.1(c)(1) of the Rules of the Chief Administrator of the Courts is denied and it is

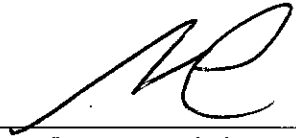
ORDERED and ADJUDGED that the mortgage granted to Wells Fargo Bank, N.A., plaintiff’s predecessor in interest, against the premises known as 13916 Laurelton Parkway, Rosedale, NY 11422 is hereby declared null and void and it is further;

ORDERED and ADJUDGED that any and all recorded notices of pendency filed against the

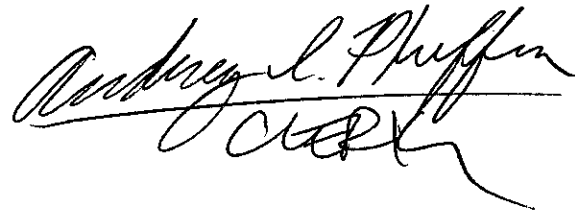
premises known as 13916 Laurelton Parkway, Rosedale, NY 11422 are hereby vacated and discharged.

This constitutes the Decision and Order of the Court.

Dated: July 29, 2019



Laurence L. Love, J.S.C.



**FILED & RECORDED**  
**AUG 28 2019**  
**COUNTY CLERK**  
**QUEENS COUNTY**

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