

<b>Milton v Specialized Loan Servicing, LLC</b>
2020 NY Slip Op 30510(U)
February 21, 2020
Supreme Court, New York County
Docket Number: 153913/2019
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 46

JACOB MILTON,

Index No. 153913/2019

Plaintiff

- against -

DECISION AND ORDER

SPECIALIZED LOAN SERVICING LLC, U.S.  
BANK, N.A., ADAM GROSS, ESQ., AMY  
POLOWY, ESQ., GROSS POLOWY, LLC, WELLS  
FARGO BANK, N.A., STEVEN J. BAUM, ESQ.,  
STEVEN J. BAUM, P.C., ELPINIKI BECHAKAS,  
BRANDY MOORE, MELANIE ARNDT, PEOPLE'S  
CHOICE HOME LOANS, INC., and MORTGAGE  
ELECTRONIC REGISTRATION SYSTEMS,

Defendants

LUCY BILLINGS, J.S.C.:

This action seeks to vacate a judgment of foreclosure and sale in a foreclosure action in the Supreme Court in Queens County where defendant here, U.S. Bank, N.A., the mortgagee, sued plaintiff Milton, the mortgagor. Plaintiff here now sues the mortgagee U.S. Bank that commenced the foreclosure action and obtained the judgment and the mortgagee's agent, Specialized Loan Servicing LLC. These two defendants move to dismiss this action against them within the time extended by plaintiff's stipulation filed May 16, 2019. C.P.L.R. § 3211(a) (1), (5), and (7). Plaintiff cross-moves to consolidate this action with the foreclosure action in Queens County. C.P.L.R. § 602(b).

It is in that foreclosure action in Queens County that plaintiff must seek to vacate that court's judgment. Until he does so, that judgment precludes a contrary determination here

vacating that judgment. Pinnacle Consultants v. Leucadia Natl. Corp., 94 N.Y.2d 426, 432-33 (2000); Parker v. Blauvelt Volunteer Fire Co., 93 N.Y.2d 343, 349 (1999); Simmons-Grant v. Quinn Emanuel Urquhart & Sullivan, LLP, 116 A.D.3d 134, 139 (1st Dep't 2014); Sanders v. Grenadier Realty, Inc., 102 A.D.3d 460, 461 (1st Dep't 2013).

In fact, plaintiff raised the very grounds on which he seeks here to vacate the judgment in that action where U.S. Bank obtained the judgment. Again he claims that U.S. Bank presented a fabricated allonge to his promissory note to show that the note was physically delivered to U.S. Bank. Again he claims that the assignments of the note and mortgage leading up to U.S. Bank's ownership and possession of them were the product of misconduct. Again he claims that the required notices of the foreclosure were never delivered. R.P.A.P.L. § 1303-1304. The Supreme Court in Queens County determined all these claims as well as any other grounds for challenging the foreclosure action that plaintiff might have raised.

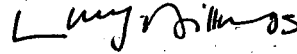
To the extent that plaintiff now raises new grounds revealed by newly discovered evidence, again his remedy is in the action where he seeks to vacate the judgment. C.P.L.R. § 5015(a)(2) and (3). Plaintiff's new grounds, however, that his former attorney in the foreclosure action misinformed the court that the property being foreclosed was not plaintiff's primary residence, is neither newly discovered evidence nor fraud. Id.; Grinshpun v. Borokhovich, 148 A.D.3d 447, 447-48 (1st Dep't 2017); Shomron v.

Fuks, 147 A.D.3d 685, 686 (1st Dep't 2017); Ryan v. Zherka, 140 A.D.3d 500, 500 (1st Dep't 2016); Orchard Hotel, LLC v. D.A.B. Group, LLC, 114 A.D.3d 509, 511 (1st Dep't 2014). His further new grounds, evidence that he was falsely convicted of fraud in a criminal action unrelated to this or the foreclosure action, is incomprehensible. He claims that defendants exploited his "unclean hands" to obtain the judgment of foreclosure. Aff. of John P. DeMaio, Esq., ¶¶ 32, 34. Unclean hands is an affirmative defense that plaintiff, as a defendant in the foreclosure action, might have used to bar the plaintiff there, U.S. Bank, from recovery due to the plaintiff U.S. Bank's, not the defendant mortgagor Milton's, reprehensible conduct that had injured Milton. Genger v. Genger, 121 A.D.3d 270, 278 (1st Dep't 2014); Bank of Smithtown v. 264 West 124 LLC, 105 A.D.3d 468, 469 (1st Dep't 2013); Citibank, N.A. v. American Banana Co., Inc., 50 A.D.3d 593, 594 (1st Dep't 2008); Willett v. Lincolnshire Mgt., 302 A.D.2d 271, 271 (1st Dep't 2003). The doctrine is not one that the plaintiff U.S. Bank might have used to obtain its recovery. Levkoff v. Soho Grand-W. Broadway, Inc., 115 A.D.3d 536, 537 (1st Dep't 2014).

Consequently, the court grants the motion by defendants Specialized Loan Servicing LLC and U.S. Bank, N.A., to dismiss this action against them with prejudice based on collateral estoppel. C.P.L.R. § 3211(a)(5). Since plaintiff shows no reason for consolidating this action against the remaining defendants, where disclosure has not even commenced, with the

foreclosure action in Queens County, where a final judgment already has been entered, the court denies plaintiff's cross-motion to consolidate this action with the action in Queens County. C.P.L.R. § 602(b); McGinty v. Structure-Tone, 140 A.D.3d 465, 466 (1st Dep't 2016); Wachovia Bank, N.A. v. Silverman, 84 A.D.3d 611, 612 (1st Dep't 2011); Suckishvili v. Visiting Nurse Serv. of N.Y., 74 A.D.3d 433, 433 (1st Dep't 2010); Ahmed v. C.D. Kobsons, Inc., 73 A.D.3d 440, 441 (1st Dep't 2010). Plaintiff and the remaining defendants that have been served shall appear for a Preliminary Conference March 19, 2020, at 2:15 p.m., in Part 46.

DATED: February 21, 2020



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LUCY BILLINGS, J.S.C.

LUCY BILLINGS  
J.S.C.