

HSBC Bank USA, N.A. v Lowe
2020 NY Slip Op 30721(U)
March 6, 2020
Supreme Court, New York County
Docket Number: 850029/2019
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 32

Justice

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INDEX NO. 850029/2019

HSBC BANK USA, NATIONAL ASSOCIATION, AS
TRUSTEE FOR DEUTSCHE ALT-A SECURITIES
MORTGAGE LOAN TRUST, SERIES 2007-1,

MOTION DATE N/A

MOTION SEQ. NO. 004

Plaintiff,

- v -

ELIZABETH LOWE, E. L. 27 REALTY LLC A/K/A E.L. 27
REALTY LLC, GAIL LOWE MAIDMAN LLC, UNITED
STATES OF AMERICA O/B/O INTERNAL REVENUE
SERVICE, NEW YORK CITY TRANSIT ADJUDICATION
BUREAU, NEW YORK CITY ENVIRONMENTAL CONTROL
BOARD, NEW YORK CITY PARKING VIOLATIONS
BUREAU, AND JOHN DOE AND MARY DOE, (SAID
NAMES BEING FICTITIOUS, IT BEING THE INTENTION
OF PLAINTIFF TO DESIGNATE ANY AND ALL
OCCUPANTS, TENANTS, PERSONS OR
CORPORATIONS, IF ANY, HAVING OR CLAIMING AN
INTEREST IN OR LIEN UPON THE PREMISES BEING
FORECLOSED HEREIN)

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180

were read on this motion to/for JUDGMENT - SUMMARY

The motion by plaintiff for summary judgment and to appoint a referee is granted.

Background

This foreclosure action arises out of a consolidated loan to defendant Lowe secured by property located at 231 East 62nd Street in Manhattan. Plaintiff claims that Ms. Lowe stopped making payments in March 2018 and now owes over \$4 million. In opposition, Ms. Lowe complains that plaintiff failed to respond to discovery demands and claims that plaintiff lacks

standing. Ms. Lowe contends that there was a break in the chain of the assignment of the note and the mortgage.

Discussion

As an initial matter, the Court rejects Ms. Lowe's claim that discovery is necessary and is a sufficient ground to deny the instant motion. The fact is that "A mortgagee establishes a prima facie case for foreclosure by production of the mortgage documents and proof of default" (*Bank Leumi Trust Co. of New York v Lightning Park Inc.*, 215 AD2d 246, 247, 626 NYS2d 202 [1st Dept 1995]). Here, plaintiff produced the relevant mortgage documents and sufficiently alleged that Ms. Lowe defaulted by not making payments. Ms. Lowe failed to adequately rebut plaintiff's prima facie case—she does not deny that she didn't make the mortgage payments. There is no need for discovery where plaintiff has demonstrated it is entitled to summary judgment.

And Ms. Lowe's arguments about standing are also meritless. "[I]f the note is affixed to the summons and complaint at the time the action is commenced, it is unnecessary to give factual details of the delivery to establish that possession was obtained prior to a particular date" (*Bank of New York Mellon v Knowles*, 151 AD3d 596, 597, 57 NYS3d 473 [1st Dept 2017]). Here, plaintiff attached the note to the complaint (NYSCEF Doc. No. 1) and established its standing to bring this case.

Accordingly, it is hereby

ORDERED that plaintiff's motion for a summary judgment against defendant Elizabeth Lowe is granted; and it is further

ORDERED that Joseph Buono, Esq. with an address of 804 Route 9, Suite 4, Fishkill, NY 12524 (845) 765-1050 is hereby appointed Referee in accordance with RPAPL § 1321 to

compute the amount due to Plaintiff and to examine whether the premises can be sold in parcels; and it is further

ORDERED that the Referee shall hold no hearing and take no testimony or evidence other than by written submission; the Court is the ultimate arbiter and the Referee's report is merely an advisory finding; and it is further

ORDERED that by accepting this appointment the Referee certifies that he is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2 (c) ("Disqualifications from appointment"), and §36.2 (d) ("Limitations on appointments based upon compensation"), and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule; the Referee shall immediately notify the Appointing Judge; and it is further

ORDERED that, pursuant to CPLR 8003(a), and in the discretion of the court, a fee of \$350 shall be paid to the Referee for the computation of the amount due and upon the filing of his report and the Referee shall not request or accept additional compensation for the computation unless it has been fixed by the court in accordance with CPLR 8003(b); and it is further;

ORDERED that the Referee is prohibited from accepting or retaining any funds for himself or paying funds to himself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED that plaintiff shall forward all necessary documents to the Referee and to defendants who have appeared in this case within 30 days of the date of this order and shall *promptly* respond to every inquiry made by the referee (*promptly* means within two business days); and it is further

ORDERED that if defendant(s) have objections, they must submit them to the referee within 14 days of the mailing of plaintiff's submissions; and include these objections to the Court if opposing the motion for a judgment of foreclosure and sale; and it is further

ORDERED the failure by defendants to submit objections to the referee shall be deemed a waiver of objections before the Court on an application for a judgment of foreclosure and sale; and it is further

ORDERED that plaintiff must bring a motion for a judgment of foreclosure and sale within 30 days of receipt of the referee's report; and it is further

ORDERED that if plaintiff fails to meet these deadlines, then the Court may *sua sponte* vacate this order and direct plaintiff to move again for an order of reference and the Court may *sua sponte* toll interest depending on whether the delays are due to plaintiff's failure to move this litigation forward; and it further

ORDERED that the John Doe and Mary Doe defendants are removed from the caption, and the caption shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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HSBC BANK USA, NATIONAL ASSOCIATION, AS
TRUSTEE FOR DEUTSCHE ALT-A SECURITIES
MORTGAGE LOAN TRUST, SERIES 2007-1,
Plaintiff,

v.

ELIZABETH LOWE, E. L. 27 REALTY LLC A/K/A
E.L. 27 REALTY LLC, GAIL LOWE MAIDMAN
LLC, UNITED STATES OF AMERICA O/B/O
INTERNAL REVENUE SERVICE, NEW YORK
CITY TRANSIT ADJUDICATION BUREAU, NEW
YORK CITY ENVIRONMENTAL CONTROL
BOARD, NEW YORK CITY PARKING
VIOLATIONS BUREAU
Defendant(s).

-----X

and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being removed pursuant hereto; and it is further

ORDERED that such service upon the County Clerk 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/suptmanh)]; and it is further

ORDERED that Plaintiff shall serve a copy of this Order with notice of entry on all parties and persons entitled to notice, including the Referee appointed herein.

Next Conference: June 16, 2020 @ 2:15 p.m. If a motion for judgment of foreclosure and sale has been filed, plaintiff may seek an adjournment of the conference. Please consult this part's rules for information on how to obtain an adjournment. If a motion has been made, then a conference is required to explore the reasons for the delay.

3/6/2020

DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE