

97 Lyman Ave., LLC v MTGLO Invs., L.P.

2020 NY Slip Op 31023(U)

March 17, 2020

Supreme Court, Richmond County

Docket Number: 151798/2019

Judge: Wayne M. Ozzi

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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97 LYMAN AVENUE, LLC,

PART 23

Plaintiff,

Present:
Hon. WAYNE M. OZZI

-against-

DECISION and ORDER

MTGLO INVESTORS, L.P.; METRO PORTFOLIOS
INC.; NEW YORK CITY PARKING VIOLATIONS
BUREAU; NEW YORK STATE DEPARTMENT OF
TAXATION AND FINANCE; and "John Doe #1"
through "John Doe #10", the last ten names being
fictitious and unknown to the plaintiff intended as
persons or entities having some claim or interest in
the premises described in the Complaint,

Index No. 151798/2019

Motion Seq. Nos. 3810 – 001
4747 – 002

Defendants.
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The following papers numbered 1 and 5 were fully submitted on the 5th day
of December, 2019.

Papers Numbered

Notice of Motion by Defendant MTGLO Investors, L.P. to
to Dismiss the Complaint pursuant to CPLR §3211 and
strike the Notice of Pendency, with Supporting Papers
(dated September 3, 2019)..... 1

Memorandum of Law in Support of Defendant’s
Motion to Dismiss..... 2

Notice of Cross Motion by Plaintiff 97 Lyman Avenue, LLC
for an Order pursuant to CPLR §2201 staying this action
pending the resolution of Plaintiff’s Appeal,
with Supporting Papers
(dated November 5, 2019)..... 3

Memorandum of Law in Further Support of Defendant’s
Motion to Dismiss and in Opposition to Plaintiff’s
Cross Motion to stay this action

(dated December 13, 2019)..... 4

Affirmation in Further Support of Plaintiff’s Cross Motion
and in Opposition to Defendant’s Motion
(dated December 26, 2019)..... 5

Defendant’s Affirmation in Reply
(dated January 16, 2020)..... 6

Upon the foregoing papers, the motion (Seq. No. 001) of defendant MTGLO Investors, L.P. to dismiss the Complaint pursuant to CPLR §§3211(a)(1), (a)(4), (a)(5) and (a)(7) is denied with leave to renew; the cross motion (Seq. No. 002) of plaintiff 97 Lyman Avenue LLC for an Order staying this action pending the Appeal of the Orders of this Court dated June 24, 2019 is granted.

On or about July 7, 2010, non-party BAC Home Loans Servicing (hereinafter, “BAC”) commenced an action to foreclosure a consolidated mortgage encumbering certain premises known as 97 Lyman Avenue, Staten Island, New York. The mortgage was given to BAC’s predecessor-in-interest to secure a consolidated note executed by the homeowners on June 7, 2007. They failed to appear or answer the Complaint. No further proceedings were undertaken. As such, the matter was placed on the calendar in the “Shadow Foreclosure Part” of this Court, wherein BAC discontinued the proceedings on March 19, 2013. Thereafter, via a series of assignments, all beneficial interest under the subject mortgage was transferred to defendant MTGLO Investors, L.P. (hereinafter, “MTGLO”) by Assignment of Mortgage dated June 14, 2017. Subsequently, MTGLO commenced a foreclosure action (bearing Index No. 135631/2018) against the mortgagors by filing a Summons and Complaint and Notice of Pendency on November 2, 2018. Once again, none of the defendants appeared. As a result, on or about

February 6, 2019, MTGLO moved for a Default Judgment and Order of Reference. Three months later, on May 13, 2019, non-party 97 Lyman Avenue, LLC (hereinafter, “97 Lyman”) appeared in the action by filing a Motion to Intervene seeking to preserve its alleged ownership interest in the subject premises. Apparently, by deed dated November 13, 2018 the defendant/mortgagors transferred title to the subject premises to plaintiff 97 Lyman. Pertinently, the conveyance occurred eleven days *after* the Notice of Pendency and Complaint were filed in the 2018 foreclosure action. For this reason, the proposed intervenor was not named as a party defendant.

97 Lyman sought to intervene on the grounds that it is a necessary and indispensable party within the purview of RPAPL §1311(1). More particularly, as the record owner of the subject premises, 97 Lyman argued it would be bound and adversely affected by a Judgment of Foreclosure which could result in the forfeiture of its ownership interest in the subject property.

In a Decision and Order dated June 24, 2019, this Court found “the Notice of Pendency statute [to be] constructive notice of an action’s pendency, from the time of its filing, to any purchasers of any defendant named in the notice concerning the affected property.” The Court noted “persons whose conveyance is recorded after the filing of the Notice are bound to the same extent as a party in any proceeding.” Consonant with the foregoing, 97 Lyman’s argument that it was a necessary party to the 2018 foreclosure action was rejected, and the Court denied its motion to intervene and simultaneously granted MTGLO’s motion for an Order of Reference and Default Judgment. Shortly thereafter, on July 3, 2019, 97 Lyman filed a Notice of Appeal to the Appellate Division of the Supreme Court, Second Judicial Department. On its own accord, the Court marked the 2018 foreclosure action stayed pending the outcome of the Appeal of the Orders dated June 24, 2019.

This action ensued. It was commenced to quiet title pursuant to RPAPL § 1501(4) and compel the determination of the parties’ claims to the real property which is the subject of the 2018 foreclosure action. More specifically, plaintiff 97 Lyman seeks to cancel and discharge the underlying mortgage encumbering the subject premises, or in the alternative, to declare said mortgage unenforceable.

Before the Court is the motion of the defendant mortgagor, MTGLO, to dismiss the complaint pursuant CPLR §§ 3211(a)(1), 3211(a)(4), (a)(5) and/or (a)(7) on the grounds that 97 Lyman took title to the encumbered property *subject to* the 2018 foreclosure action, therefore, plaintiff is bound by the Court’s determination in the foreclosure proceedings.

Plaintiff cross moves for, *inter alia*, an Order pursuant to CPLR §2201 staying the quiet title action pending the resolution of the Appeal of this Court’s Orders dated June 24, 2019. CPLR § 2201 provides, in pertinent part, “[except] where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just.” The issuance of a stay is warranted where the issues and parties “substantially” overlap and the possibility of inconsistent rulings exists (*see Onebeacon America Insurance Company v Colgate-Palmolive Company*, 96 AD3d 541, 541 [1st Dept 2012]). Here, the dispositive issues raised in plaintiff’s action to quiet title overlap with those presented in the 2018 foreclosure proceeding. Both are sufficiently related, *e.g.*, they pertain to the parties’ respective interest in the subject property and the enforceability of the mortgage encumbering the property. It is the Court’s opinion that granting a stay in this action to quiet title pending the Appeal in the foreclosure action would prevent inconsistent rulings and preserve judicial resources. As such, it is unnecessary for the Court to consider the substance of defendant’s motion to dismiss the Complaint.

Accordingly, it is

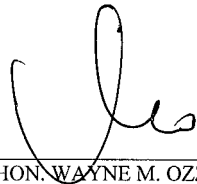
ORDERED, that plaintiff's cross motion is granted; and it is further

ORDERED, the within action to quiet title pursuant to RPAPL § 1501(4) and compel the determination of the parties' claims to the subject real property is hereby stayed pending the determination of the Appellate Division of the Supreme Court, Second Judicial Department in the Appeal of the Orders of this Court dated June 24, 2019; and it is further

ORDERED, that defendant's motion to dismiss the Complaint is denied with leave to renew; and it is further

ORDERED, that the Clerk mark his records accordingly.

ENTER,



HON. WAYNE M. OZZI, J.S.C.

Dated:

3/17/20