

Brody v RBC Mtge. Co.

2020 NY Slip Op 35440(U)

July 6, 2020

Supreme Court, Westchester County

Docket Number: Index No. 63363/2019

Judge: Charles D. Wood

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

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

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IRA LAWRENCE BRODY,

Petitioner,

DECISION & ORDER

Index No.:63363/2019
Sequence Nos. 2,3,4

-against-

RBC MORTGAGE COMPANY, COUNTRYWIDE HOME LOANS INC., MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., BANK OF NEW YORK MELLON CORPORATION F/K/A THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATE HOLDER OF CWALT, INC. ALTERNATIVE LOAN TRUST 2007-1T1, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-1T1, NEWREZ LLC AS SERVICING AGENT FOR BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATE HOLDERS OF CWALT, INC. ALTERNATIVE LOAN TRUST 2007-1T1, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-1T1 AND JOHN DOE #1 THROUGH #10 (SAID NAMES BEING FICTITIOUS, IT BEING THE INTENTION OF THE PETITIONER TO DESIGNATE AND ALL INDIVIDUALS, CORPORATIONS, OR ENTITIES, IF ANY HAVING OR CLAIMING AN INTEREST IN THE PROPERTY DESCRIBED IN THE PETITION),

Respondents.

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WOOD, J.

New York State Courts Electronic Filing (“NYSCEF”) Documents Numbers 53-80, 83, 85-131, were read in connection with separate motions to dismiss by respondents Mortgage

Electronic Systems, Inc., and New Rez, LLC.(Seq 2); and The Bank of New York Mellon Corporation f/k/a The Bank of New York, As Trustee for the Certificate Holders of CWALT, Inc., Alternative Loan Trust 2007-1T1, Mortgage Pass-Through Certificates, Series 2007-1T1 ("BONY") (Seq 3); and petitioner Ira Lawrence Brody's ("Brody") Cross-Motion to Compel respondents to Answer under CPLR 404 (a).¹

Brody brings this quiet title action pursuant to Real Property Action and Proceedings Law ("RPAPL") Article 15 seeking a declaration that mortgages held by BONY encumbering the subject property are unenforceable and invalid.

NOW based upon the foregoing, the motions are decided as follows:

It is well settled that pursuant to CPLR 3211 (a)(7) "upon a motion to dismiss [for failure to state a cause of action], the sole criterion is whether the subject pleading states a cause of action, and if, from the four corners of the complaint, factual allegations are discerned which, taken together, manifest any cause of action cognizable at law, then the motion will fail. The court must afford the pleading a liberal construction, accept the facts alleged in the pleading as true, accord the plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (Esposito v Noto, 90 AD3d 825 [2d Dept 2011]). Moreover, if the court considers evidence submitted by a defendant in support of a motion to dismiss under CPLR 3211 (a) (7)... a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint," and if the court does so, "the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one"

¹The actions against respondents Countrywide Home Loans, Inc. and RBC Mortgage Company, was discontinued by Stipulations of Discontinuance.

(Leon v Martinez, 84 NY2d 83, 88 [1994]; Uzzle v Nunzie Ct. Homeowners Ass'n. Inc., 70 AD3d 928, 930 [2d Dept 2010]).

On October 3, 2003, Brody obtained a loan from RBC Mortgage Company ("RBC") in the original principal amount of \$620,000.00, secured by a mortgage (the "2003 Mortgage"), encumbering real property located at 613 Purchase Street, in Rye ("the Property"). On December 22, 2006, Brody obtained an additional loan in the original principal amount of \$1,963,000.00 from Countrywide Home Loans, Inc. ("Countrywide") (succeeded by BONY), in part, evidenced by a Note executed by Brody for \$1,372,798.27 (the "Gap Note") and secured by a new mortgage encumbering the Property for the original amount of \$1,372,798.27, (the "Gap Mortgage"). On December 22, 2006, Brody executed a Note in favor of Countrywide Home Loans, Inc. for \$1,963,000.00 (the "Consolidated Note"), Consolidation, Extension and Modification Agreement and consolidated mortgage (collectively "CEMA"), which, in part, consolidated the 2003 Mortgage with a Gap Mortgage to form a single lien on the Property in the amount of \$1,963,000.00.

On April 15, 2013, Brody filed a special proceeding (Index No. 55375/2013) under Real Property and Proceedings Law §1921 against Countrywide (Bank of America as successor) seeking to compel the discharge of the CEMA Note. In that prior proceeding, Countrywide and BONY filed a summary judgment motion, in which Brody opposed the motion. By its Decision and Order dated December 7, 2016, the court granted summary judgment to Countrywide and BONY, and found that the record before the court made clear that Brody ratified the \$1.963 Million Consolidated Loan.

On July 10, 2019, Brody filed a Petition for Chapter 11 bankruptcy with the United States Bankruptcy Court, Southern District of New York, listing the Property as an asset and BONY as a creditor (the "Bankruptcy Proceeding"). BONY's motion to lift the automatic stay was granted. The bankruptcy proceeding remains pending.

Now, in their respective motions, Moving respondents argue that Brody attempts to re-litigate claims and issues already determined in the prior proceeding before this court under Real Property and Proceedings Law ("RPAPL") § 1921, which sought to invalidate the mortgages on the basis of fraud. As hereinbefore stated, that prior proceeding was dismissed on summary judgment upon a finding by the court that Brody had ratified the purportedly fraudulent mortgages by accepting the mortgage proceeds, signing the mortgage documents and making the mortgage payments without protest. The court agrees with Moving respondents that because the validity of the Mortgages was already determined in the special proceeding, the doctrines of res judicata and collateral estoppel preclude Brody's claims and mandate their dismissal.

Specifically, under the doctrine of res judicata, or claim preclusion, "a disposition on the merits bars litigation between the same parties, or those in privity with them, of a cause of action arising out of the same transaction or series of transactions as a cause of action that either was raised or could have been raised in the prior proceeding. Thus, a party seeking to assert res judicata must show the existence of a prior judgment on the merits between the same parties, or those in privity with them, involving the same subject matter" (HSBC Bank USA, Nat'l Ass'n v Pantel, 179 AD3d 650, 650–51 [2d Dept 2020]).

Brody's complaint seeks a declaration that he is vested with absolute and unencumbered title to the Property which is based upon his allegation that the CEMA is, for various reasons,

fraudulent and invalid. He alleges that the 2003 Mortgage is "defective on its face and unenforceable" and that the CEMA is in conflict with the 2003 Mortgage.

In light of the foregoing, it is indisputable in this context that res judicata bars Brody's claims here. The claims clearly arise from the identical transaction at issue in the prior proceeding the consolidated loan transaction, and in particular the CEMA, - - and involve the identical parties. The Court already determined that Brody ratified the Mortgages by accepting the mortgage proceeds, executing the loan documents and making payments thereon without protest and that the Mortgages are therefore enforceable and valid.

Further, the Second Department has found that "collateral estoppel, or issue preclusion, precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party or those in privity, whether or not the tribunals or causes of action are the same. The party seeking to invoke collateral estoppel has the burden to show the identity of the issues, while the party trying to avoid application of the doctrine must establish the lack of a full and fair opportunity to litigate" (Oxford Health Plans (N.Y.), Inc., et al., appellants, v Biomed Pharm., Inc., respondent., 181 AD3d 808, 813 (2d Dept 2020) [internal quotation marks omitted]).

Moving respondents have met their burden by demonstrating identity of issue, namely the CEMA Loan, the alleged fraud that was litigated in the prior proceeding, and Brody having had the full and fair opportunity to litigate that issue is collaterally estopped in this case from re-litigating that determination.

Having concluded that the doctrines of res judicata and collateral estoppel preclude Brody's claims and mandate their dismissal, it is not necessary to consider the other issues raised by the parties.

In light of the foregoing, Brody's cross motion is denied as academic.

All matters not specifically addressed are herewith denied.

This constitutes the Decision and Order of the Court.


Accordingly, it is hereby

ORDERED, that moving respondents' motions to dismiss (Seqs 2 and 3) are granted and petitioner's complaint, as well as any cross claims are dismissed as against these respondents; and it is further

ORDERED, the petitioner Brody's cross motion (Seq 4) is denied as academic.

The Clerk shall mark this case as disposed.

Dated: July 6, 2020
White Plains, New York



HON. CHARLES D. WOOD
Justice of the Supreme Court

To: All Parties' Counsel by NYSCEF