

Sharan v Christiana Trust
2021 NY Slip Op 30051(U)
January 5, 2021
Supreme Court, Kings County
Docket Number: 500334/17
Judge: Lawrence S. Knipel
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At an IAS Term, Part 57 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 5th day of January, 2021.

P R E S E N T:

HON. LAWRENCE KNIPEL,
Justice.

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YANAY SHARAN,

Plaintiff,

- against -

Index No. 500334/17

CHRISTIANA TRUST, a division of WILMINGTON SAVINGS FUND SOCIETY, FSB, not in its individual capacity, but solely as separate Trustee for PENNYMAC LOAN TRUST 2010-NPLI; CITIMORTGAGE, INC. successor by merger to ABN AMRO MORTGAGE GROUP, INC.; NEW YORK CITY ENVIRONMENTAL CONTROL BOARD; NEW YORK CITY PARKING VIOLATIONS BUREAU; NEW YORK CITY TRANSIT ADJUDICATION BUREAU; NEW YORK CITY DEPARTMENT OF FINANCE; KINGS COUNTY CLERK'S OFFICE; NANCY T. SUNSHINE, solely in her official capacity as the Clerk of Kings County; and "JOHN DOE #1" through "JOHN DOE #10," the last ten names being fictitious and unknown to the plaintiffs intended as persons or entities having some claim or interest in the premises described in the Complaint.

Defendants.

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The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed_____

118-137

Opposing Affidavits (Affirmations)_____

138-158

Reply Affidavits (Affirmations)_____

161-170

Upon the foregoing papers in this action to quiet title to the property at 956 St. Johns Place in Brooklyn (Property), defendant, Christiana Trust (Christina Trust), a division of Wilmington Savings Fund Society, FSB, not in its individual capacity, but solely as separate Trustee for PennyMac Loan Trust 2010-NPL1's assignee West Coast Servicing, Inc. (West Coast or defendant), moves (in motion sequence [mot. seq.] five) for an order, pursuant to CPLR 2221 (e), granting it leave to renew the June 20, 2018 order of the court (Wooten, J.), entered on July 19, 2018 (the Underlying Order), which denied defendant's dismissal motion and granted plaintiff Yanay Sharan's (Sharan) summary judgment cross motion, and, upon renewal, denying Sharan's summary judgment cross motion and dismissing this action as premature.

Background

The court refers to the Underlying Order for a full factual recitation of this action to quiet title to the Property and the related, pending 2009 action to foreclose a first mortgage encumbering the Property (2009 Foreclosure Action).¹

Essentially, in this quiet title action, Sharan, the current owner of the Property, alleges that it has been more than six years since the alleged dates on which the predecessor owner of the Property defaulted under the first and second mortgages and the acceleration of those mortgages (*see* complaint at ¶ 34).

On January 27, 2017, Christiana Trust made a motion for an order, pursuant to CPLR 3211 (a) (1) and (a) (7), dismissing Sharan's quiet title complaint on the grounds

¹See *CitiMortgage, Inc. v Shirley Roque, et al.*, Kings County index No. 13154/09.

that its ability to foreclose the first mortgage is not barred by the applicable statute of limitations because the debt was never “validly” accelerated, and Roque (the borrower) reaffirmed the debt before the statute of limitations expired.

Christiana Trust argued that commencement of the 2009 Foreclosure Action did not “validly” accelerate the debt because the court ultimately dismissed the 2009 Foreclosure Action for failure to file a certificate of conformity with the affidavit of service upon Roque. Christiana Trust reasoned that “because the Court found that Borrower was not properly served, Borrower was not provided with clear and unequivocal notice of acceleration. As such, the Loan was never accelerated and the statute of limitations was never triggered.”

On March 27, 2017, Sharan opposed the dismissal motion and cross-moved for partial summary judgment against Christiana Trust in connection with the first mortgage. Sharan argued, in part, that CitiMortgage’s failure to file a certificate of conformity with its out-of-state affidavit of service upon Roque in the 2009 Foreclosure Action “is merely a procedural defect which renders the aforementioned affidavit of service inadmissible . . .” (underline in original).

Importantly, that precise issue of the validity of the acceleration of the debt and the timeliness of the 2009 Foreclosure Action is the subject of a pending appeal to the Appellate Division, Second Department in the 2009 Foreclosure Action. According to the court’s records, the appeal has been perfected and is awaiting an argument date.

In the Underlying Order, the court denied defendant's pre-answer dismissal motion and granted Sharan's partial summary judgment motion. West Coast now seeks leave to renew the Underlying Order and, upon renewal, an order denying Sharan's summary judgment cross motion and granting defendant's motion to dismiss this action as premature.

West Coast argues that the instant quiet title action is premature, as a matter of law, based on the Second Department's holding in *Mizrahi v U.S. Bank, N.A.*, (156 AD3d 617 [2017]). In *Mizrahi*, the Second Department held that an action to quiet title to a property based on the statute of limitations is premature if there is a pending, unresolved action to foreclose the property (*id.* at 618). Here, as in *Mizrahi*, there is a pending appeal in the 2009 Foreclosure Action regarding the acceleration of the first mortgage. Consequently, until that appeal is decided, the instant quiet title action is premature, as a matter of law. Accordingly, it is

ORDERED that West Coast's motion for leave to renew the Underlying Order, pursuant to CPLR 2221 (e), is granted, and, upon renewal, the motion to dismiss the complaint as premature is granted and Sharan's cross motion for partial summary judgment is denied.

This constitutes the decision and order of the court.

E N T E R,

J. S. C.

Justice Lawrence Knipel