

Dang's Mgt. Inc. v 13th Ave. Funding Assoc.

2021 NY Slip Op 30794(U)

March 15, 2021

Supreme Court, Kings County

Docket Number: 505304/2019

Judge: Debra Silber

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : PART 9

X

DANG'S MANAGEMENT INC., CHUI YUK WONG a/k/a
POLLY WONG, ABDO MOHAMED ALI a/k/a KENNY ALI

DECISION/ORDER/
JUDGMENT

Plaintiffs,

-against-

Index No. 505304/2019
Motion Seq. No. 1

13th AVENUE FUNDING ASSOCIATES, HELEN LIU
LEE, MARCIA LEE and LEE'S BROKERAGE CO.,

Date Submitted: 3/15/2021

Defendants.

X

Recitation, as required by CPLR 2219(a), of the papers considered in the review of plaintiffs' motion for partial summary judgment

Papers	NYSCEF Doc.
Notices of Motion, Affirmations and Exhibits Annexed.....	<u>6-17</u>
Affirmation in Opposition and Exhibits Annexed.....	<u>22-23</u>
Reply Affirmation and Exhibit annexed.....	<u>24</u>

Upon the foregoing cited papers, the Decision/Order on this application is as follows:

Plaintiff moves pursuant to CPLR 3212 for an order granting plaintiff partial summary judgment and directing that the subject mortgages be cancelled and discharged of record. Defendant opposes on the grounds that discovery is not complete.

On August 16, 2006, plaintiff Dang's Management Inc., along with another entity, non-party 3301 Church LLC, executed two mortgages of \$50,000 each, one with defendant Lee's Brokerage and one with defendant Helen Lee, which were recorded against the subject Property, 6702 13th Avenue a/k/a 1278 67th Street, Brooklyn, New York, (Block 5767 Lot 43) as well as against another property, 3301 Church Avenue, Brooklyn, NY (Block 4870 Lot 41). Then, on November 9, 2006, another two mortgages

were executed, also for \$50,000 each, with the same borrowers and lenders. The notes, provided at E-File Doc. 12, indicate that the mortgages were to be paid in twelve monthly payments for one year, at fifteen percent interest, and then the balance was to be paid in full. Thus, these mortgages all matured in 2007. No action was brought on the mortgages or on the notes, and the statute of limitations has run. Further, plaintiffs claim the mortgages were paid in full, but defendants failed to provide them with a satisfaction piece. In any event, that issue does not need to be determined for the court to decide this motion.

Plaintiffs contends that they are entitled to partial summary judgment as there are no facts in controversy and the mortgages must be cancelled and discharged of record as the statute of limitations has run.

Defendant claims New York General Obligations Law ("GOL") § 17-101 is applicable to this action, and that the statute effectively revives a time-barred claim when the "debtor has signed a writing that validly acknowledges the debt" but that he cannot provide this document and hopes it will turn up during discovery. The court notes that a preliminary conference has not even been held and the action was commenced two years ago. In addition, the affidavit from Mr. Yeung, defendant Helen Lee's son-in-law, is unavailing. In fact, he does not claim there is a written acknowledgement, but an oral one, which would not satisfy the statute.

To prevail on a motion for summary judgment, the movant must establish, *prima facie*, its entitlement to judgment as a matter of law, providing sufficient evidence demonstrating the absence of any triable issues of fact. (*Matter of New York City Asbestos Litig.*, 33 NY3d 20, 25-26 [2019]). If this burden is met, the opponent must

offer evidence in admissible form demonstrating the existence of factual issues requiring a trial; "conclusions, expressions of hope, or unsubstantiated allegations or assertions are insufficient." (*Justinian Capital SPC v WestLB AG*, 28 NY3d 160, 168 [2016], quoting *Gilbert Frank Corp. v Fed. Ins. Co.*, 70 NY2d 966, 96 [1988]). In deciding the motion, the evidence must be viewed in the "light most favorable to the opponent of the motion and [the court] must give that party the benefit of every favorable inference" (*O'Brien v Port Authority of New York and New Jersey*, 29 NY3d 27, 37 [2017]).

As pertinent here, RPAPL 1501 (4) provides that "[w]here the period allowed by the applicable statute of limitation for the commencement of an action to foreclose a mortgage . . . has expired, any person having an estate or interest in the real property subject to such encumbrance may maintain an action against any other person or persons . . . to secure the cancellation and discharge of record of such encumbrance, and to adjudge the estate or interest of the plaintiff in such real property to be free therefrom."

Pursuant to CPLR 213(4), the statute of limitations to foreclose on a mortgage is six years. Here, the final payment under each of the four mortgage notes was due in 2007. Thus, the statute of limitations has run. Therefore, plaintiff demonstrates, *prima facie*, that they are entitled to the relief provided for in RPAPL §1501(4) (See *e.g.*, *Vargas v Deutsche Bank Natl. Trust Co.*, 168 AD3d 630 [1st Dept 2019]).

As defendant fails to overcome plaintiff's *prima facie* showing and raise a triable issue of fact, the court must grant plaintiff's motion for partial summary judgment.

Accordingly, it is hereby **ORDERED**, that plaintiff's motion for partial summary judgment is granted.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said mortgages which are liens of record and encumbrances upon the subject real property are declared to be invalid, ineffective, outlawed and barred in that the said mortgages and the indebtedness secured thereby became due and payable in 2007, by the terms of the mortgage notes, and that the running of the Statute of Limitations for the commencement of an action to foreclose said mortgages for the principal or for any interest thereon has expired and has not been tolled or abated and that the said Mortgages have become invalid, outlawed and barred by the Statute of Limitations, and it is further

ORDERED, ADJUDGED AND DECREED that defendants and their successors and assigns are hereby barred from any and all claims of any lien, encumbrance or interest in the said real property above-mentioned and described, and that the estate, title and interest of the plaintiffs, in such real property is hereby adjudged to be free from the lien of such mortgages, and from any claim, lien or encumbrance arising from said mortgages or the ownership thereof, and it is further

ORDERED, ADJUDGED AND DECREED that the defendants and every person claiming under them by title accruing after the filing of the judgment roll, as prescribed by law, be and they hereby are forever barred from asserting a claim, the invalidity of which is established in this action, to an estate or interest in the real property above-described, of any kind or nature whatsoever, and it is further

ORDERED, ADJUDGED AND DECREED that the New York City Register, County of Kings, upon presentation of a certified copy of this Judgment, and upon the payment of the lawful and applicable fees, if any, shall cancel and discharge of record the said mortgages above-mentioned and described, as against Block 5767 Lot 43 only, to wit:

CRFN	Doc Date	Lender
2012000145708	8/16/2006	LEE'S BROKERAGE CO
2012000039953	11/9/2006	LEE'S BROKERAGE CO
2009000172738	8/16/2006	LEE, HELEN LIU
2012000161908	11/9/2006	LEE, HELEN LIU

and shall mark upon its books and records wherein the same is recorded the cancellation of said mortgages with a notation referring to this Judgment and the date of the entry thereof.

This constitutes the decision, order and judgment of the court.

Dated: March 15, 2021

ENTER:



Hon. Debra Silber, J.S.C.