

U.S. Bank N.A. v Kim
2021 NY Slip Op 31651(U)
May 5, 2021
Supreme Court, New York County
Docket Number: 850238/2018
Judge: Francis A. Kahn III
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. FRANCIS A. KAHN, III PART IAS MOTION 32

Justice

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U.S. BANK, NATIONAL ASSOCIATION, SUCCESSOR TRUSTEE TO BANK OF AMERICA, NATIONAL ASSOCIATION AS SUCCESSOR BY MERGER TO LASALLE BANK NA AS TRUSTEE FOR WASHINGTON MUTUAL MORTGAGE PASS-THROUGH CERTIFICATES WAMU SERIES 2007-OA4 TRUST,

Plaintiff,

- v -

SHERRY KIM, THOMAS KIM, ROBERT L. GORDONS LLC, NATIONAL CITY BANK, BOARD OF MANAGERS OF THE DOWNTOWN CLUB CONDOMINIUM, COLLINS FINANCIAL SERVICES INC., NEW YORK CITY TRANSIT ADJUDICATION BUREAU, NEW YORK CITY PARKING VIOLATIONS BUREAU, JOHN DOES AND JANE DOES

Defendant.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 40 – 78, 97, 109 – 116, 118

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 004) 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189

were read on this motion to/for MISCELLANEOUS

Upon the foregoing documents, the motions are determined as follows:

In this action to foreclose on a mortgage on residential real property located at 20 West Street, Unit 11H, New York, New York, Justice Arlene Bluth, by order dated November 15, 2019, denied Plaintiff’s motion for summary judgment. In the same order, Justice Bluth granted Defendant Robert L. Gordons, LLC (“Gordons”) motion for summary dismissing Plaintiff’s complaint as barred by the statute of limitations. Justice Bluth reasoned that since the dismissal of a prior foreclosure action pursuant to CPLR §3215[c] was on the merits, Plaintiff could not avail itself of the savings provision under CPLR §205[a].

On March 25, 2021, the Appellate Division, First Department reversed the above order holding there was no finding by the court of a general pattern of delay that would preclude application of CPLR §205[a] (*see US Bank National Association v Kim*, ___AD3d___, 2021 NY Slip Op 01876 [1st Dept 2021]). Accordingly, the Appellate Division reinstated the

complaint and “remanded the matter for consideration of plaintiff’s motion for summary judgment and an order of reference”. Thereafter, Defendant Gordons moved, by order to show cause, for an order granting it leave to file supplemental opposition to Plaintiff’s motion for summary judgment.

Defendant Gordons obtained its title to the premises via a deed, dated May 4, 2016, executed by a Sheriff of the City of New York after a public sale of the property was held under execution of a money judgment held by Board of Managers Of The Downtown Club Condominium for unpaid common charges. Just prior to the decision of the Appellate Division, on March 15, 2021, Defendant Gordons deeded the entire premises to non-party Gokhvat Holdings, LLC.

Defendant Gordons’ motion for leave to submit supplemental opposition to the motion is denied. Gordons has no standing to defend this action as it is no longer the titled owner of the premises nor is it the mortgagor (*see Valiotis v Bekas*, 191 AD3d 1037 [2d Dept 2021]; *U.S. Bank N.A. v Davids*, 188 AD3d 943 [2d Dept 2020]; *Bancplus Mortgage Corp. v Galloway*, 203 AD2d 222 [2d Dept 1994]).

With respect to Plaintiff’s motion for *inter alia* summary judgment, a default judgment and appointment of a referee, Plaintiff established *prima facie* entitlement to relief with the submission of proof the note and mortgage given by the mortgagors and proof of their default (*see eg Bank of NY v Knowles*, 151 AD3d 596 [1st Dept 2017]; *Fortress Credit Corp. v Hudson Yards, LLC*, 78 AD3d 577 [1st Dept 2010]). Although an affirmative defense of lack of standing was pled, via physical receipt of the note prior to the commencement of the action, since a copy of the note, endorsed in blank, was affixed it to the complaint (*Bank of NY v Knowles*, 151 AD3d 596, 597 [1st Dept 2017]; *Federal Natl. Mtge. Assn. v Nugent*, 187 AD3d 716 [2nd Dept 2020]).

In opposition, Defendant Gordons could raise no defense as it no longer owns the property and it is not the mortgagor.

Accordingly, the branch of Plaintiff’s motion for summary judgment is granted and Defendant Gordons’ answer is stricken.

The branch of Plaintiff’s motion for default judgment against all non-appearing Defendants is granted without opposition.

Accordingly, it is

ORDERED Tom Kleinberger, Esq., 411 5th Avenue, New York, New York 10016 – Tel. (917) 326-5523 is hereby appointed Referee in accordance with RPAPL § 1321 to examine whether the tax parcel 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 the caption is amended as follows:

SUPREME COURT STATE OF NEW YORK
COUNTY OF NEW YORK

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U.S. BANK, NATIONAL ASSOCIATION, SUCCESSOR TRUSTEE
TO BANK OF AMERICA, NATIONAL ASSOCIATION AS
SUCCESSOR BY MERGER TO LASALLE BANK NA AS
TRUSTEE FOR WASHINGTON MUTUAL MORTGAGE
PASS-THROUGH CERTIFICATES WAMU SERIES 2007-OA4 TRUST,

Plaintiff,

Index No. 850238/2018

-against-

SHERRY KIM; THOMAS D. KIM; ROBERT L.
GORDONS LLC; NATIONAL CITY BANK;
BOARD OF MANAGERS OF THE DOWNTOWN
CLUB CONDOMINIUM; COLLINS FINANCIAL
SERVICES INC.; NEW YORK CITY TRANSIT

ADJUDICATION BUREAU; NEW YORK CITY PARKING VIOLATIONS BUREAU; "JOHN DOE" (Occupant - Refused Name) and "JANE DOE" (Occupant - Refused Name), WORKER'S COMPENSATION BOARD OF NEW YORK STATE, CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD, CITY OF NEW YORK PARKING VIOLATIONS BUREAU and CITY OF NEW YORK TRANSIT ADJUDICATION BUREAU,

Defendants.

and it is further,

ORDERED that Plaintiff must bring a motion for a judgment of foreclosure and sale within 45 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 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/suptctmanh)); 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.

All parties are to appear for a virtual conference via Microsoft Teams on August 13, 2021 at 11:20 a.m. If a motion for judgment of foreclosure and sale has been filed Plaintiff may contact the Part Clerk Tamika Wright (tswright@nycourt.gov) in writing to request that the conference be cancelled. If a motion has not been made, then a conference is required to explore the reasons for the delay.

5/5/2021 DATE

CHECK ONE:

Form with checkboxes for CASE DISPOSED, GRANTED, DENIED, SETTLE ORDER.

APPLICATION:

Form with checkboxes for SETTLE ORDER, INCLUDES TRANSFER/REASSIGN.

CHECK IF APPROPRIATE:

Form with checkboxes for INCLUDES TRANSFER/REASSIGN.

Signature of Francis A. Kahn, III, A.J.S.C. and stamp: HON. FRANCIS A. KAHN III J.S.C. with checkboxes for NON-FORMAL DISPOSITION, GRANTED IN PART, SUBMIT ORDER, FIDUCIARY APPOINTMENT, OTHER, REFERENCE.