

Nadam Props. Inc. v Taeid

2021 NY Slip Op 32447(U)

November 4, 2021

Supreme Court, Kings County

Docket Number: Index No. 510361/2020

Judge: Richard J. Montelione

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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 DJMP

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NADAM PROPERTIES INC.,

Plaintiff,

-against-

ELIAS TAEID, DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE FOR FIRST FRANKLIN
MORTGAGE LOAN TRUST 2006-FF16, ASSET-BACKED
CERTIFICATES, SERIES 2006-FF16,

Defendants.
-----X

**DECISION
and
ORDER**

Index No.: 510361/2020
Motion Date: 7/13/2021
Motion Cal. No.:
Mot. Seq. 2

After oral argument, the following papers were read on this motion pursuant to CPLR 2219(a):

<u>Papers</u>	<u>Numbered</u>
<p>Plaintiff Nadam Properties Inc.'s Notice of Motion dated November 30, 2020 (MS#1), for an Order directing the entry of judgment pursuant to CPLR 3215(a) in favor of the Plaintiff and against Defendant Taeid and Defendant Deutsche Bank; b) Declaring that Defendant Taeid never, at any time, acquired a fee interest in and/or title to the Premises by virtue of either the February 20, 2020 Sale and/or Taeid Deed; c) Setting aside the February 20, 2020 Sale of the Premises to Defendant Taeid; d) Canceling, setting aside and removing the Taeid Deed; e) Declaring that the aforementioned February 20, 2020 Sale and Taeid Deed are null and void and that Plaintiff's interest in the subject Premises is free and clear from any estate, trust or other interest of Defendant Taeid, as well as all persons or entities claiming under and/or acting in concert with same; f) Declaring that Defendant Taeid, as well as all person or entities claiming under and/or acting in concert with the same Defendant, are barred forever and precluded from asserting any claims to an estate, trust, encumbrance or other in interest in the subject Premises; g) Declaring that the Discharge Judgment, which has not been vacated and which was both procured and recorded prior to the JFS, is superior to, and has priority over, the JFS; h) Declaring that Plaintiff obtained title to the Premises free and clear of the Mortgage and is (was) not bound by and/or affected by the JFS; i) Declaring that, as a result of the Discharge Judgment, Plaintiff's interest in the subject Premises is free and clear from any estate, trust or other interest of Defendant Deutsche Bank, as well as all persons or entities claiming under and/or acting in concert with same; j) Declaring that, as a result of the Discharge Judgment, Defendant Deutsche Bank, as well as all person or entities claiming under and/or acting in concert with the same Defendant, are barred forever and precluded from asserting any claims to an estate, trust, encumbrance or other in interest in the subject Premises; k) Awarding Plaintiff reasonable attorneys' fees, costs and expenses; and l) Granting such other and further relief as the Court may deem just and proper (NYSCEF No. 19);</p>	<p>(NYCEF DOC. #s)</p>

<p>Plaintiff's Attorney Affirmation of Medea Matiashvili, affirmed on November 30, 2020 (NYSCEF No. 20);</p> <p>Exhibits:</p> <p>A-September 14, 2006 Deed (NYSCEF No. 21)</p> <p>B-September 14, 2006 Mortgage (NYSCEF No. 22)</p> <p>C-Assignment of the Mortgage (NYSCEF No. 23)</p> <p>D-S & C Foreclosure Action (NYSCEF No. 24)</p> <p>E-2013 Conditional Order of Dismissal (NYSCEF No. 25)</p> <p>F-S&C Discharge Action (NYSCEF No. 26)</p> <p>G-2016 Discharge Judgment (NYSCEF No. 27)</p> <p>H-Nadam Deed (NYSCEF No. 28)</p> <p>I-March 2, 2016 Court Order (NYSCEF No. 29)</p> <p>J-Judgment of Foreclosure and Sale (NYSCEF No. 30)</p> <p>K-Foreclosure Surplus Monies Form (NYSCEF No. 31)</p> <p>L-Summons and Complaint (NYSCEF No. 32)</p> <p>M-Affidavit of Service re: defendant Taeid (NYSCEF No. 33)</p> <p>N-Affidavit of Service for Defendant Deutsche Bank (NYSCEF No. 34).....</p>	<p>19-34</p>
<p>Defendant Deutsche Bank National Trust Company, as Trustee for First Franklin Mortgage Loan Trust 2006-FF16; Asset-backed certificates, Series 2006-FF16's Cross Motion (MS#2), dated July 2, 2021, for an order: 1) Denying Plaintiff's Default Judgment motion in all respects and in its entirety; 2) Dismissing the action pursuant to CPLR 3211(a)(8); or alternatively 3) Vacating Defendant's default pursuant to CPLR 317; and 4) Granting leave for Defendant to file and serve an answer pursuant to CPLR 3012(d); and for such other and further relief that the Court may deem just and proper (NYCEF No. 43);</p> <p>Defendant Deutsche Bank's Attorney Affirmation of Molly L. Chapman, Esq., affirmed on July 2, 2021 (NYCEF No. 44); Affidavit of Ronaldo Reyes, Vice-President Deutsche Bank National Trust Company, sworn to on March 29, 2021 ((NYCEF No. 45);</p> <p>Exhibits</p> <p>A-Affidavit of Alexandre C. Halow, a Representation Services Adviser for C T Corporation System ("CT Corp."), sworn to on April 1, 2021 ((NYCEF No. 46);</p> <p>B-Deed dated September 14, 2006 from Kalefa to Lynden Hall (NYCEF No. 47);</p> <p>C-Promissory Note of \$512,000.00 (NYCEF No. 48);</p> <p>D-Mortgage (NYCEF No. 49);</p> <p>E-Assignment of Mortgage (NYCEF No. 50);</p> <p>F-Notice of Pendency (NYCEF No. 51);</p> <p>G-Conditional Dismissal Order dated October 8, 2013 (NYCEF No. 52);</p> <p>H-Order vacating dismissal dated March 2, 2016 (NYCEF No. 53);</p> <p>I-Order of Reference dated July 19, 2017 (NYCEF No. 54);</p> <p>J-Appellate Division decision (NYCEF No. 55);</p> <p>K-Appellate Division decision (NYCEF No. 56);</p> <p>L-Order of the court dated May 20, 2019 (NYCEF No. 57);</p> <p>M-Judgment Order with Entry, confirming referee report and judgment of foreclosure and sale, dated May 20, 2019 (NYCEF No. 58);</p> <p>N-Notice of Sale (NYCEF No. 59);</p> <p>O-Report of Sale (NYCEF No. 60);</p>	

P-Deed from Hall to Nadam Properties LLC (NYCEF No. 61); Q-Judgment of Hon. Johnny Lee Baynes discharging note and mortgage dated March 24, 2016 entered on ACRIS (NYCEF No. 62); R-Summons and Complaint (NYCEF No. 63); S-Affidavit of Service upon CT Corporation System for Deutsche Bank on August 4, 2020 (NYCEF No. 64); T-Affidavit of service upon CT Corporation System for Deutsche Bank “authorized to accept”, dated October 9, 2020 (NYCEF No. 65); U-Affidavit of service of Notice of Motion (NYCEF No. 66); V-Notice of Pendency ((NYCEF No. 67).....	43-67
Plaintiff’s Attorney Affirmation of Medea Matiashvili, Esq., affirmed on July 12, 2021 (NYCEF No. 69).....	69

Montelione, Richard J., J.

This is the third action (“Third Action-Quiet Title”) involving the premises located at 46 Paerdegat 3rd Street, Brooklyn, New York 11236, Block 8031 and Lot 33 (the “premises”). Plaintiff seeks to quiet title pursuant to Real Property Actions and Proceedings Law (“RPAPL”) § 1501(1). Plaintiff claims that Lynden Hall, a non-party in this action but a party in the First and Second Actions acquired title to the premises by deed dated September 14, 2006. At the time Mr. Hall acquired titled, he also executed and delivered a certain note and mortgage to non-party First Franklin, a Division of National City Bank (“First Franklin”) in the amount of \$512,000.00 (the “mortgage”) which thereafter was assigned to Defendant Deutsche Bank.

In or about February 13, 2009, defendant Deutsche Bank commenced a foreclosure action in Kings County Supreme Court, *Deutsche Bank National Trust Company, as Trustee for First Franklin Mortgage Loan Trust 2006-FF16, Asset-Backed Certificates, Series 2006-FF16 v. Lynden Hall, et al*, Index No. 3552/2009 (the “First Action-Foreclosure”). On October 8, 2013, the court issued a 90-day conditional order of dismissal. On or about June 26, 2015, Lynden Hall commenced the second action (“Second Action-Discharge”) entitled *Lynden Hall v. Deutsche Bank National Trust Company, as Trustee for First Franklin Mortgage Loan Trust 2006-FF16, Asset-Backed Certificates, Series 2006-FF16*, Index No. 8116/2015 to discharge the

note and mortgage. By default, a judgment was entered in the second action on March 29, 2016 discharging the note and mortgage. However, prior to this judgment being entered, Deutsche Bank filed a motion to vacate the conditional order of dismissal in the foreclosure action (First Action) on September 4, 2015 which was granted by order dated March 2, 2016 and entered on April 1, 2016, “(t)he plaintiff’s motion to vacate the order of dismissal dated October 8, 2013 and restoring plaintiff’s action to the court’s docket is hereby granted in its entirety.” This decision and order were appealed by Mr. Hall. The appellate court affirmed the lower court’s order vacating the dismissal and restoring the 2009 foreclosure action. The appellate court further affirmed the lower court’s order denying mortgagor’s (Mr. Hall’s) cross-motion and granting Deutsche Bank’s motion for default judgment and an order of reference. (*Deutsche Bank Nat’l Tr. Co. v. Hall*, 185 A.D.3d 1006, 129 N.Y.S.3d 146 [AD 2nd Dept 2020]; *Deutsche Bank Nat. Tr. Co. v. Hall*, 149 A.D.3d 803, 49 N.Y.S.3d 910 [AD 2nd Dept 2017]).

Notwithstanding the restoration of the foreclosure action by order dated March 2, 2016 (First Action), by deed dated August 20, 2017, Lynden Hall transferred ownership in the premises to plaintiff for the sum of \$45,000.00 ostensibly based on the default judgment discharging the mortgage in the Second Action *Lynden Hall v. Deutsche Bank National Trust Company, as Trustee for First Franklin Mortgage Loan Trust 2006-FF16, Asset-Backed Certificates, Series 2006-FF16*, Index No. 8116/2015 entered on March 29, 2016. This discharge judgment was thereafter recorded in the Office of the City Register on December 7, 2017. On or about March 12, 2021, defendant Deutsche Bank filed a motion to vacate the judgment dated March 24, 2016 and entered on March 29, 2016 pursuant to CPLR 5015(a)(3) and (5) and to dismiss the action pursuant to CPLR 3211(a)(1) (Second Action). This motion in the Second Action is currently returnable on a future date.

Plaintiff asserts that although the discharge judgment was not recorded until *after* the transfer, it relied on the fact that the discharge order was entered prior to the transfer (March 29, 2016), it had no actual knowledge of the foreclosure action, it was a bona-fide purchaser for value who acquired ownership of the premises free and clear of the alleged mortgage held by defendant Deutsche Bank and therefore its claims are superior to those now raised by the defendant bank. Plaintiff further claims that defendant bank continued to prosecute the foreclosure action which incorrectly and improperly resulted in a Judgment of Foreclosure and Sale which was dated May 20, 2019 and entered on June 18, 2019 (*Deutsche Bank National Trust Company, as Trustee for First Franklin Mortgage Loan Trust 2006-FF16, Asset-Backed Certificates, Series 2006-FF16 v. Lynden Hall, et al*, Index No. 3552/2009). The foreclosure auction took place on or about February 20, 2020 and the premises was sold to defendant Taid for the sum of \$820,000.00. No deed has yet been recorded although executed.

Plaintiff seeks a default judgment under CPLR 3215(a), and a declaratory judgment declaring the rights of the parties with respect to the premises which ultimately determines the plaintiff as the owner in fee.

Defendant Deutsche Bank cross-moves for an order 1) Denying Plaintiff's motion in all respects; 2) Dismissing the action pursuant to CPLR 3211(a)(8); or alternatively 3) Vacating Defendant's default pursuant to CPLR 317; and 4) Granting leave for Defendant to file and serve an answer pursuant to CPLR 3012(d).

Defendant Deutsche Bank claims that although there was a conditional order dated October 8, 2013 and entered on December 16, 2013 dismissing the foreclosure action, this order was vacated by order dated March 2, 2016 and entered March 3, 2016. In other words, the

foreclosure action that was reinstated by order dated March 2, 2016 occurred before the transfer from Lynden Hall to plaintiff Nadam Properties Inc. on August 20, 2017.

No party has requested that any of the three pending matters involving the premises be consolidated.

The defendant's motion, *inter alia*, seeks to dismiss the action because the court lacks jurisdiction. Defendant bank asserts through an affidavit of Ronaldo Reyes, a Vice-President of Deutsche Bank (NYSCEF Doc. No. 45), and affidavit of Alexandre C. Halow, a Representation Services Adviser for CT Corporation System (NYSCEF Doc. 46), that notwithstanding the affidavit of service which indicates that the summons and complaint was served upon CT Corporation, as an agent for Deutsche Bank, this Corporation is not an agent for the bank.

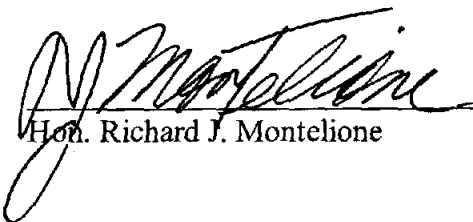
LEGAL ANALYSIS

The plaintiff's affidavit of service of process upon CT Corporation System as an agent "authorized to accept" service (NYSCEF No. 16) and the defendant bank's affidavits to the contrary (NYSCEF Nos. 45 and 46) sufficiently raise an issue of fact as to whether jurisdiction was obtained over defendant bank. "When a defendant seeking to vacate a default judgment raises a jurisdictional objection pursuant to CPLR 5015 (a) (4), the court is required to resolve the jurisdictional question before determining whether it is appropriate to grant a discretionary vacatur of the default under CPLR 5015 (a) (1) (*see Marable v Williams*, 278 AD2d 459, 718 NYS2d 400 [2000]; *Taylor v Jones*, 172 AD2d 745, 746, 569 NYS2d 131 [1991])," *see Roberts v Anka*, 45 AD3d 752, 753 [2d Dept 2007]). This matter is scheduled for a virtual traverse hearing in Part DJMP, on Wednesday, 11/22/22 at 3⁰⁰ ~~am~~ pm. The plaintiff is directed to produce the process server and all her or his records. Such records shall be converted to pdf files and forwarded to chambers at least two business days prior to the hearing. Defendant

shall also produce any relevant witnesses. If I, Judge Montelione, am no longer the sitting judge in Part DJMP, this matter may be referred to me to conduct the traverse hearing.

This constitutes the decision and order of the Court.

Dated: 11/4/2021


Hon. Richard J. Montelione

KINGS COUNTY CLERK
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