

Wells Fargo Bank, N.A. v Sulton

2022 NY Slip Op 31638(U)

May 16, 2022

Supreme Court, Kings County

Docket Number: Index No. 16658/2010

Judge: Bernard J. Graham

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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

WELLS FARGO BANK, N.A.
347 Stateview Boulevard
Ft. Mill, SC 29715,

Plaintiff,

-against-

ANDRE SULTON, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD, NEW
YORK CITY PARKING VIOLATIONS BUREAU,
NEW YORK CITY TRANSIT ADJUDICATION
BUREAU, PEOPLE OF THE STATE OF NEW YORK,
JOHN DOE (Said name being fictitious, it being the
intention of Plaintiff to designate any and all occupants
of premises being foreclosed herein, and any parties,
corporations or entities, if any, having or claiming an
interest or lien upon the mortgaged premises.),

Defendants.

WILMINGTON TRUST, NATIONAL ASSOCIATION,
NOT IN ITS INDIVIDUAL CAPACITY, BUT SOLELY
AS TRUSTEE FOR MFRA TRUST 2015-1,

Plaintiff,

-against-

ANDRE SULTON, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD, "JOHN
DOE #1" through "JOHN DOE #12," the last twelve
Names being fictitious and unknown to plaintiff, the
Persons or parties intended being the tenants,
Occupants, persons or corporations, if any, having or
Claiming an interest in or lien upon the premises,
Described in the complaint,

Defendants.

Index No.: 16658/2010
Action #1

DECISION/ORDER

Hon. Bernard J. Graham
Supreme Court Justice

Index No.: 503546/2017
Action #2

Recitation, as required by CPLR §2219(a), of the papers considered on the review of this motion to: vacate the order of dismissal and restoring the action and lis pendens, pursuant to CPLR §5015 and/or §2221 and the cross-motion of the defendant for sanctions and attorneys fees.

Papers	NYSEF Doc. #
Notice of Motion and Affidavits Annexed.....	<u>(seq. 3) 8-21</u> <u>(seq. 4) 23-37</u>
Order to Show cause and Affidavits Annexed.....	_____
Answering Affidavits.....	<u>(seq. 4) 39-40</u>
Replying Affidavits.....	<u>(seq. 4) 42</u>
Exhibits.....	_____
Other: (memo).....	_____

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

Plaintiff, Wilmington Trust, National Association, not in its Individual Capacity, but Solely as Trustee for MFRA Trust 2015-1 (“plaintiff”), has moved (seq. 3) to vacate the August 15, 2013 dismissal Order of Judge Lawrence Knipel pursuant to CPLR §3215(c); to amend the caption to reflect the substitution of Wilmington for Wells Fargo Bank, N.A. (“Wells Fargo”); as plaintiff, pursuant to CPLR §1018; and to consolidate the two related actions bearing Index No. 16658/2010 and Index No. 503546/2017.

Counsel for defendant, Andre Sulton, has opposed the relief sought in the motion upon the grounds plaintiff has failed to provide a reasonable excuse for its delay in seeking vacatur of the dismissal, pursuant to CPLR §5015(a)(1); the vacatur of the August 13, 2015 order would violate RPAPL §1301(3); and the relief sought in plaintiff’s motion is barred by the doctrine of laches. Defendant has cross-moved in which it seeks an order of the Court to sanction the plaintiff, pursuant to NYCRR 130-1.1, for attempting to restore a dismissed action and for an award of attorneys fees in the sum of \$7,500.00.

Background:

This action was brought to foreclose on a mortgage and note dated June 11, 2008, which was recorded on January 22, 2009 in the Office of the City Register of the City of New York (the “subject note and mortgage”). The principal sum of the note was \$533,850.00, and the mortgage encumbered the property located at 63 Dumont Ave., Brooklyn, New York 11212 (Block 3552, Lot 102).

The former plaintiff (mortgagee), Wells Fargo, commenced this foreclosure action (“Action #1”) by the filing of a Summons and Complaint and a Notice of Pendency in the Office of the Kings County Clerk on July 7, 2010. Thereafter, the Summons and Complaint was served upon all defendants and issue was joined upon the service of an Answer by defendant Andre Sulton on July 29, 2010. Following the commencement of the action, the Note and Mortgage were assigned and was allegedly transferred to the current plaintiff, Wilmington, on August 20, 2015.

Although an Answer had been filed by defendant Andre Sulton, the action was dismissed on August 15, 2013, by Order of Judge Knipel, due to the failure of the plaintiff to move for a default judgment against defendant Andre Sulton, pursuant to CPLR §3215(c). A motion requesting relief similar to the instant motion was later filed by Wilmington in June of 2018, however, the defendant Andre Sulton filed for Chapter 11 Bankruptcy while the motion was pending, and the motion was marked withdrawn by the Court. On February 22, 2017, a second action (“Action #2”) was commenced by Wilmington seeking to foreclose on the subject note and mortgage.

Discussion:

This Court has reviewed the submissions of counsel and considered the arguments presented therein and has determined that it is appropriate, based on the facts herein, to vacate the August 15, 2013 Order dismissing Action #1.

In reaching this determination, this Court initially considered whether the undersigned is authorized to determine this motion, as the August 15, 2013 dismissal order was issued by Judge Knipel. The Uniform Court Rules provide that all motions

shall be returnable before the assigned judge. 22 NYCRR 202.8. This Court notes that “the CPLR §2221 requirement of referral of motions to a judge who granted an order on a prior motion has been modified to provide for consistency with the mandate of the Individual Assignment System that all motions in a case shall be addressed to the assigned judge.” Ministry of Christ Church v Mallia, 129 AD2d 922 [3d Dept 1987], *see* CPLR §2221[b], as amended by L. 1986, ch. 355, §5; 22 NYCRR 202.8[a]. This Court further rejects the argument that the vacatur of Judge Knipel’s order would violate the principle which prevents one judge from overruling another judge of co-ordinate jurisdiction. Here, the case had been dismissed by Judge Knipel *sua sponte* and not pursuant to a motion. The case has been reassigned to Judge Graham and is part of his inventory. Under the circumstances the “CPLR permits *sua sponte* recusals and reassignments of such motions.” Matter of Petus v Board of Directors, 155 AD3d 485, 486 [1st Dept 2017]; *see also* C&W Camera & Electronics v Pub. Serv. Mut. Ins. Co., 210 AD2d 132, 133 [1st Dept 1994].

It is undisputed that the dismissal pursuant to CPLR §3215(c), was improper, as the application of that statute only applies “[i]f the plaintiff fails to take proceedings for the entry of judgment within one year after [a] default.” Meyers v Slutsky, 139 AD2d 709, 711 [2d Dept 1998]; Gilmore v Gilmore, 286 AD2d 416 [2d Dept 2001]; Hodson v Vinnie’s Farm Mkt., 103 AD3d 549 [2d Dept 2013]; Avir Surgical Supplies, Inc. v Windsor Group Ins. Co., 32 Misc.3d 134(A), 936 NYS2d 57 [2011]; Household Finance Realty Corporation of New York v Adeosun-Ayegbusi, 156 AD3d 870 [2d Dept 2017]; Bank of Am., N.A. v Rice, 155 AD3d 593 [2d Dept 2017]. Here, there was no default, as the defendant filed an answer on July 29, 2010, and as such, the Supreme Court was without power to dismiss the action. Bank United v Kheyfets, 150 AD3d 948 [2d Dept 2017]; U.S. Bank Nat. Ass’n v Ricketts, 153 AD3d 1298 [2d Dept 2017]; Meyers v Slutsky, 139 AD2d at 711; Bank of Am., N.A. v Rice, 63 NYS3d at 486; HSBC Bank USA, N.A. v Alexander, 124 AD3d 838 [2d Dept 2015]; Washington Mutual Bank, FA v Milford-Jean-Gille, 153 AD3d 754 [2d Dept 2017]; US Bank Nat. Ass’n v Madero, 154

AD3d 795 [2d Dept 2017]; WM Specialty Mtge. LLC v Palazzollo, 145 AD3d 714 [2d Dept 2016].

Under CPLR §5015(a), a court is empowered to vacate a default judgment for several reasons, including excusable neglect; newly-discovered evidence; fraud, misrepresentation or other misconduct by an adverse party; lack of jurisdiction; or upon the reversal, modification or vacatur of a prior order. The Court of Appeals has determined that the list of reasons as to when a default judgment may be vacated, which are enumerated in CPLR §5015(a), is not exhaustive, as the drafters of that provision intended that courts retain and exercise their inherent discretionary power in situations that warranted vacatur but which the drafters could not easily foresee. Woodson v Mendon Leasing Corp., 100 NY2d 62, 68 [2003]. In addition to the grounds set forth in CPLR §5015(a), a court may vacate its own judgment for sufficient reason and in the interests of substantial justice. Woodson v Mendon Leasing Corp., 100 NY2d 62, 68 [2003]; *see* Ladd v. Stevenson, 112 NY 325, 332, 19 NE 842 [1889]; *see generally* 10 Weinstein–Korn–Miller, N.Y. Civ. Prac. ¶ 5015.01, at 50–299; ¶ 5015.12, at 50–338 [2002]. “A foreclosure action is equitable in nature and triggers the equitable powers of the court.” Hudson City Sav. Bank v Cohen, 120 AD3d 1304, 1305 [2d Dept 2014]; Deutsche Bank Natl. Trust Co. v. Luden, 91 A.D.3d 701, 701, 936 N.Y.S.2d 561, quoting Mortgage Elec. Registration Sys., Inc. v. Horkan, 68 A.D.3d 948, 948, 890 N.Y.S.2d 326.

The Court took into consideration that counsel for plaintiff, during argument, advised the Court that they were unable to appeal the August 15, 2013 Order as it was not rendered on a motion, but *sua sponte*, and proceeded to file a motion to vacate. Plaintiff’s counsel then explained that the initial motion to vacate was filed in 2018 and was inadvertently marked withdrawn, instead of the case being stayed as a result of defendant’s bankruptcy filing. Counsel for plaintiff corresponded with the Court but was still unsuccessful in vacating the dismissal, and as a result, filed the instant motion.

In the interest of justice, this Court will exercise its discretionary power, and in doing so, vacate the dismissal of the initial case (filed under Index No. 16685/2010), and

restore said matter to active status. The second action (filed under Index No. 503546/2017) is hereby dismissed. The Court considered the steps plaintiff took to vacate the original dismissal and finds them to be reasonable under the circumstances. It would be unfair and unjust to penalize the plaintiff for what appears to have been a ministerial but crucial error by the Court, and if not for said error, there would not have been a need by the plaintiff to commence the second action. The defendant will have the opportunity to present its defenses to the initial action. In dismissing the second action, there will be no need for a consolidation of the two matters, and defendant's argument that he will be prejudiced by having to defend two actions is rendered moot.

Conclusion:

Accordingly, it is

ORDERED that plaintiff's motion to vacate the dismissal of Action #1 is granted, the case is restored to active status under Index No. 16685/2010, and the lis pendens is restored; and it is further

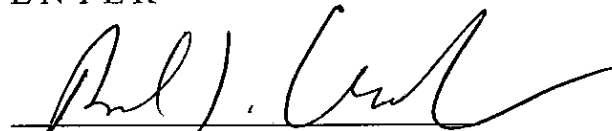
ORDERED that Action #2 (filed under Index No. 503546/2017) is dismissed; and it is further

ORDERED that the relief sought in defendant's cross-motion is denied.

This shall constitute the decision and order of this Court.

Dated: May 16, 2022
Brooklyn, NY

ENTER



Hon. Bernard J. Graham, Justice
Supreme Court, Kings County

HON. BERNARD J. GRAHAM