

PNC Bank, N.A. v Sprout Mtge., LLC

2022 NY Slip Op 33703(U)

October 26, 2022

Supreme Court, New York County

Docket Number: Index No. 653697/2022

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

PNC BANK, NATIONAL ASSOCIATION,

Plaintiff,

- v -

SPROUT MORTGAGE, LLC, CHRISTOPHER WRIGHT,
MICHAEL STRAUSS, BANC OF CALIFORNIA, N.A., JOHN
DOES

Defendants.

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INDEX NO. 653697/2022

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7- 12, 13, 21, 22 were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

Plaintiff’s motion for a preliminary injunction enjoining defendants from transferring funds held and maintained by defendants related to defendant Sprout Mortgage LLC’s (“Sprout”) servicing of certain mortgage loans is denied.

Background

Plaintiff contends that it entered into a mortgage loan purchase and interim servicing agreement with Sprout in June 2022 in which plaintiff would purchase residential mortgage loans totaling an unpaid balance of about \$35 million along with the servicing rights from the loans. It alleges that under the terms of this agreement, Sprout was to act as an interim servicer for the period of time between the closing date of the agreement and the servicing transfer date. Plaintiff maintains that Sprout acted as the interim servicer from June 2022 through August 22, 2022 and plaintiff took over servicing thereafter.

Plaintiff insists that during this interim period, Sprout was supposed to send all sums collected on the loans to plaintiff. It argues that during the applicable time period, Sprout

collected about \$420,000 in various payments but failed to send these payments to plaintiff.

Plaintiff concludes that this failure constitutes a breach of the relevant agreement.

Plaintiff also named Christopher Wright, the CEO of Sprout, and Michael Strauss, the CFO of Sprout, as defendants as well as Banc of California (where the purported payments belonging to plaintiff are located).

In this motion, plaintiff seeks injunctive relief to restrain defendants' bank accounts. Plaintiff insists that it demanded the money from Sprout but that it has refused to turn over what it owes to plaintiff. Plaintiff argues that Sprout abruptly closed in July 2022 and is subject to numerous lawsuits and judgments. It claims that there is a risk that the funds will not be preserved during the pendency of this case. Plaintiff argues that it has a substantial likelihood of success on the merits and that it does not merely seek monetary damages. It argues that it also seeks a turnover of money held in trust by Sprout for plaintiff.

In opposition, Sprout contends that the instant relief sought by plaintiff is premature. It argues that plaintiff's assertions that Sprout may abscond with the funds is not a basis to obtain injunctive relief. It also argues that the only damages plaintiff seeks are monetary and so a preliminary injunction is not appropriate.

Defendant Michael Strauss also submits opposition and simply endorses the arguments raised by Sprout.

Discussion

“A preliminary injunction substantially limits a defendant's rights and is thus an extraordinary provisional remedy requiring a special showing. Accordingly, a preliminary injunction will only be granted when the party seeking such relief demonstrates a likelihood of ultimate success on the merits, irreparable injury if the preliminary injunction is withheld, and a

balance of equities tipping in favor of the moving party” (*1234 Broadway LLC v W. Side SRO Law Project*, 86 AD3d 18, 23, 924 NYS2d 35 [1st Dept 2011] [citations omitted]).

Here, the Court denies the motion because the primary relief sought here is for money damages (*JSC VTB Bank, etc. v Mavlyanov*, 154 AD3d 560, 561, 63 NYS3d 40 [1st Dept 2017] [affirming denial of a motion for a preliminary injunction where the primary relief sought was money damages and where plaintiff sought to enjoin defendants from transferring assets]). In this action, plaintiff seeks money that it claims Sprout should have transferred to it. That is plainly a claim for monetary damages. Plaintiff’s attempt to claim its conversion cause of action somehow avoids this clear precedent is unavailing. The undisputed fact is that plaintiff seeks money damages in this case—that means a preliminary injunction is not appropriate.

Moreover, plaintiff’s claim that it fears Sprout will not be able to satisfy a judgment is not a reason to grant the motion. “[A] general creditor has no legally recognized interest in or right to interfere with the use of the unencumbered property of a debtor prior to obtaining judgment” (*Credit Agricole Indosuez v Rossiyskiy Kredit Bank*, 94 NY2d 541, 549, 708 NYS2d 26 [2000]). “[A]n unsecured creditor suing to collect a debt [is] not entitled to preliminary injunctive relief to prevent the debtor’s dissipation of assets prior to judgment” (*id.* at 546). This is exactly the case here—plaintiff claims that Sprout should have sent plaintiff certain payments it allegedly received. Plaintiff did not sufficiently explain why the Court should depart from this long-standing precedent.

To the extent that plaintiff attempts to claim that, somehow, injunctive relief is appropriate because it wants a specific fund, that claim is also without merit. There is no evidence that plaintiff is seeking a specific and identifiable fund. In fact, the requested relief seeks a broad injunction applying to all accounts in the name of all defendants (as well as their

agents, subdivision, servants, officers, employees, attorneys, and any other persons acting on their behalf) at any institution where the money might be located. That compels the Court to deny the requested relief in light of the above-cited precedent.

Accordingly, it is hereby

ORDERED plaintiff's motion for a preliminary injunction is denied and all stays and temporary injunctive relief previously issued are hereby immediately lifted.

Conference: January 26, 2023 at 10:30 a.m. By January 19, 2023, the parties are directed to upload 1) a stipulation concerning discovery signed by all parties, 2) a stipulation of partial agreement that identifies the areas in dispute or 3) letters explaining why no discovery agreement could be reached. The Court will then assess whether an in-person conference is necessary. The failure to submit anything by January 19, 2023 will result in an adjournment of the conference.

10/26/2022

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE