

Genovese v Nationstar Mtge. LLC

2022 NY Slip Op 34673(U)

October 28, 2022

Supreme Court, Bronx County

Docket Number: Index No. 805874/2022E

Judge: Kenneth L. Thompson Jr.

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX IA 20 _____ X

DEBORAH GENOVESE, as Executor of the ESTATE
OF JOSEPH GENOVESE,

Index No: 805874/2022E

Plaintiff,

-against-

NATIONSTAR MORTGAGE LLC d/b/a Champion
Mortgage Company,

Defendants.

DECISION AND ORDER

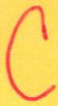
Present:

HON. KENNETH L. THOMPSON, JR.

_____ X

The following papers numbered 1 to read on this **motion to dismiss**

No	On Calendar of July 29, 2022	PAPERS
Notice of Motion-Order to Show Cause - Exhibits and Affidavits Annexed-----		motion sequence #1 NYSCEF
Answering Affidavit and Exhibits-----		motion sequence #1 NYSCEF
Replying Affidavit and Exhibits-----		motion sequence #1 NYSCEF
Memorandum of Law-----		motion sequence #1 NYSCEF



Upon the foregoing papers and due deliberation thereof, the Decision/Order on this motion is as follows:

Defendant moves pursuant to CPLR 3211(a)(1) and (a)(7), to dismiss this action based upon documentary evidence and for failure to state a cause of action. Pursuant to RPAPL 1501(4) plaintiff seeks to cancel and discharge a mortgage held by defendant, on grounds that the statute of limitations has run. The mortgaged property, (hereinafter, Property), is in Bronx County.

In a decision and order of this Court dated April 7, 2017, a Judgment of Foreclosure and Sale against the plaintiff's Property, was vacated and the herein defendant's foreclosure complaint that accelerated the monthly mortgage payments was dismissed on grounds that the estate of decedent/mortgagor, Joseph Genovese, was not served. Consequently, the action was a legal nullity.

Greenpoint served but did not substitute the executor of decedent's estate as a party in the 2008 action (*see* CPLR 1015 [a]). As such, the court lacked jurisdiction over the 2008 action, and that action was a legal nullity from its inception (*see Beneficial Homeowner Serv. Corp. v Heirs at Large of Ramona E. Thwaites*, 185 AD3d 1126, 1129

[2020]; *Wells Fargo Bank, N.A. v Baymack*, 176 AD3d 905, 906 [2019]; *Citigroup Global Mkts. Realty Corp. v LaGreca*, 167 AD3d 842, 843 [2018]). It follows that the 2008 action, a legal nullity, did not trigger the statute of limitations.

(*U.S. Bank Nat'l Ass'n v. Stewart*, 187 A.D.3d 1330, 1332 [3rd Dept 2020]).

The commencement of the dismissed foreclosure action that is a legal nullity, did not trigger the running statute of limitations under RPAPL 1501(4), and consequently, the plaintiff's complaint seeking to cancel and discharge the mortgage must be dismissed.

Plaintiff attempts to distinguish *Stewart* with a quote from *GMAT Legal Title Tr. 2014-1, U.S. Bank Nat'l Ass'n v. Wood*, 192 A.D.3d 1285, 1286–87 [3rd Dept 2021], which states “[t]he fact of election [to accelerate should not be confused with the notice or manifestation of such election’ ” (*id.* at —, 2021 NY Slip Op 01090, *2, quoting *Albertina Realty Co. v Rosbro Realty Corp.*, 258 NY 472, 476 [1932]).” The Third department was referring to a letter threatening acceleration that is “merely an expression of future intent that fell short of an actual acceleration.” “[T]he letter did not seek immediate payment of the entire, outstanding loan, but referred to acceleration only as a future event, indicating the debt was not accelerated at the time the letter was written.” *Id.* at 1287. *GMAT* has no relevance to the facts of this action, where a complaint accelerating a mortgage is a legal nullity. Likewise, *Albertina Realty Co. v. Rosbro Realty Corp.*, 258 N.Y. 472 [1932], is inapposite as It does not concern a purported

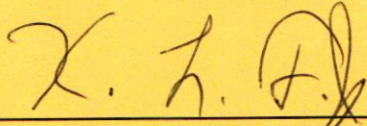
acceleration that is part of a complaint that is a legal nullity.

Accordingly, defendant, Nationstar Mortgage LLC d/b/a Champion Mortgage Company's motion to dismiss is granted and the summons and complaint is hereby dismissed.

The foregoing constitutes the decision and order of the Court.

The Clerk is directed to enter judgment accordingly.

Dated: 10/28/2022



KENNETH L. THOMPSON JR. J.S.C.