

Wells Fargo v Reisman

2023 NY Slip Op 31407(U)

March 10, 2023

Supreme Court, Kings County

Docket Number: Index No. 511156/14

Judge: Larry D. Martin

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FSMP, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 10th day of March 2023.

P R E S E N T:

HON. LARRY D MARTIN,
J.S.C.

Index No.: 511156/14 ✓

_____ x

WELLS FARGO,

Plaintiff,

DECISION AND ORDER

-against-

MOSHE REISMAN et al,

Defendant,

_____ x

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this

Motion:

Papers	Numbered
✓ Motion (MS 6)	<u>1</u>
✓ Opp/Cross (MS 7)	<u>2</u>
Reply/Opp to Cross	<u>3</u>
Cross-Reply	<u>4</u>

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

The instant action was commenced on November 26, 2014. Goldie Reisman, as trustee of the MGR 5-10 Trust¹ and Moshe Reisman jointly answered through counsel. Following motions for summary judgment by Plaintiff and Defendants, the Court held that Plaintiff had demonstrated its standing but that issues of fact remained as to whether Plaintiff had complied with the RPAPL 1304 and contractual notice provisions. Thereafter, both parties again unsuccessfully sought summary judgment, the Court finding that issues of fact still remained as to Plaintiff's compliance with notice requirements.

¹ Moshe Reisman transferred his interest in the property to the trust in 2010.

Rather than proceed to trial, Plaintiff moved by order to show cause to discontinue this action against Moshe – the sole borrower and mortgagor – and for summary judgment against Goldie as she (and the trust) cannot assert the notice defenses which are personal to the borrower. After Defendants opposed and Plaintiff replied, the motion was granted to the extent that the action was dismissed against Moshe. Summary judgment, however, was denied as “the Court already barred Plaintiff from filing an additional summary judgment motion (and the Court notes that Plaintiff still has not demonstrated a default in light of *Gordon* – another issue raised in opp to the prior motion).”

Plaintiff now moves to strike Goldie’s answer as the trust allegedly no longer has an interest in the property and for an order of reference. Goldie opposes and cross-moves for dismissal, suggesting that Moshe was an indispensable party as she transferred the property back to him during the pendency of this action but prior to the discontinuance against him. In the alternative, Moshe seeks leave to intervene in this action and, thereafter, for dismissal of this action based upon Plaintiff’s alleged failure to comply with RPAPL 1304.

Unfortunately, both parties appear to be proceeding upon the misconception that Goldie transferred the trust’s interest in the property – which used to be Moshe’s – to Moshe. That is inaccurate. By deed dated June 25, 2010, Moshe deeded the property to “Goldie Reisman, as trustee of the ‘MGR 5-10 Trust’.” The parties reference a deed dated November 8, 2019 from Goldie – not as trustee – to Moshe. In other words, she transferred her personal interest, if any, to him rather than that of the trust². As such, Goldie – as trustee – remains a necessary party.

² Stepping outside the record for a moment and consulting ACRIS, one would find the situation to be more complicated. In summary,

Date	Transfer	Ownership Post-Transfer
11/22/88	Rebecca Stein → Moshe Reisman	Moshe Reisman
4/23/91	Moshe → Moshe (50%) and Rebecca (50%)	Moshe (50%) and Rebecca (50%)
9/21/97	Moshe and Rebecca → Moshe	Moshe
11/21/06	Moshe → Moshe (50%) and Rebecca (50%)	Moshe (50%) and Rebecca (50%)
10/29/09	Rebecca (50%) → Meir Stein and Rebecca, as Trustees of the M & R Stein Family Trust	Moshe (50%) and M&R Stein Family Trust (50%)
6/25/10	Moshe → Goldie Reisman, as Trustee of the MGR 5-10 Trust	MGR 5-10 Trust (50%) and M&R Stein Family Trust (50%)
1/30/17	M&R Stein Family Trust (50%) → Goldie	MGR 5-10 Trust (50%) and Goldie (50%)
11/8/19	Goldie → Moshe	MGR 5-10 Trust (50%) and Moshe (50%)

Even assuming arguendo that Moshe regained an interest in the property during the pendency of this action, he would step into the shoes of the transferor rather than gaining rights that they did not have. While Defendants argue that it would be a ridiculous result for “Moshe the New Owner” to have different rights than “Moshe the Borrower,” that would be the correct outcome. As the borrower, he was entitled to raise both contractual and statutory notice defenses. “Moshe the New Owner” who acquired subject to this litigation – though the same person – would only be able to assert the non-personal defenses of the party in whose stead he would be acting³. Thus, had he acquired the interest of the MGR 5-10 Trust, he would have been able to assert the defenses in its answer to the same degree that it could have.

Intervention is unnecessary. If Moshe acquired an interest in the property from Goldie as Trustee, he is already a party to this action in her stead. If he did not, then he has no interest – at least not one demonstrated by the record – and there would be no basis for intervention.

In light of the foregoing, it is

ORDERED that Plaintiff’s motion for default judgment and an order of reference is granted to the extent that default judgment is granted against the non-appearing defendants; and it is further

ORDERED that that the Plaintiff has a valid and fully enforceable lien against the premises and Plaintiff has the right to enforce the note and relative mortgage dated August 9, 2004 and recorded in the Kings County Office of the City Register on February 23, 2005 in CRFN 2005000108982⁴; and it is further

ORDERED that the Kings County Office of the City Register be compelled to record this Order declaring that the Plaintiff has the right to enforce the note and relative mortgage

As such, Goldie as Trustee would remain a necessary party and Moshe would step into the shoes of the trustees of the M&R Stein Family Trust who defaulted in this action. The Court recognizes that this is all beyond the record – and reaches a different result based upon the parties’ filings.

³ By the same logic, discontinuing against “Moshe the Borrower” would not be a discontinuance against “Moshe the New Owner” -- who would be a separate “party” in place of the transferor. As such, the discontinuance would not drop an indispensable party.

⁴ It is undisputed that page 12 of the mortgage was omitted from the recorded copy. As such, Plaintiff sought, and Defendants did not oppose, that the Court issue an order declaring that Plaintiff nonetheless has the right to enforce the mortgage.

dated August 9, 2004 and recorded in the Kings County Office of the City Register on February 23, 2005 in CRFN 2005000108982; and it is further

ORDERED that MCLP Asset Company, Inc. be substituted in place and stead of Wells Fargo Bank, N.A. as Plaintiff in this action and that the caption be amended to reflect the same; and it is further

ORDERED that to the extent that this Court finds that Goldie, as trustee remains a necessary party, the portion of Plaintiff's motion seeking to strike her answer is denied and it is further

ORDERED that the caption be amended, pursuant to the Order entered March 9, 2020, removing Moshe Reisman as a party defendant in this action; and it is further

ORDERED that the caption of this action be amended by substituting Yoel Reisman and Zalman Friedman and Chaya Reisman and Mier Stein and Mieriam Stein and Pesha Friedman and Rebecca Stein in place of "JOHN DOE"; and it is further

ORDERED that the caption shall read as follows:

MCLP Asset Company, Inc.,

Plaintiff

v.

Goldie Reisman, as Trustee of the MGR 5-10 Trust;
Meir Stein and Rebecca Stein, as Trustees, or the
Alternate and Successor Trustees of the M&R Stein
Family Trust; New York City Parking Violations
Bureau; New York City Transit Adjudication Bureau;
New York City Environmental Control Board; PNC
Bank, National Association Successor by merger to
National City Bank; Yoel Reisman; Zalman Friedman;

Chaya Reisman; Mier Stein; Mieriam Stein; Pasha
Friedman; Rebecca Stein,

Defendant(s).

and it is further

ORDERED that Defendants' motion to dismiss and/or intervene and dismiss is denied in its entirety.

This constitutes the decision and order of the Court.

ENTER:



Hon. Larry D Martin JSC

**HON. LARRY MARTIN
JUSTICE OF THE SUPREME COURT**