

Halfon v U.S. Bank N.A.

2023 NY Slip Op 32411(U)

July 13, 2023

Supreme Court, Kings County

Docket Number: Index No. 505979/2015

Judge: Joy F. Campanelli

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS:IAS Part 6

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JENIFFER HALFON,

Plaintiff,

Index No.: 505979/2015

-against-

DECISION AND ORDER

U.S. BANK NATIONAL ASSOCIATION, NOT
INDIVIDUALLY BUT SOLELY AS TRUSTEE FOR
THE HOLDERS OF THE BEAR STEARNS ASSET
BACKED SECURITIES I TURST 2006-AC5, ASSET
BACKED CERTIFICATES, SERIES 2006-AC5 AND
OCWEN LOAN SERVICING, L.L.C,

Hon. Joy F. Campanelli, J.S.C.

Defendants.
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In this action to quiet title and cancel and discharge a mortgage recorded against the property located at 1014 Lancaster Avenue in Brooklyn, New York, (hereinafter "Property") Defendant U.S. Bank National Association, (hereinafter "US Bank") moves for an order pursuant to CPLR §3211(a)(1) and (7) dismissing Plaintiff's complaint.

Plaintiff, Jennifer Halfon, ("hereinafter "Halfon") cross-moves for an order pursuant to CPLR § 2221(e) renewing Plaintiff's motion seq. 4, which sought consolidation of this action with related actions, and upon renewal, consolidating this action with US Bank v. Halfon, under index no. 513979/2016 and US Bank v. Halfon, under index no. 521681/2022.

The complaint alleged that on or about August 7, 2006, Halfon obtained a loan from GFI Mortgage Bankers Inc., which was secured by a mortgage on the Property. GFI Mortgage Bankers Inc. subsequently assigned the mortgage to Greenpoint Mortgage Funding, Inc. (hereinafter "Greenpoint").

The complaint alleged that on or about September 11, 2008, Greenpoint sent Halfon a notice of default and on October 20, 2008, commenced a foreclosure action under index no. 28667/2008. (hereinafter "2008 foreclosure action").

The complaint alleged that on or about November 30, 2013, Greenpoint assigned the subject loan to US

Bank.

On November 21, 2013, Hon. Karen Rothenberg denied Greenpoint's motion for an order of reference and dismissed the foreclosure action in its entirety, directing the Clerk of the Court to cancel the Notice of Pendency.

In May 2015, Halfon commenced this action pursuant to RPAPL 1501(4) to cancel and discharge the subject mortgage alleging that the statute of limitations to foreclose on the subject loan has expired based on a purported acceleration in the 2008 foreclosure action. On August 11, 2016, US Bank commenced the 2016 Unjust Enrichment action against Halfon.

Halfon moved for summary judgment on the action to cancel and discharge the mortgage. By order dated March 29, 2016, the Supreme Court granted Halfon's motion for summary judgment on the complaint and directed the Kings County Clerk to cancel and discharge the mortgage. US Bank appealed.

On February 6, 2019, the Appellate Division, Second Department, reversed and held that while "the plaintiff met her prima facie burden of demonstrating her entitlement to judgment as a matter of law on the complaint by establishing that the 2008 foreclosure action accelerated the mortgage debt and that the commencement of a new foreclosure action would be time-barred by the applicable six-year statute of limitations [...] [t]he defendants raised a triable issue of fact as to whether Greenpoint had standing to commence the 2008 foreclosure action, and therefore, whether the service of the 2008 complaint was effective to constitute a valid exercise of the option to accelerate the debt...".

On July 2, 2020, US Bank moved in this action for summary judgment dismissing the Halfon complaint on the grounds that the mortgage debt was never accelerated during the 2008 foreclosure action because Greenpoint was not the owner of the note and had no standing to foreclose. In support of its motion, US Bank resubmitted the same affidavits previously submitted in opposition to Halfon's prior summary judgment and two additional affidavits, one from Gina Feezer, a Senior Loan Analyst of Ocwen Financial Corp., which has been the servicer of the subject loan as of June 1, 2019, and an affidavit from Charles Brehm, a CTS Special Accounts

Consultant in Corporate trust Services for Wells Fargo, which is the Custodian for US Bank. Halfon opposed US Bank's summary judgment motion arguing that the affidavits submitted in support of the motion said nothing new and cross-moved to consolidate the within action with the 2016 Unjust Enrichment action.

On September 23, 2021, Hon. Carl J. Landicino denied US Bank's summary judgment motion "because the affidavits submitted by [Defendants] raise triable issue of fact as to whether the subject note was physically delivered and continuously held by Wells Fargo on behalf of US Bank on November 30, 2006, before Green[p]oint commenced the 2008 foreclosure action."

Furthermore, Justice Landicino denied Halfon's cross-motion "because Halfon has not demonstrated that this quiet title action and the 2016 Unjust Enrichment Action involve common questions of law and fact. The issue of whether Green[p]oint has physical possession of the note when it commenced the 2008 [f]oreclosure [a]ction, and thus, validly accelerated the debt has nothing to do with the claims of US Bank's 2016 Unjust Enrichment [a]ction."

Discussion

A. US Bank's motion to dismiss pursuant to CPLR §3211(a)(1) and (7)

New York law is clear that "[o]n a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction" (Leon v Martinez, 84 NY2d 83, 87 [1994]; see CPLR 3026). The court must "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (Leon v Martinez, 84 NY2d at 87-88; see Goshen v Mutual Life Ins. Co. of N.Y., 98 NY2d 314, 326 [2002]). Under CPLR 3211 (a) (1), a dismissal is warranted only if "the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law" (Goshen v Mutual Life Ins. Co. of N.Y., 98 NY2d at 326; see Leon v Martinez, 84 NY2d at 88)." Goldman v. Nationstar Mtge., LLC 205 A.D.3d 1008 (2d Dep't 2022).

In addition, the Second Department has previously held that when considering a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), the court must accept the facts as alleged in the complaint as true,

accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (Lubonty v. U.S. Bank N.A., 159 A.D.3d 962, 963, 74 N.Y.S.3d 279 [internal quotation marks omitted], affd 34 N.Y.3d 250, 116 N.Y.S.3d 642, 139 N.E.3d 1222; see Nonnon v. City of New York, 9 N.Y.3d 825, 827, 842 N.Y.S.2d 756, 874 N.E.2d 720; Leon v. Martinez, 84 N.Y.2d 83, 87–88, 614 N.Y.S.2d 972, 638 N.E.2d 511). “ ‘Where evidentiary material is submitted and considered on a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), and the motion is not converted into one for summary judgment, the question becomes whether the plaintiff has a cause of action, not whether the plaintiff has stated one, and unless it has been shown that a material fact as claimed by the plaintiff to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it, dismissal should not eventuate’ ” (Lubonty v. U.S. Bank N.A., 159 A.D.3d at 963, 74 N.Y.S.3d 279, quoting Christ the Rock World Restoration Church Intl., Inc. v. Evangelical Christian Credit Union, 153 A.D.3d 1226, 1229, 62 N.Y.S.3d 396; see Guggenheimer v. Ginzburg, 43 N.Y.2d 268, 275, 401 N.Y.S.2d 182, 372 N.E.2d 17).” Medina v. Bank of New York Mellon Trust Company, N.A., 183 A.D.3d 633 (2d Dep’t 2020).

In the instant matter, dismissal of the action is not warranted. This Court has already determined that the documentary evidence US Bank relies on and has previously submitted in support of its summary judgment motion raises triable issues of fact. In other words, the documents fail to utterly refute Halfon’s allegations and conclusively establish its defense as a matter of law. Nothing from the documents submitted in support of the motion demonstrates that US Bank was in continuous and uninterrupted physical possession of the subject note as of November 30, 2006. US Bank’s contention that the pendency of the 2022 foreclosure action is sufficient to warrant dismissal of the complaint is meritless. No determination was made that the 2008 foreclosure action was dismissed due to Greenpoint’s lack of standing. Justice Rothenberg did not address Greenpoint’s standing in her order of dismissal nor did the Appellate Division. In fact, there are questions of law and fact as to whether and/or when Greenpoint accelerated the debt and whether the 2022 foreclosure action is proper.

Consequently, US Bank’s motion to dismiss pursuant to CPLR §3211(a)(1) and (7) is denied.

B. Halfon’s cross-motion to renew and upon renewal to consolidate

CPLR §2221(e) states that a “motion for leave to renew [...] shall be based upon new facts not offered on the prior motion that would change the prior determination[...].” “A motion for consolidation is addressed to the sound discretion of the court, and absent a showing of substantial prejudice by the party opposing the motion, consolidation is proper where there are common questions of law and fact”. Galasso, Langione & Botter, LLP v. Galasso, 81 A.D.3d 879 (2d Dept 2011)

Here, Halfon argues that the commencement of the foreclosure action is a new fact that warrants the renewal of the prior motion to consolidate this action to the 2016 Unjust Enrichment action. This Court agrees, therefore, Plaintiff’s application to renew her prior cross-motion to consolidate this matter to other actions is granted.

Nonetheless, there has been already a determination that this quiet title action and the 2016 Unjust Enrichment action do not involve common questions of law and fact. Therefore, the prong of Plaintiff’s cross-motion to consolidate this action with the 2016 Unjust Enrichment action is denied.

In addition, the Court finds that consolidation of this action to the 2022 foreclosure action is inappropriate and procedurally impossible. Halfon is a Plaintiff in this action and a Defendant in the 2022 foreclosure action. Halfon cannot sue herself. Therefore, the prong of Plaintiff’s cross-motion to fully consolidate this action with the 2022 foreclosure action is denied.

Accordingly, it is ORDERED that US Bank’s motion to dismiss pursuant to CPLR §3211(a) and (7) is denied; and it is further

ORDERED that Halfon’s cross-motion to renew her prior cross-motion to consolidate pursuant to CPLR §2221(e) is granted, and upon renewal it is,

ORDERED that Halfon’s application to consolidate this action with the 2016 Unjust Enrichment action and the 2022 foreclosure action is denied.

This constitutes the decision and order of the court.

Dated: July 13, 2023
Brooklyn, NY


Hón. Joy F. Campanelli, J.S.C.

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