

**Wilmington Sav. Fund Socy., FSB v Brown**

2023 NY Slip Op 32666(U)

August 2, 2023

Supreme Court, New York County

Docket Number: Index No. 157963/2020

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

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WILMINGTON SAVINGS FUND SOCIETY, FSB, AS
TRUSTEE OF STANWICH MORTGAGE LOAN TRUST A,

Plaintiff,

INDEX NO. 157963/2020

MOTION DATE 05/18/2023

MOTION SEQ. NO. 005

- v -

RAQUEL COOK BROWN, WESLEY D. BROWN, THE
OFFICE OF THE CITY REGISTER OF THE CITY OF NEW
YORK, REGINA ATKINSON, WELLS FARGO BANK, N.A.,
NEW YORK CITY ENVIRONMENTAL CONTROL BOARD,
NEW YORK CITY TRANSIT ADJUDICATION BUREAU,
CRIMINAL COURT OF THE CITY OF NEW YORK, NEW
YORK CITY PARKING VIOLATIONS BUREAU,

Defendant.

DECISION + ORDER ON
MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 118, 119, 120, 121,
122, 123, 124, 125, 126, 127, 136, 137, 138, 139

were read on this motion to/for DISMISSAL.

Facts

Plaintiff is the assignor and holder of the disputed mortgage that was originated in 2008.
The mortgage was never executed by defendant Raquel Cook Brown, and thus never recorded.
Plaintiff brought this RPAPL Article 15 action against defendants, seeking declaratory
judgement of priority and validity of the mortgage. Defendants RAQUEL COOK BROWN and
WESLEY D. BROWN moved to dismiss the complaint pursuant to CPLR §§ 3211(a)(5),
claiming the action is time-barred. Plaintiff disagrees, claiming the action is timely filed
according to RPAPL §§ 1501(1).

CPLR §§ 3211(a)(5)

“On a motion to dismiss a cause of action pursuant to CPLR § 3211(a)(5) as barred by the
statute of limitations, a defendant must establish, prima facie, that the time within which to sue has

expired. Once that showing has been made, the burden shifts to the plaintiff to raise a question of fact as to whether the statute of limitations has been tolled, an exception to the limitations period is applicable, *or* the plaintiff actually commenced the action within the applicable limitations period.” *Flintlock Constr. Services, LLC v Rubin, Fiorella & Friedman, LLP*, 188 AD3d 530, 531 [1st Dept 2020].

### **Discussion**

In the case before the court, Plaintiff brought all five causes of action seeking declaratory judgment of priority and validity of the mortgage lien pursuant to Article 15 of the Real Property Actions and Proceedings Law (RPAPL). RPAPL §§ 1501 (1) provides in pertinent part that: a person claims an estate or *interest in real property*..., may maintain an action against any other person, known or unknown, ..., to compel the determination of any claim *adverse* to that of the plaintiff 1) which the defendant makes, or 2) which it appears from the *public records*, or 3) from the allegations of the complaint, 4) the defendant *might make*; provided, however, that where the estate or interest claimed by the plaintiff is for *a term of years*, the action may not be maintained unless the balance remaining of such term of years is *not less than five*.

The first cause of action asks for a declaration of the validity of the mortgage. The third, fourth and fifth claims seek declarations of priority of Plaintiff’s mortgage and satisfaction of a prior mortgage. Finally, the second cause of action asks the court to compel the recordation of the mortgage if the court finds it valid.

As a general principle, “[w]hen the legislature creates a new right of action, otherwise unknown to the law, and in the statute of creation imposes a time limitation, that limitation is part of the grant of power and the bringing of such an action is subject to that limitation and no other.” *Cimo v State*, 306 NY 143, 145 [1953]. Here, §§ 1501(1) imposes a time limitation for declaratory

judgment action concerning real property interest that contains a term of years: Plaintiff may maintain the action if the remaining term of years is at least five. Accordingly, so long as the complaint can satisfy the pleading standard set forth in §§ 1515, the action should be sustained. This principle established by the Court of Appeals is also consistent with §§ 1501(2), which provides in pertinent part that “such action may be maintained, even though the court may have to determine..., any statutory limitation of time”.

Additionally, plaintiff, as assignor of the mortgage at issue here, is entitled to bring the action against defendants because the “interest in real property” defined in §§ 1501(1) includes the interest held by any successor of the mortgagee. See RPAPL §§ 1501(5).

Finally, this also shows that defendants, by filing the motion to dismiss the entire complaint pursuant to CPLR §§ 3211(a)(5) and CPLR §§ 213(4), failed to clear the initial hurdle of why the time limitations supplanted by §§ 1501(1) should not be applied here, and why CPLR §§ 213(4) should instead take over and control the issue.

The court now turns to check if the mortgage at issue has sufficient remaining term of years to survive the limitations challenge and if so, does the complaint satisfy the pleading standard delineated in §§ 1515. If both answers are affirmative, the motion to dismiss should be denied and the case should stay for further development.

Balance remaining term of years

Plaintiff is the holder and assignor of the note and the mortgage issued by the original lender Chevy Chase Bank on January 31, 2008. NYSCEF Doc. No. 1, page 2. NYSCEF Doc. No. 4, pages 32-33. The maturity date of the note is February 1, 2038, and the mortgage is for a term of thirty years. NYSCEF Doc. No. 1, page 3. The “interest in real property” sought to be protected by Plaintiff is to encumber defendant Raquel Cook Brown’s interest in the premises described in


the note. NYSCEF Doc. No. 2, ¶ 23. The encumbrance won't be lifted until February 1, 2038. The present complaint was filed on September 24, 2020, thus leaving the balance remaining of the term more than five years. Therefore, the action is timely filed.

Compliance with § 1515 pleading standard

RPAPL § 1515 sets forth the pleading standard in an Article 15 action for Plaintiff to satisfy. A review of the complaint leads the court to conclude that the pleading standard has been satisfied: the complaint conspicuously states all claims are brought pursuant to Article 15 and clearly defines the nature of the interest sought to be protected by plaintiff. From the record the court can see that defendants hold an adverse claim to that of plaintiff. Any potential parties that could be affected by the judgment have been named in the complaint. The property at issue has been identified with sufficient certainty. Based on the foregoing, it is hereby

ADJUDGED that defendant's motion to dismiss is denied.

8/2/2023  
DATE

  
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LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  OTHER  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT  REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: