

**Caputo v 6901 LLC.**

2023 NY Slip Op 33771(U)

October 24, 2023

Supreme Court, Kings County

Docket Number: Index No. 501631/2019

Judge: Leon Ruchelsman

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: PART 16

-----x  
ANDREA CAPUTO,

Plaintiff, Decision and order

- against -

Index No. 501631/2019

6901 LLC., CIRCLES BAY RIDGE REALTY CORP.,  
CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD,  
NEW YORK CITY DEPARTMENT OF FINANCE, NEW YORK  
STATE DEPARTMENT OF TAXATION AND FINANCE,  
"JOHN DOE" NOS. 1-25, the Names of the  
"John Doe" Defendants Being Fictitious and  
Unknown to Plaintiff, the Persons and Entities  
Intended to Be Persons Who May Be In Possession  
of, or May Have Possessory Liens or Other Interests  
in Any Part of the Mortgaged Premises,

Defendants, October 24, 2023

-----x  
PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #1, #2 & #3

The plaintiff has moved seeking summary judgement pursuant to CPLR §3212. The complaint was filed seeking to foreclose a mortgage and the plaintiff has now moved seeking a summary determination in that regard. Further, plaintiff argues that she is entitled to statutory interest from June 1, 2013. The defendants have filed a cross-motion staying this proceeding until the Appellate Division decides an appeal in a companion case and has further filed a cross-motion seeking to amend the pleadings. The motions have been opposed respectively. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

As recorded in companion actions, the plaintiff is the mortgagee and holder of mortgage in the amount of \$900,500. The

mortgage was actually consolidated from two prior mortgages and was recorded on June 10, 2009. The mortgages had a maturity date of June 1, 2013. The complaint alleges the defendants failed to make the necessary payments and failed to pay off the mortgage by June 1, 2013. The plaintiff now moves seeking summary judgement arguing there are no questions of fact the defendants have defaulted upon the loans. As noted, the motion is opposed.

#### Conclusions of Law

Where the material facts at issue in a case are in dispute summary judgment cannot be granted (Zuckerman v. City of New York, 49 NYS2d 557, 427 NYS2d 595 [1980]). Generally, it is for the jury, the trier of fact to determine the legal cause of any injury, however, where only one conclusion may be drawn from the facts then the question of legal cause may be decided by the trial court as a matter of law (Marino v. Jamison, 189 AD3d 1021, 136 NYS3d 324 [2d Dept., 2021]).

First, the dismissal of the 2017 action based upon the statute of limitations forecloses any defenses in this action. There is no defense that mortgage payments were made. Rather, the defenses, all held time barred in the prior action, concern obligations allegedly imposed upon Ms. Caputo that were neglected by her. However, those time-barred allegations cannot be resurrected in this action. Those claims would not have been

permitted had they been raised in this action if this motion would have filed in a more timely manner. They are surely not permitted now after they were rejected in a lawsuit filed against Ms. Caputo. The inability to assert such claims remains true in every action between the parties no matter the posture or the procedural specifics of any particular motion. Therefore, based on the foregoing the motion seeking summary judgement is granted. Likewise, the motion seeking interest is granted.

The motion seeking to amend the complaint is denied. The amendments seek to raise arguments that have already been rejected in the prior action.

However, CPLR §2201 permits a court to stay proceedings "in a proper case, upon such terms as may be just" (id).

In Assenzio v. A.O. Smith Water Products, 2015 WL 5283301 [Supreme Court New York County 2015] the court held that it was appropriate to stay an action while waiting for an appellate determination in a different case that would have a "significant impact" in the current case. Thus, in Islay v. Garde, 2022 WL 17475676 [Supreme Court New York County 2022] the court stayed the proceedings while waiting for a decision in another case pending before the Court of Appeals. The court explained that whether the arguments before the Court of Appeals was imminent was not dispositive. Rather, the key issue was whether that determination would have a significant impact upon the stayed


action. Again, in Castillo v. Saheet Construction Corp., 2022 WL 6409689 [Supreme Court Queens County 2022] the court noted that staying a proceeding while waiting for the Court of Appeals to render a decision in another matter that would impact the current litigation should be done sparingly and only when the decision is imminent. The court in Castillo (supra) stayed the action because the Court of Appeals decision would bind the parties in the present litigation.

Therefore, there is no question the appeal in the matter of 6901 LLC v. Caputo, Index Number 507756/2017 will have a significant impact upon this lawsuit. Indeed, the importance of that decision in this lawsuit is readily apparent. Therefore, the motion seeking to stay this action pending a determination from the Appellate Division in that other action is granted. Thus, no action whatsoever may be taken regarding the summary judgement awarded until the appeal is decided in the other action.

So ordered.

ENTER:

DATED: October 24, 2023  
Brooklyn NY

  
\_\_\_\_\_  
Hon. Leon Ruchelsman  
JSC