JPMorgan Chase Bank, N.A. v Zuckerman
2023 NY Slip Op 33972(U)
November 10, 2023
Supreme Court, New York County
Docket Number: Index No. 150806/2023
Judge: Gerald Lebovits
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. GERALD LEBOVITS** **PART** **07**

Justice

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JPMORGAN CHASE BANK, N.A.,

Plaintiff,

- v -

CAROLE S. ZUCKERMAN, NEWPORT EAST, INC C/O TRIBORO PROPERTIES CORP; BRANDON ZUCKERMAN, JPMORGAN CHASE BANK, AMERICAN EXPRESS CENTURION BANK, and OFFICE OF THE CITY REGISTER OF NEW YORK, NEW YORK COUNTY,

Defendants.

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INDEX NO. 150806/2023

MOTION DATE 08/25/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36

were read on this motion for DEFAULT JUDGMENT.

McCalla Raymer Leibert Pierce, LLC, New York, NY (Phionah N. Brown of counsel), for plaintiff.
No appearance for defendants.

Gerald Lebovits, J.:

This action concerns the validity of a security interest held by plaintiff, JPMorgan Chase Bank, N.A., in cooperative-apartment shares owned by the late George Zuckerman.[1] In particular, the action implicates the unusual question whether a security interest in co-op shares, once terminated, may be restored upon a showing by plaintiff that the termination was erroneous.

Plaintiff brought this action in January 2023, alleging that its security interest, held under the Uniform Commercial Code (UCC), was erroneously terminated in October 2013. Plaintiff is seeking what it describes as a judgment "[d]eclaring" that (i) the recorded termination filing was "unauthorized and wrongfully filed" and that "upon presentation of an entered copy of this Court's order," the filing is "cancelled and discharged of record"; (ii) plaintiff has a security interest in the co-op shares that retains priority retroactive to the date of filing as if the termination had never been filed; and (iii) "a certified copy of an order directing the relief requested herein be recorded in the Office of the City Register." (NYSCEF No. 2 at 3-4.)

[1] Defendant Carole S. Zuckerman is the administrator of George Zuckerman's estate.

Plaintiff now moves without opposition under CPLR 3215 for default judgment. (NYSCEF No. 21.) The motion is denied.

DISCUSSION

Plaintiff has established proper service on defendants (*see* NYSCEF Nos. 10-14 [affidavits of service]); and no defendant has appeared. But plaintiff has not established the facts constituting its claim for purposes of CPLR 3215 (f)—or shown that on those facts it is entitled to the requested declaration. (*See JBBNY, LLC v Dedvukaj*, 171 AD3d 898, 901 [2d Dept 2019] ["[A] default judgment in a declaratory judgment action will not be granted on the default and pleadings alone for it is necessary that [the party seeking default] establish a right to a declaration."] [second alteration in original; internal quotation marks omitted].)

On this motion, plaintiff seeks two forms of relief, corresponding to the first two requests for relief made in the complaint: "[A]n Order and Judgment vacating the erroneously filed UCC-3 Termination referenced in the complaint"; and a declaration that "Plaintiff's lien [is] a valid first lien." (NYSCEF No. 21 at 1.) Plaintiff has not shown on this motion that it is entitled to either one.

1. Although plaintiff's complaint described the first form of relief as declaratory, in substance this relief exceeds the permissible scope of a declaratory judgment. Under CPLR 3001, this court may declare "the rights and other legal relations of the parties to a justiciable controversy." But in asking this court to vacate a recorded UCC statement terminating a security interest, termination statement, plaintiff does not merely ask this court to determine whether the termination statement is invalid, but to grant coercive relief carrying the court's determination into effect through an order directing alteration of the records of the City Register. That request is not cognizable under CPLR 3001. Nor does plaintiff identify on this motion another statutory or common-law cause of action that would support vacatur of the UCC termination statement at issue.

The request for an order declaring plaintiff's lien a valid first lien—thus necessarily also declaring invalid the termination of that security interest—seeks more traditionally declaratory relief. But plaintiff does not identify the legal basis for issuing the declaration.

That is, plaintiff asserts that (i) it held a lien on co-op shares; (ii) the lien was erroneously or wrongfully canceled; (iii) an improper cancelation is voidable; and (iv) plaintiff is entitled to a declaration that the cancelation here should be voided as improper. The difficulty here is step three. Plaintiff does not identify statutory or decisional authority for the proposition that a court may void an improper cancellation of a security interest in co-op shares.[2] Nor has this court found any New York caselaw to that effect. (*Cf. Kushmakova v HSBC Mortge. Corp. (USA)*, 2018 WL 1566728, at *2 [Sup Ct, Queens County 2018] [rejecting defendants-creditors'

[2] The UCC provides that a termination statement is ineffective if it is filed by an unauthorized filer. (*See* UCC 9-513 [d], 9-510 [a], 9-509 [d].) Plaintiff does not, however, contend on this motion that filing of the termination statement was by an unauthorized filer—merely that it was made "[t]hrough inadvertence and in error." (NYSCEF No. 23 at ¶ 10.)

argument "upon erroneously terminating the Loan" made in connection with the purchase of co-op shares and "becoming unperfected creditors," they could be "restored as priority secured creditors by filing a new [UCC financing statement] nearly two years after filing an erroneous termination"].)

It is true that a "lien affecting *real estate*, satisfied through mistake, may be restored to its original status and priority as a lien," absent reliance on the cancellation by an innocent third party. (*DLJ Mtge. Capital, Inc. v Windsor*, 78 AD3d 645, 647 [2d Dept 2010] [emphasis added].) But "[s]hares of stock issued in connection with cooperative apartments are personal property, not real property." (*Lombard v. Station Square Inn Apts. Corp.*, 94 AD3d 717, 718 [2d Dept 2012].) That is why co-op shares—and security interests in those shares—are governed by the Uniform Commercial Code to begin with, rather than the Real Property Actions and Proceedings Law. (*See Fundex Capital Corp. v Reichard*, 172 AD2d 420, 420 [1st Dept 1991].) Plaintiff has not established that the same lien-restoration rule applies to personal property as to real property. And, as noted above, this court's research has not turned up authority for that proposition.[3]

2. Even assuming that plaintiff could bring an action to void the termination statement and restore its security interest, the face of the record reveals serious doubts about the timeliness of *this* action for that relief.

The default limitations period for a declaratory-judgment action comes within the six-year catch-all statute of limitations of CPLR 213 (1).[4] (*See Town of Hempstead v AJM Capital II, LLC*, 130 AD3d 607, 608 [2d Dept 2015]; *cf. Wells Fargo Bank, N.A. v Burke*, 155 AD3d 668, 670 [2d Dept 2017] [noting that "[a] cause of action seeking to establish a lien pursuant to the doctrine of equitable mortgage or the doctrine of equitable subrogation is governed by a six-year statute of limitations"]; *Matter of Hoffman*, 107 Misc 2d 497, 499 [Surr Ct, Kings County 1980] [same, in action to enforce equitable lien].) But plaintiff concededly did not bring this action until more than *nine* years after the filing and recording of the allegedly erroneous termination statement. (*Compare* NYSCEF No. 2 [complaint], *with* NYSCEF No. 29 [recorded termination statement].) Plaintiff does not attempt to explain why this action is nonetheless timely.

Accordingly, it is

ORDERED that plaintiff's default-judgment motion is denied; and it is further

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[3] To be clear, this court does not definitively hold that plaintiff is foreclosed from obtaining vacatur of the allegedly erroneous termination statement (and thus restoration of plaintiff's lien). But plaintiff has not, on this motion, identified a basis to grant that relief.

[4] If the claims sought to be vindicated through a declaratory-judgment action are "open to resolution through a form of proceeding for which a specific limitation period is statutorily provided, then that period limits the time for commencement of the declaratory judgment action." (*Town of Hempstead v AJM Capital II, LLC*, 130 AD3d 607, 608 [2d Dept 2015] [internal quotation marks omitted].) Plaintiff does not identify, and this court has not found, a different applicable limitations period that would govern the declaratory-judgment claims in this action.

ORDERED that if plaintiff does not, within 30 days of entry of this order, file a renewed motion for default judgment that addresses the timeliness of this action, the action will be dismissed; and it is further

ORDERED that plaintiff shall serve a copy of this order with notice of its entry on all parties by certified mail, return receipt requested, directed to their respective last-known addresses.

11/10/2023
DATE

HON. GERALD LEBOVITS
J.S.C.

CHECK ONE:	☐	CASE DISPOSED		☒	NON-FINAL DISPOSITION		
	☐	GRANTED	☒ DENIED	☐	GRANTED IN PART	☐	OTHER
APPLICATION:	☐	SETTLE ORDER		☐	SUBMIT ORDER		
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN		☐	FIDUCIARY APPOINTMENT	☐	REFERENCE