Wells Fargo v Hull

2023 NY Slip Op 34622(U)

September 14, 2023

Supreme Court, Kings County

Docket Number: Index No. 504972/17

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 14th day of September 2023.

PRESENT:

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

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WELLS FARGO,

Plaintiff, **DECISION AND ORDER**

-against-

FLORIS B HULL et al,

Defendant,

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KINGS COUNTY CLERK
FILED
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Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion:

Papers	**Numbered**
Motion (MS 1)	1
Opposition	—
Reply	—

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

The instant action was commenced on March 13, 2017 against Floris Hull, Rawle Sterling, and Rupert L Rose – the three borrowers, the former two of whom still owned the property. Shortly thereafter,[1] Plaintiff's counsel learned that Hull had died in 2013. It does not appear that it acted upon that knowledge at that time. The remaining defendants defaulted in appearing but, for reasons unclear from the record, Plaintiff elected to not even file an RJI until May 5, 2021. Foreclosure pre-settlement conferences were scheduled for November 22nd and December 14, 2022 but were marked held upon the non-appearance of any defendant.

[1] Certainly no later than June 23, 2017 (see e-file doc 49).

Plaintiff now moves to drop this action against Hull – as she predeceased the action – and for the grant of default judgment and an order of reference against the remaining Defendants. Oddly, the moving papers use a different caption than all previous filings – substituting "Rawle Sterling as heir to the estate of Rupert L Rose" in place of "Rawle Sterling" and "Rupert Rose" as separate Defendants. Nowhere in the papers is there an explanation of the change, evidence of Rose's death, or a basis to believe that Sterling is Rose's heir. Additionally, Sterling appears to be – and should be – a party in his individual capacity and, as Rose does not appear to have an ownership interest in the property, his estate rather than heir would be the proper party to a deficiency claim.[2]

It is undisputed that the action against Hull is a nullity and that she should be dropped from the caption. Plaintiff, however, claims that "ownership of the subject premises vests by operation of law solely in the surviving owner and Defendant Rawle Sterling" (Knuckles Aff, ¶12). However, Plaintiff also asserts that Hull and Sterling owned the property as tenants-in-common (id.) which would not include survivorship.

While Plaintiff claims to have appended a copy of the deed to Hull and Sterling to its papers, it did not. Per ACRIS, however, on May 6, 1991, the property was deeded to Hull, Sterling, and Rose "as tenants in common." On February 4, 2005, the three of them deeded the property to Hull and Sterling, again "as tenants in common." There does not appear to be any subsequent transfer recorded prior to the commencement of this action. In light of the foregoing, the Court sees no basis for Plaintiff's assertion that Hull's ownership interest in the property vested by the operation of law in Sterling.

Pursuant to Hull's death certificate, Sterling is her son. As such (and presuming the absence of a will), he would an heir to her estate. The record does not demonstrate, however, that there are no other heirs. The Court recognizes that Sterling recently deeded the property to what may or may not be himself[3], claiming to be the sole heir, but there does not appear to be any evidence demonstrating the veracity of that assertion.

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[2] Were Rose to be deceased.

[3] The deed appears to list Rawle Sterling as grantor of his 50% interest, Rawle A Sterling as the heir/grantor of Hull's 50%, and Rawle C Sterling as the grantee. It is unclear to this Court whether there are one, two, or three Rawle Sterlings involved in the transaction.

In light of the foregoing, this Court grants the portion of the motion dropping Hull from the caption. There is, however, insufficient evidence in the record for the Court to allow the action to proceed against her interest in the property. It is unclear whether it passed to Sterling and/or others at the time of her death.

Default judgment against the other defendants is also denied. Pursuant to CPLR 3215[c], "[i]f the plaintiff fails to take proceedings for the entry of judgment within one year after the default, the court shall not enter judgment but shall dismiss the complaint as abandoned ... upon its own initiative or on motion, unless sufficient cause is shown why the complaint should not be dismissed." Here, Plaintiff not only did not timely file a motion to advance this action – it did not even file an RJI until 2021. As such, default judgment is denied with leave to renew upon a showing why this action should not instead be dismissed pursuant to CPLR 3215[c].

Plaintiff's motion is granted solely to the extent that the caption is amended to read:

_____x

U.S. BANK TRUST NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS OWNER TRUSTEE FOR VRMTG ASSET TRUST

Plaintiff

vs

RAWLE STERLING, RUPERT L ROSE, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, NEW YORK CITY PARKING VIOLATIONS BUREAU, UNITED STATES OF AMERICA ACTING

THROUGH THE IRS,

Defendants

x

This constitutes the decision and order of the Court.

ENTER:

Hon. Larry D Martin JSC

HON. LARRY MARTIN
JUSTICE OF THE SUPREME COURT

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