

Bank of N.Y. Mellon v Young

2023 NY Slip Op 34649(U)

September 12, 2023

Supreme Court, Suffolk County

Docket Number: Index No. 608195/2018

Judge: Betsey Heckman Torres

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This opinion is uncorrected and not selected for official publication.

Short Form Order

SUPREME COURT - STATE OF NEW YORK
IAS PART 18 - SUFFOLK COUNTY

PRESENT:
HON. S. BETSY HECKMAN TORRES, J.S.C.

INDEX NO.: 608195/2018
MOTION DATE: 5/9/2023
MOTION SEQ. #: 002 MG
003 MD
CASE DISP

-----X
THE BANK OF NEW YORK MELLON,

Plaintiff,

-against-

PLAINTIFF'S ATTORNEY:
LOGS LEGAL GROUP LLP
175 Mile Crossing Blvd.
Rochester, NY 14624

IVAN YOUNG, et al.,
-----X
Defendants.

DEFENDANT'S ATTORNEY:
CHRISTOPHER THOMPSON, ESQ.
33 Davison Lane East
West Islip, NY 11795

Upon the following electronically filed documents listed on NYSCEF as documents #71-92 read on this motion (#002) for judgment of foreclosure and sale, inter alia, answering affidavits and supporting papers and replying affidavits and supporting papers, and read on this cross-motion (#003) for renewal, it is

ORDERED that motion (#002) by plaintiff for an order confirming the referee's report and for a judgment of foreclosure and sale is granted; and it is further

ORDERED that the cross-motion (#003) by IPA Asset Management, LLC (hereinafter "IPA") seeking, inter alia, leave to renew based on a change of law is denied in its entirety; and it is

ORDERED, plaintiff shall serve a copy of this order with notice of entry upon all persons entitled to notice thereof.

In April 2018, the plaintiff commenced this action against IPA, among others, to foreclose a mortgage encumbering certain real property located in Central Islip. IPA filed an answer dated July 30, 2018 asserting seventeen (17) affirmative defenses and one counter-claim. The plaintiff thereafter moved, inter alia, for summary judgment on the complaint insofar as asserted against IPA, to strike the answer, and for an order of reference. IPA opposed plaintiff's motion (#001). Pursuant to an Order dated December 14, 2022, plaintiff's motion (#001) was granted.

Plaintiff's motion (#002) seeks, among other things, to confirm the referee's report dated January 30, 2023 and judgment of foreclosure and sale. IPA opposes and submits a cross-motion (#002) seeking leave to new, pursuant to CPLR 2221(e)(2). Plaintiff filed opposition to IPA's cross-motion.

The court will first address IPA's cross-motion (#003) seeking, inter alia, renewal as determination thereof may render plaintiff's motion academic.

"A motion for leave to renew 'shall ... demonstrate that there has been a change in the law that would change the prior determination' (CPLR 2221[e][2]; see *Dinallo v. DAL Elec.*, 60 A.D.3d 620, 621, 874 N.Y.S.2d 246 [(2009)])" (*McLaughlin v. Snowlift, Inc.* 214 A.D.3d 720, 721, 185 N.Y.S.3d 212 [2d Dept. 2023]). Here, IPA asserts that the recently enacted Foreclosure Abuse Prevention Act (L 2022, ch 821, § 8 [eff Dec. 30, 2022]; hereinafter "FAPA") would change the prior determination of this court granting summary judgment.

Contrary to IPA's contention, FAPA would not change the prior determination of the court. In opposing plaintiff's motion for summary judgment, IPA claimed, in opposition only, that summary judgment should be denied based on the statute of limitations and that IPA had a quiet title action pending in which the court denied dismissal of the complaint. However, in granting summary judgment herein, this court noted that the Second Department dismissed IPA quiet title action and specifically held that "the mortgage was not accelerated." Further, as specifically stated in this court's December 14, 2022 Order, the prior action was a nullity since it was dismissed based on plaintiff's lack of standing. CPLR 213(4), as amended by FAPA, added paragraph (a), which provides that "[i]n any action on an instrument described under this subdivision, if the statute of limitations is raised as a defense, and if that defense is based on a claim that the instrument at issue was accelerated prior to, or by way of commencement of a prior action, a plaintiff shall be estopped from asserting that the instrument was not validly accelerated, *unless the prior action was dismissed based on an expressed judicial determination, made upon a timely interposed defense, that the instrument was not validly accelerated.*" Here, since the prior action was dismissed based on an expressed judicial determination that the instrument was not validly accelerated, plaintiff is not estopped from asserting that the instrument was not validly accelerated by the commencement of the prior action (CPLR 213(4)(a)). Here, plaintiff correctly argued that the foreclosure action was timely because the debt at issue was not validly accelerated by the commencement of the prior action, since plaintiff's predecessor in interest did not having standing. Accordingly, FAPA would not change the court's prior determination and IPA's motion seeking renewal is denied.

Based upon the evidence presented by the plaintiff, no legal basis exists to deny confirmation of the referee's report. Plaintiff's submissions establish its entitlement to a judgment of foreclosure and sale based upon the referee's report and findings (*U.S. Bank, N.A. v. Saraceno*, 147 AD3d 1005 (2nd Dept., 2017); *HSBC Bank USA, N.A. v. Simmons*, 125 AD3d 930 (2nd Dept., 2015)). Whereas the court is not bound by the referee's report of the damages due the plaintiff, the report of a referee should be confirmed in circumstances where the findings are substantially supported by the evidence in the record (*CitiMortgage, Inc. v. Kidd*, 148 AD3d 767

(2nd Dept., 2017); *Matter of Cincotta*, 139 AD3d 1058 (2nd Dept., 2016)). The referee submitted evidence to support the amounts due and owing to the plaintiff, as the computation was premised upon an affidavit and computations from a person with knowledge and necessary business records evidencing the amount due.

IPA's remaining contentions lack merit.

Accordingly, plaintiff's motion (#002) seeking an order confirming the referee's report of sale and for a judgment of foreclosure is granted. The proposed judgment of foreclosure and sale, as modified by the court, has been signed simultaneously with the execution of this order. IPA's cross-motion (#003) is denied in its entirety.



DATED: September 12, 2023

J.S.C

HON. S. BETSY HECKMAN TORRES, J.S.C.