

Deutsche Bank Natl. Trust Co. v Letennier

2023 NY Slip Op 35042(U)

March 31, 2023

Supreme Court, Delaware County

Docket Number: Ind. No. EF2018-290

Judge: Brian D. Burns

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This opinion is uncorrected and not selected for official publication.

At a term of the Supreme Court of the State of New York, held in and for the County of Delaware, at Delhi, New York on March 22, 2023.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DELAWARE

DEUTSCHE BANK NATIONAL TRUST COMPANY,
AS TRUSTEE, ON BEHALF OF THE HOLDERS OF
THE J.P. MORGAN MORTGAGE ACQUISITION TRUST
2007-CH3 ASSET BACKED PASS-THROUGH
CERTIFICATS, SERIES 2007-CH3,

Plaintiff,

DECISION AND ORDER
(Motions #11 and #12)
Ind. No. EF2018-290

-against-

JEAN LETENNIER A/K/A JEAN MICHEL LETENNIER
A/K/A JEAN M. LETENNIER; GREGORY SCHUENEMANN;
STATE BANK OF LONG ISLAND; and KSENIA
KRAVTSOVA,

Defendants.

BEFORE: HON. BRIAN D. BURNS
SUPREME COURT JUSTICE

APPEARANCES: For Plaintiff
HINSHAW & CULBERTSON LLP
By Robert D. Bailey, Esq.

For Defendant
Joshua A. Douglass, Esq.

Defendant filed a motion seeking an order, pursuant to CPLR R 5015(a)(2),(3),(4) and (5), vacating the orders of this court dated July 29, 2019 and May 31, 2022, respectively. The motion was made returnable at a submitted term of the court. Plaintiff has been heard in

opposition to the motion. Plaintiff filed a cross-motion seeking an order deeming defendant a vexatious litigant. Defendant has been heard in opposition to the cross-motion and in reply on his motion. The court has considered all papers filed in connection with the motions, as well as applicable law, in determining the following.

This action concerns real property located at 1580 State Highway 357, Unadilla, New York. Defendant Jean Michael LeTennier executed a note in favor of plaintiff's predecessor wherein defendant agreed to pay \$399,000 plus interest at the rate of 9.69 %. The note was transferred to plaintiff prior to commencement of the action. Defendant defaulted on the note and mortgage by failing to make the monthly payment of principal and interest due on September 1, 2012. The underlying action to foreclose a mortgage on real property was commenced on March 26, 2018, alleging \$381,249.99 plus interest due as of August 1, 2012. Issue was joined by the interposition of an Answer dated April 25, 2018 by defendant Jean Michael LeTennier. The remaining defendants did not appear.

Plaintiff filed a motion seeking an order granting summary judgment on December 10, 2018. Defendant filed a cross-motion seeking an order dismissing the complaint. By decision and order dated July 25, 2019, and entered on July 29, 2019, the Hon. Richard D. Northrup, Jr., granted the motion for summary judgment, and signed an order appointing a referee to compute. Defendant's cross-motion was denied. Defendant appealed.

By decision and order decided and entered December 31, 2020, the Supreme Court, Appellate Division for the Third Judicial Department affirmed this court's decision and order.

Plaintiff filed a motion seeking an order confirming the referee's report and for judgment of foreclosure and sale, which was originally returnable on February 26, 2020, but adjourned because of the COVID-19 pandemic. Defendant filed three motions seeking leave to reargue,

and to compel a response to his Demand for Bill of Particulars. By decision and order dated February 2, 2022 and entered on February 4, 2022, the court denied defendant's motions and granted plaintiff's motions. The court also executed the Judgment of Foreclosure and Sale. Defendant subsequently filed an order to show cause which was denied by decision and order dated April 5, 2022, on the ground that the Third Department's affirmance of the court's summary judgment decision prohibited reexamination of the issues raised by defendant.

By decision and order dated May 31, 2022, the court denied defendant's motion for an order granting renewal and vacating the court's previous order confirming the referee report and Judgment of Foreclosure as well as the decision and order granting summary judgment entered on July 29, 2019. Defendant filed a proposed order to show cause on October 27, 2022, which again sought renewal of plaintiff's motion for summary judgment and upon renewal, vacating the court's orders granting summary judgment and Judgment of Foreclosure. By decision and order dated October 28, 2022, the court denied the order to show cause on the ground that defendant was continuing to argue the same issues that were already determined, and that the Third Department's affirmance of the court's grant of summary judgment acts to foreclose any further reexamination by this court of the issues raised by defendant. Further, the matter was stayed as a result of the filing of a bankruptcy proceeding by defendant. The Chapter 13 petition was dismissed without prejudice in United States Bankruptcy Court for the Northern District of New York on January 9, 2023. This motion was filed on February 10, 2023.

Defendant's motion is based on four arguments – the court did not have jurisdiction as per Article 6, Section 21, paragraph 4 of the NYS Constitution; plaintiff lacked standing as the “falsified/fabricated allonges are not affixed to the Note to satisfy UCC § 3-202(2)”; plaintiff, as a foreign corporation, was not in compliance with NYS Law §§ 1301, 1302, and 1312 to bring

suit in NYS; and plaintiff does not have an equitable interest in the Note (#1890326080) of security instruments (#0023575830).

Defendant's motion is brought pursuant to CPLR R 5015, which provides that the court may relieve a party from a judgment or order upon such terms as may be just, upon, as applicable here, on the following grounds:

2. newly-discovered evidence which, if introduced at the trial, would probably have produced a different result and which could not have been discovered in time to move for a new trial under section 4404; or

3. fraud, misrepresentation, or other misconduct of an adverse party; or

4. lack of jurisdiction to render the judgment or order; or

5. reversal, modification or vacatur of a prior judgment or order upon which it is based.

Such motions are addressed to the sound discretion of the court (see, *Elsawi v Saratoga Springs City Sch. Dist.*, 179 A.D.3d 1186, 1189, 114 N.Y.S.3d 526 [3rd Dept. 2020]).

There has been no reversal, modification or vacatur of a prior judgment or order in this matter. CPLR 5015(a)(5) is, therefore, inapplicable, and so much of the motion which seeks relief under that ground is denied.

Defendant's argument that the court lacked jurisdiction per Article 6, Section 21, paragraph 4 of the NYS Constitution is without merit, and was addressed and determined by the Appellate Division. This court is foreclosed from reexamining that issue (see, *Carroll v Rondout Yacht Basin, Inc.*, 183 A.D.3d 1000, 121 N.Y.S.3d 691 [3rd Dept. 2020]), and defendant's repeated attempts to resurrect issues which have already been determined by the Appellate Division constitutes frivolous conduct (22 NYCRR § 130-1.1(c)(1)).

Defendant's arguments that plaintiff lacked standing are also foreclosed by the Appellate

Division's determination on that issue, and his continued attempts to reargue that issue also constitute frivolous conduct.

To the extent defendant's motion is based upon newly-discovered evidence, he has not met his burden of demonstrating such evidence could not have been, with due diligence, been discovered earlier or would have altered the outcome (see, *Maddux v. Schur*, 53 A.D.3d 738, 739, 861 N.Y.S.2d 814 [3rd Dept. 2008]). Any requests for relief on that ground are denied.

Finally, defendant has made no showing, whatsoever, that plaintiff has engaged in misrepresentation, fraud or misconduct, and that much of the motion which seeks relief on that ground is denied.

Addressing plaintiff's cross-motion for an order declaring defendant to be a vexatious litigant and impose an anti-filing injunction, such relief may be granted when a litigant is found to be abusing the judicial process (*Shreve v. Shreve*, 229 A.D.2d 1005, 1006, 645 N.Y.S.2d 198 [4th Dept. 1996]).

The court finds that the instant motion filed by defendant constitutes frivolous conduct. Despite such a finding, "public policy mandates free access to the courts (*Shreve, id.*)," and the motion for an order finding him to be a vexatious litigant is denied.

Defendant is, however, admonished for his repeated attempts to relitigate issues which have already been determined by the Appellate Division. This is the first motion that has been filed with the assistance of counsel, who has an obligation to certify that the filings are not frivolous (see, 22 NYCRR § 130-1.1a(a)). Counsel did not submit the certification, and is also admonished for his failure to do so.

This file is in the late stages of litigation, and should now only require a sale date and an order confirming the referee's report of sale. There should not be need for further filings. In

the event defendant seeks to file additional filings, such filings would need to be filed by the attorney of record, who shall certify that the filings are not frivolous. Should defendant or defense counsel file another frivolous action, they are cautioned that such conduct may result in additional sanctions, including financial sanctions.

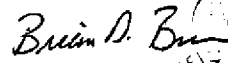

The court has examined all other requests and arguments. To the extent they are not specifically addressed, they are denied.

Based on the forgoing, it is hereby

ORDERED that the motion and cross-motion are decided as outlined above.

Dated: March 31, 2023
Delhi, New York

ENTER,


Digitally signed by
Hon. Brian D. Burns
3/31/2023, 7:42:33 AM


Hon. BRIAN D. BURNS
Supreme Court Justice

To All Parties Via NYSCEF

Entered March 31, 2023 at 9:18 am *Debra A. Kozluch* Clerk