

Wells Fargo Bank, N.A. v Eitani

2024 NY Slip Op 32106(U)

June 18, 2024

Supreme Court, Kings County

Docket Number: Index No. 507424/2013

Judge: Derefim B. Neckles

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FRP-2 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, 11201 on the 18th day of June, 2024.

P R E S E N T:

HON. DEREKIM B. NECKLES,
Acting Justice.

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Wells Fargo Bank, N.A., as Trustee, in Trust for the
Registered Holders of Park Place Securities, Inc.,
Asset-Backed Pass-Through Certificates, Series
2005-WCW1,
Plaintiff,

- against -

Index No. 507424/2013

DORON EITANI; DAVID COHAN; ARGENT MORTGAGE
COMPANY, LLC; MARINA IVANOVA; CITY OF NEW
YORK ENVIRONMENTAL CONTROL BOARD; CITY OF
NEW YORK PARKING VIOLATIONS BUREAU; CITY OF
NEW YORK TRANSIT ADJUDICATION BUREAU;
HANNA JACOB,

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Affidavits (Affirmations) Annexed
Affirmation in Opposition to Motion

169, 170
177

Upon the foregoing papers in this proceeding defendant, David Cohan (Cohan) moves (under mot. seq. 7) for an order with leave to renew from the July 30, 2014 short form order, seeking dismissal of this action under CPLR §§ 3211(a)(5) and 213(4). The Court has carefully considered the arguments presented by both parties, as well as the applicable law.

Background

Plaintiff, Wells Fargo Bank, N.A., as Trustee, initiated this action seeking to foreclose a mortgage on real property located at 2920 Avenue N, Brooklyn, New York 11210. This is the second foreclosure proceeding commenced in connection with the subject mortgage, the first having been initiated by Argent Mortgage Company, LLC under index number 35176/2005. The prior action was dismissed on August 1, 2013, pursuant to CPLR §3215(c). Defendant filed a motion to dismiss, which was denied on July 30, 2014, and affirmed on appeal. Subsequent motions and cross-motions followed, culminating in a summary judgment in favor of Plaintiff on March 30, 2017, which was also upheld on appeal.

Cohan moves for leave to renew based on new caselaw, specifically ACE Sec. Corp. v. DB Structured Prods., Inc., 2022 N.Y. LEXIS 1173 (2022). Defendant argues that ACE Sec. Corp. supports his contention that the "savings statute" under CPLR §205(a) does not apply to Plaintiff in this case, as Plaintiff is not the original plaintiff in the prior action.

Legal Framework

CPLR §2221(e) provides that a motion for leave to renew must be based upon new facts not offered on the prior motion or demonstrate a change in law that would change the prior determination. The moving party must also provide a reasonable justification for the failure to present such facts on the prior motion.

The relevant statute, CPLR §205(a), is a remedial statute intended to afford a litigant a second chance to have the merits of the case determined within the applicable statute of limitations. Specifically, CPLR §205(a) allows a plaintiff to commence a new action within six months after the termination of an earlier action, provided the termination was not on the merits. However, the statute explicitly states that the new action must be commenced by the same plaintiff or the plaintiff's representative.

The Foreclosure Abuse Prevention Act (FAPA), which went into effect on December 30, 2022, codified a new savings statute, CPLR §205-a, which provides in relevant part:

(a) If an action upon an instrument described under subdivision four of section two hundred thirteen of this article is timely commenced and is terminated in any manner other than a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for any form of neglect, including but not limited to those specified in subdivision three of section thirty-one hundred twenty-six, section thirty-two hundred fifteen, rule thirty-two hundred sixteen and rule thirty-four hundred four of this chapter for violation of any court rule or individual part rules, for failure to comply with any court scheduling orders, or by default due to nonappearance for conference or at a calendar call or by

failure to timely submit any order or judgment, or upon a final judgment upon the merits, the original plaintiff or, if the original plaintiff dies and the cause of action survives, his or her executor or administrator may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months following the termination, provided that the new action would have been timely commenced within the applicable limitations period prescribed by law at the time of the commencement of the prior action and that service upon the original defendant is completed within such six-month period ...

FAPA also amended CPLR §205 to provide that it no longer applies to mortgage foreclosure actions (CPLR §205 [c]). CPLR §205-a provides that, in order for a plaintiff to take advantage of the new statute's saving protections, the prior action must not have been dismissed for any form of neglect.

Defendant's Argument

Defendant relies on the recent decision in ACE Sec. Corp. v. DB Structured Prods., Inc., arguing that it precludes Plaintiff, as a subsequent plaintiff, from utilizing the savings statute under CPLR §205(a). In ACE Sec. Corp., the Court of Appeals emphasized that the statute applies only where the second action is brought by the same plaintiff or an estate representative. The court held that the savings statute is meant to protect the rights of the

original litigant and not those of a new or different party, even if the new party is closely related or has similar interests.

Defendant contends that since Wells Fargo Bank, N.A., as Trustee, is not the same entity as Argent Mortgage Company, LLC, the original plaintiff in the dismissed action, it cannot benefit from the extension provided by CPLR §205(a). Defendant argues that allowing Wells Fargo to proceed would undermine the specific language and intent of the statute.

Plaintiff's Argument

Plaintiff Wells Fargo Bank, N.A., counters that it is entitled to the benefits of CPLR §205(a) because it is pursuing the same cause of action as the original plaintiff, Argent Mortgage Company, LLC. Plaintiff argues that the assignment of the mortgage and note from Argent to Wells Fargo effectively transferred all rights and interests in the foreclosure action, including the right to benefit from the savings statute.

Plaintiff further contends that the policy underlying CPLR §205(a) is to prevent the loss of claims due to procedural dismissals that are not on the merits. Given that the prior action was dismissed under CPLR §3215(c) for failure to enter a default judgment within one year, a procedural issue, Plaintiff argues that it should be allowed to proceed with the current action within the six-month grace period provided by the statute.

Application

The central issue is whether Plaintiff Wells Fargo Bank, N.A., as Trustee, can be considered the same plaintiff as Argent Mortgage Company, LLC, for the purposes of

CPLR §205(a). The Court of Appeals' decision in ACE Sec. Corp. requires a close examination of the relationship between the parties and the specific rights and interests involved.

In ACE Sec. Corp., the Court of Appeals distinguished between plaintiffs with distinct legal identities and rights, emphasizing that the savings statute does not apply to new or different plaintiffs. However, in the present case, Wells Fargo Bank, N.A. is not an entirely new or unrelated plaintiff; rather, it is the assignee of the note and mortgage originally held by Argent Mortgage Company, LLC. The assignment of the mortgage and note vested Plaintiff with the same rights and interests that Argent had, including the right to foreclose.

The principle that an assignee steps into the shoes of the assignor is well-established in New York law. By receiving the assignment, Wells Fargo obtained all the rights Argent had under the mortgage, including the right to enforce the debt and pursue foreclosure. Thus, for the purposes of CPLR §205(a), Wells Fargo can be seen as standing in the place of Argent, prosecuting the same cause of action with the same substantive rights.

Furthermore, the policy underlying CPLR §205(a) supports allowing Wells Fargo to proceed with the foreclosure. The statute aims to ensure that procedural dismissals do not result in unjust forfeiture of substantive rights. Dismissing the current action on the grounds that Wells Fargo is a different plaintiff would elevate form over substance and undermine the remedial purpose of the statute.

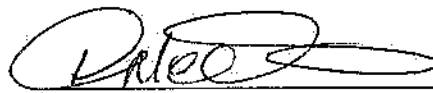
Conclusion

Based on the foregoing analysis, the court finds that Defendant has not presented new facts or a change in law that would warrant a different outcome from the prior determination. Plaintiff Wells Fargo Bank, N.A., as Trustee, having been assigned the note and mortgage, is entitled to the benefits of CPLR §205(a) as the legal successor to Argent Mortgage Company, LLC. Therefore, Plaintiff's action is timely under the savings statute, and the motion for leave to renew and dismiss the action is DENIED.

ORDERED that Defendant's motion for leave to renew is **DENIED**.

This constitutes the decision and order of the court.

E N T E R,



HON. DEREFIM B. NECKLES

A. J. S. C.
HON. DEREFIM B. NECKLES
— A.J.S.C. —