

U.S. Bank N.A. v Mingo

2024 NY Slip Op 32704(U)

July 31, 2024

Supreme Court, Kings County

Docket Number: Index No. 526938/2019

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 73

Index No.: 526938/19
Motion Date: 2-5-24
Mot. Seq. No.: 1-2

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U.S. BANK NATIONAL ASSOCIATION,

Plaintiff,

-against-

DECISION/ORDER

SUMMONS BLOSSOM MINGO.
NICOLE JERRIHO-CADOGAN.
AJ LOGAN PARTNERS CORP.,

Action #1

NYS DEPARTMENT OF TAXATION & FINANCE,
NYC ENVIRONMENTAL CONTROL BOARD,
NYC PARKING VIOLATIONS BUREAU,
NYC TRANSIT ADJUDICATION BUREAU,

‘JOHN DOE #1’ through ‘JOHN DOE #12,’ the last twelve names being fictitious and unknown to plaintiff, the persons or parties intended being the tenants, occupants, persons or corporations, if any, having or claiming an interest in or lien upon the premises, described in the complaint.

Defendants.

-----X
AJ LOGAN PARTNERS CORP.,

Plaintiff,

Index No. 527421/19

-against-

Action #2

U.S. BANK NATIONAL ASSOCIATION,

Defendant.

-----X

Upon the following e-filed documents, listed by NYSCEF as item numbers 45; 47-69; 71-76; 81, 83, 85-86; 89-90; 92-96; 98-100, the motion and cross motion are decided as follows:

In this residential mortgage foreclosure action, plaintiff U.S. BANK NATIONAL ASSOCIATION (“U.S. Bank”) moves for an order: 1) Awarding U.S. Bank summary judgment against answering defendant AJ LOGAN PARTNERS CORP. and striking its Answer; 2) Appointing a Referee to compute the amount due plaintiff, to examine whether the mortgaged property known as 523 Logan Street, Brooklyn, NY 11208 (Block 4246, Lot 15) may be sold in

parcels, and make a computation and report pursuant to RPAPL 1321; 3) Declaring that all non-appearing and non-answering defendants to be in default pursuant to CPLR 3215; and 4) Amending the caption re: the “JOHN DOE’s”.

Defendant AJ LOGAN PARTNERS CORP. (“AJ Logan”) cross-moves for an order dismissing this action pursuant to CPLR 3211(a)(5) on statute of limitations grounds.

The motion and cross motion are consolidated for disposition.

The Court has been advised that in 2021, AJ Logan transferred the property to another entity. Plaintiff contends that the transfer served to strip AJ Logan of standing to defend this action.¹ Defendant asserts that its successor in interest, Logan Street Realty LLC, has standing to defend in this action since defendant’s counsel is the attorney for both AJ Logan Partners Corp. and Logan Street Realty LLC (NYSCEF Doc No. 81) and both entities are owned by the same principal, Morris Moskovics, who provided his affidavit at NYSCEF Doc No. 83. Pursuant to CPLR 1018 and in the interest of justice, the Court holds that defendant AJ Logan Partners Corp. and non-party Logan Street Realty LLC may both defend against this foreclosure.

Background:

On June 25, 2009, defendants Nicole Jerriho-Cadogan and Blossom Mingo executed a note in the sum of \$394,718.00 payable to lender Wall Street Mortgage Bankers, Ltd. d/b/a Power Express, a New York Corporation. AJ Logan Partners Corp. purchased the property from Jerriho-Cadogan and Mingo in November of 2017 (NYSCEF Doc No. 72). Defendant AJ Logan’s Answer includes the affirmative defense that the action is barred by the statute of limitations.

¹ In actuality, the deed transferred the property from AJ Logan Partners Corp. to Logan Street Realty on or about June 13, 2018 (NYSCEF Doc No. 76) which pre-dates commencement of this action and the quiet title action that is joined for trial. The document was not recorded until 2021.

Summary Judgment (Mot Seq No. 1):

In moving for summary judgment in an action to foreclose a mortgage, a plaintiff establishes its prima facie case through the production of the mortgage, the unpaid note, and evidence of default (*see Wells Fargo Bank, N.A. v Osias*, 156 AD3d 942, 943 (2d Dept 2017)). Here, the plaintiff US Bank established its entitlement to judgment as a matter of law by submitting a copy of the endorsed note with the complaint, and an affidavit from plaintiff's servicing agent, Christina J. Gordon, Vice President of US Bank, who attested to the defendant's default in the repayment of the loan. Defendant has failed to raise a triable issue of fact.

Defendant's contention that the plaintiff lacks standing and that the action is barred by the statute of limitations are without merit. The plaintiff established, prima facie, its standing by demonstrating that it was the holder of the note when it commenced this action, as evidenced by its attachment of a copy of the note, endorsed in blank, to the complaint (*see Citimortgage, Inc. v. Doomes*, 202 A.D.3d at 753–754, 158 N.Y.S.3d 837; *U.S. Bank N.A. v. Dayan*, 195 A.D.3d 763, 765, 145 N.Y.S.3d 390). The defendant failed to raise a triable issue of fact.

With respect to the statute of limitations defense, the plaintiff, although not the Federal government, submitted evidence sufficient to determine as a matter of law that it is prosecuting this claim as assignee/agent of the Secretary of Housing and Urban Development [hereinafter HUD] and that the ultimate benefits from the foreclosure will flow to HUD (see *Bevins* aff at NYSCEF Doc No. 98). Accordingly, plaintiff is entitled to HUD's immunity from the state statute of limitations (*see RCR Services Inc. v. Herbil Holding Co.*, 229 A.D.2d 379, 645 N.Y.S.2d 76). This proceeding is therefore not time-barred regardless of the date that the cause of action accrued.

Accordingly, it is hereby

ORDERED, the motion for summary judgment is GRANTED and defendant's Answer is stricken; it is further

ORDERED, all non-appearing defendants are in default pursuant to CPLR 3215; it is further

ORDERED, the cross motion to dismiss is DENIED in all respects; it is further

ORDERED, the caption in this action is hereby amended to read as follows:

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U.S. BANK NATIONAL ASSOCIATION,

Plaintiff,

-against-

SUMMONS BLOSSOM MINGO,
NICOLE JERRIHO-CADOGAN,
AJ LOGAN PARTNERS CORP.,
LOGAN STREET REALTY LLC,

MARIA "DOE" (REFUSED LAST NAME),
"JOHN DOE" (REFUSED NAME),
"JOHN DOE" (REFUSED NAME),
"JOHN DOE" (REFUSED NAME),
"JOHN DOE" (REFUSED NAME),
"JOHN DOE" (REFUSED NAME),
"JOHN DOE" (REFUSED NAME),
"JOHN DOE" (REFUSED NAME),
"JOHN DOE" (REFUSED NAME),
"JANE" CADOGAN (REFUSED FIRST NAME),
"JOHN DOE" (REFUSED NAME).

Defendants.

-----X

Plaintiff is directed to submit an Order of Reference in accordance with this order
forthwith.

The foregoing constitutes the decision and order of this court.

Dated: July 31, 2024

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020