

**Nadam Props., Inc v Taeid**

2024 NY Slip Op 32765(U)

August 5, 2024

Supreme Court, Kings County

Docket Number: Index No. 510361/2020

Judge: Peter P. Sweeney

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

Index No.: 510361/2020  
Motion Date: April 22, 2004  
Mot. Seq. No.: 3, 4

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NADAM PROPERTIES INC.,

Plaintiff,

-against-

**DECISION/ORDER**

ELIAS TAEID, DEUTSCHE BANK NATIONAL TRUST  
COMPANY, AS TRUSTEE FOR FIRST FRANKLIN  
MORTGAGE LOAN TRUST 2006-FF16, ASSET-  
BACKED CERTIFICATES, SERIES 2006-FF16,

Defendants.  
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The following papers, which are e-filed with NYCEF as items 80-93, were read on this motion and cross-motion:

In this declaratory judgment/quiet title action, plaintiff, NADAM PROPERTIES INC. ("Nadam"), seeks, *inter alia*, judgment declaring that defendant ELIAS TAEID has no interest in the premises located at 46 Paerdegat 3rd Street, Brooklyn, New York 11236, bearing tax map identification Block: 8031 Lot: 33 ("the premises"). Defendant Deutsche Bank National Trust Company, as Trustee for First Franklin Mortgage Loan Trust 2006-FF16, Asset-Backed Certificates, Series 2006-FF16 ("Deutsche") now moves for an Order pursuant to CPLR §§ 3212 dismissing the action (**Motion Sequence # 3**). Nadam cross-moves for an Order denying the motion, or in the alternative holding the motion in abeyance pursuant to CPLR § 2201 pending the appeal of the order of Justice Richard dated June 22, 2023 (**Motion Sequence # 4**). The two motions are consolidated for disposition.

**Background:**

The following is a timeline of the relevant events underling this action:

**The 2009 Foreclosure Action:**

On September 14, 2006, non-party Lynden Hall (hereinafter "Mortgagor") acquired title to the premises (NYSCEF DOC. NO. 47). On the same day, the Mortgagor executed and delivered a Note to First Franklin, a Division of National City Bank in the amount of

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\$512,000.00, and interest. As collateral security for the payment of said indebtedness, Mortgagor executed and delivered a purchase money mortgage to Mortgage Electronic Registration Systems, Inc., acting solely as a nominee for First Franklin a Division of National City Bank. On February 10, 2009, the foregoing mortgage was assigned to Deutsche.

On February 13, 2009, due to the Mortgagor's default in the payment of the Note, Deutsche commenced an action to foreclose the mortgage under Kings County Index No.: 3552/2009 (the "2009 Foreclosure Action") (see NYSCEF DOC. NO. 50). Along with the commencement of the action, Deutsche filed a Notice of Pendency.

On October 8, 2013, the Court issued a 90-day conditional order of dismissal (see NYSCEF DOC. NO. 52). After Deutsche failed to comply with the conditional order, the Court issued an order dismissing the action.

On September 4, 2015, Deutsche moved to vacate the conditional order of dismissal and to restore the matter the Court's active docket. By order dated March 2, 2016, the motion was granted (see NYSCEF DOC. NO. 53). On April 21, 2016, after the Order was served with notice of entry, Deutsche re-filed its notice of pendency (NYSCEF DOC. NO. 63).

On June 28, 2016, Deutsche moved for default judgment in the foreclosure action and for an Order of reference. The Mortgagor opposed the motion on December 13, 2016, and cross-moved to dismiss the action. On July 19, 2017, the Court issued an order granting Deutsche's motion and denying the Mortgagor's cross-motion. The Court also issue an Order of Reference, which was served with notice of entry on September 22, 2017 (NYSCEF DOC. NO. 54).

On April 12, 2017, the Second Department affirmed the Order which vacated the dismissal of the 2009 foreclosure action, and which restored the action to the docket (NYSCEF DOC. NO. 55). Similarly, on July 29, 2020, the Second Department affirmed the lower court's decisions denying the Mortgagor's cross-motion and granting Defendant's motion for default judgment and an Order of reference (NYSCEF DOC. NO. 56).

On July 27, 2018, Deutsche moved to confirm the referee's report that was issued in the 2009 foreclosure action and for a final Judgment of Foreclosure and Sale. On February 21, 2019, the Mortgagor served opposition and cross-moved for an Order rejecting the referee's

report, tolling interest, vacating the Order of reference, for leave to interpose an untimely answer, and to dismiss the action. On May 20, 2019, the Court granted the Mortgagor's cross-motion but only to the extent that it tolled interest from February 4, 2011, to September 4, 2015. The Court also granted Defendant's motion for final Judgment of foreclosure and sale (NYSCEF DOC. NO. 58).

On February 20, 2020, the foreclosure auction was held at which time the property was sold to a third-party purchaser, 46 Paerdegat 3rd LLC for a sale price of \$820,000.00. (NYSCEF DOC. NO. 60). The closing for the sale was set to occur on November 24, 2020, but was cancelled because a title examination of the mortgaged premises revealed that the Mortgagor had transferred title to Nadam, the plaintiff herein, via Deed dated August 20, 2017, and recorded on September 15, 2017 (NYSCEF DOC. NO. 61). The title examination further revealed that a judgment dated March 24, 2016, and entered March 29, 2016, had been recorded against the mortgaged premises on ACRIS on December 7, 2017 (NYSCEF DOC. NO. 62).

**The 2015 Quiet Title Action:**

On June 26, 2015, after third-party purchaser's title examination revealed the foregoing Judgment, Deutsche discovered that on June 26, 2015, the Mortgagor commenced an action pursuant to RPAPL Article 15 seeking to cancel and discharge Deutsche's mortgage of record and declaring the Mortgagor to be the lawful owner of the premises. The 2015 Quiet title Action was commenced by the filing a Summons and Complaint under King's County Index No. 8116/2015 (NYSCEF DOC. NO. 81). The Mortgagor purports to have served Deutsche on July 20, 2015. On September 16, 2015, the Mortgagor filed notice of motion seeking default a judgment against Deutsche and declaring that Deutsche was barred from claiming an interest in the mortgaged premises pursuant to RPAPL § 1501(4) and CPLR § 213(4), and directing the County Clerk to cancel and discharge the mortgage of record. . .” On March 24, 2016, a default judgment granting the Mortgagor's motion was signed by Hon. Johnny Lee Baynes.

On December 7, 2017, Deutsche brought a motion to vacate the default judgment pursuant to CPLR § 5015(a)(5) and (a)(3), to direct the County Clerk to expunge and discharge of record the default Judgment, and to dismiss said action with prejudice. By Order of the Hon.

Richard J. Montelione dated June 22, 2023, the motion was granted, the default judgment was vacated, and the action was dismissed.

**Transfer to Nadam:**

As stated above, by deed dated August 20, 2017, and recorded on September 15, 2017, the Mortgagor transferred title to the mortgaged premises to plaintiff Nadam (NYSCEF DOC. NO. 61). As reflected by the Real Property Transfer Report filed with the deed to plaintiff Nadam, the purchase price was approximately \$45,000.00. Sometime thereafter the premises were transferred to defendant Elias Taeid.

On June 18, 2020, Nadam commenced the instant action by the filing of a Summons and Complaint (NYSCEF DOC. NO. 63), seeking various relief, including judgement vacating the transfer of the property to defendant Elias Taeid. Defendant Taeid is in default.

**Discussion:**

Any interest that Lynden Hall, the Mortgagor, acquired in the Premises resulting from his purchase of the property on September 14, 2006, terminated on May 20, 2019, with the entry of the Judgment of Foreclosure and Sale in the 2009 Foreclosure action. The fact that the Mortgagor transferred the Premises to Nadam on August 20, 2017, prior to the entry of the final Judgment of Foreclosure and Sale, is of no moment. On April 21, 2016, after the 2009 Foreclosure Action was restored to active status, Deutsche re-filed its Notice of Pendency. There is no question that pursuant to CPLR § 6516(a), a plaintiff in a foreclosure action may file a successive notice of pendency notwithstanding that a previously filed notice of pendency had already expired (see *Deutsche Bank Nat. Tr. Co. v. Daw*, 57 Misc. 3d 828, 829, 64 N.Y.S.3d 871, 872). Thus, when the premises were deeded over to plaintiff Nadam August 20, 2017, a Notice of Pendency was on file and Nadam is therefore bound by the proceedings in the foreclosure action. In this regard, pursuant to CPLR § 6501:

A notice of pendency may be filed in any action in a court of the state or of the United States in which the judgment demanded would affect the title to, or the possession, use or enjoyment of, real property, except in a summary proceeding brought to recover the possession of real property. The pendency of such an action is

constructive notice, from the time of filing of the notice only, to a purchaser from, or incumbrancer against, any defendant named in a notice of pendency indexed in a block index against a block in which property affected is situated or any defendant against whose name a notice of pendency is indexed. **A person whose conveyance or incumbrance is recorded after the filing of the notice is bound by all proceedings taken in the action after such filing to the same extent as a party.** (Emphasis added).

(See also *Goldstien v. Gold*, 106 A.D.2d 100 (2nd Dept. 1984).

There is no merit to Nadam's contention that it acquired good title to the Premises as a bona fide purchaser for value because it lacked actual knowledge of the re-filed Notice of Pendency. "That the purchaser lacks actual knowledge of the [Notice of Pendency] is irrelevant .... By merely filing a notice of pendency, the world is put on notice of the plaintiff's potential rights in the action and ... warning all comers that if they then buy the realty \* \* \* or otherwise rely on defendant's right, they do so subject to whatever the action may establish as the plaintiff's rights (*Gold supra*; *Kestler v. Weissenfels*, 247 A.D. 888 (2nd Dept. 1936); Siegel, NY Prac, § 334, p 408; 13 CarmodyWait 2d, NY Prac, § 87:73; Osborne, Mortgages [2d ed], § 222, p 436 (internal citations and quotations omitted).

It is of no moment that a judgment may have been on file declaring that Deutsche had no interest in the property at the time the Mortgagor transferred the premises to Nadam. Again, at the time the premises were transferred to Nadam, there was an active Notice of Pendency on file in the foreclosure action and Nadam therefore is bound by proceedings in the foreclosure action.

Finally, the court rejects Nadam's contention that in the interest of justice, Deutsche's motion for summary judgment should be held in abeyance pending the determination of the appeal from Justice Monteleone's order dismissing the 2015 Quiet Title Action.

Accordingly, it is hereby

**ORDRED** that Deutsche motion for summary judgment dismissing the action is **GRANTED** and the cross-motion is in all respects **DENIED**.

This constitutes the decision and order of the Court.

Dated: August 5, 2024

**PPS**

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**PETER P. SWEENEY, J.S.C.**

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