

HSBC Bank USA, N.A. v Cabrera

2024 NY Slip Op 33688(U)

September 26, 2024

Supreme Court, Kings County

Docket Number: Index No. 12015/2008

Judge: Derefim B. Neckles

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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 26th day of September, 2024.

P R E S E N T:

HON. DEREKIM B. NECKLES,
Acting Justice.

-----X
HSBC BANK USA, NATIONAL ASSOCIATION,
AS TRUSTEE FOR MHL2007-1
Plaintiff,

- against -

Index No. 12015/2008

HEYLIN CABRERA, BOARD OF MANAGERS OF THE
WASHINGTON CONDOMINIUM, MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.,
AS NOMINEE FOR MORTGAGEIT, INC., NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD, NEW YORK CITY TRANSIT
ADJUDICATION BUREAU, PEOPLE OF THE STATE OF NEW YORK,
Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

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

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Upon the foregoing papers, the motion to reargue pursuant to CPLR§ 2221 by defendant, Heylin Cabrera (defendant), seeking inter alia an order (1) dismissing the summary judgment order and vacating the judgment of foreclosure and sale; (2) directing the entry of judgment in favor of defendant and against the plaintiff, HSBC Bank USA, National Association, as Trustee for MHL2007-1; (3) canceling of record the assignment of the mortgage pursuant to Real Property Law § 329 and thus, bar any subsequent trusts

or LLCs from making any claim against the subject property; and (4) restraining Plaintiff, HSBC Bank USA, National Association, as Trustee for MHL2007-1, known and unknown John Doe and Jane Doe, and all those persons acting in concert with them or under their control from and any and all acts, other than those which maybe permitted by this Court upon application to it, to impede or to interfere with defendant, Heylin Cabrera's peaceful possession, occupancy and residence of said premises.

Motions for leave to reargue and/or renew are governed by CPLR 2221. A motion for leave to reargue is based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion (CPLR 2221 [d] [2]). It is a basic principle that a movant on reargument must show that the court overlooked or misapprehended the facts or law or for some reason mistakenly arrived at its earlier decision (*Andrea v E.I. du Pont de Nemours & Co.*, 289 AD2d 1039 [4th Dept 2001]; *Bolos v Staten Island Hosp.*, 217 2 [* 2] AD2d 643 [2d Dept 1995]; *Schneider v Soloway*, 141 AD2d 813 [2d Dept 1988]). A motion to reargue is not to be used as a means in which an unsuccessful party is permitted to argue again the same issues previously decided (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22 [1st Dept 1992]; *Pro Brokerage v Home Ins. Co.*, 99 AD2d 971 [1st Dept 1984]).

“Collateral estoppel, or issue preclusion, precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party or those in privity, whether or not the tribunals or causes of action are the same. The party seeking to invoke collateral estoppel has the burden to show the identity of the issues, while the party trying to avoid application of the doctrine must

establish the lack of a full and fair opportunity to litigate” (*Bank of New York Mellon v. Treitel*, --- AD3d ---, 2023 NY Slip Op 03446 [2d Dept 2023]).

Under the doctrine of res judicata, “once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy” (*Jones v. Flushing Bank*, 212 AD3d 791, 793 [2d Dept 2023]). “The doctrine of res judicata bars a party from relitigating any claim which could have been or should have been litigated in a prior proceeding” (*id.*) A judgment of foreclosure and sale entered against a defendant is final as to all questions at issue between the parties and concludes all matters of defense which were or might have been raised in the foreclosure action (*id.*)

Here, defendant’s allegations regarding the fraudulent assignment of the mortgage by Steven Baum's attorney and employee, Elpiniki Bechakas, has been previously litigated and raised, including in the defendant’s motion for lack of standing, that was denied by Hon. Sylvia G. Ash on September 22, 2015.

Furthermore, subsequent to this application, defendant brought a motion, under motion seq. 14, requesting the same relief as in the present motion. Said motion was similarly denied by this court for failure to present any new evidence or facts justifying the proceeding regarding fraud and standing.

The above applies to this instant motion. Defendant’s motion to reargue presents the same facts which have been litigated and decided on, including the allegation of a fraudulent assignment and lack of standing. This motion fails to present any new evidence or facts to justify a dismissal.

Based upon the above stated reasons, defendant's order to show cause is denied in its entirety.

This constitutes the decision and order of the court.

E N T E R,



HON. DEREKIM B. NECKLES
A. J. S. C.

**HON. DEREKIM B. NECKLES
A.J.S.C.**