

21st Mtge. Corp. v Jin Hua Lin

2024 NY Slip Op 34497(U)

October 18, 2024

Supreme Court, New York County

Docket Number: Index No. 850085/2018

Judge: Francis A. Kahn III

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. FRANCIS A. KAHN, III PART 32

Justice

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INDEX NO. 850085/2018

21ST MORTGAGE CORPORATION AS MASTER
SERVICER FOR CHRISTIANA TRUST, A DIVISION OF
WILMINGTON SAVINGS FUND SOCIETY, FSB AS
TRUSTEE FOR KNOXVILLE 2012 TRUST,

MOTION DATE _____

MOTION SEQ. NO. 006

Plaintiff,

- v -

JIN HUA LIN, HSBC BANK NEVADA NA, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD, NEW YORK CITY
PARKING VIOLATIONS BUREAU, NEW YORK CITY
TRANSIT ADJUDICATION BUREAU, NEW YORK STATE
DEPARTMENT OF TAXATION AND FINANCE, TRUE
WORLD FOODS NY LLC, UNITED STATES OF AMERICA -
INTERNAL REVENUE SERVICE, BOARD OF MANAGERS
OF THE HARBORVIEW CONDOMINIUM, FRIENDLY
FRUIT INC., RENAISSANCE ECONOMIC DEVELOPMENT
CORPORATION, MIDLAND FUNDING, LLC, MATT
PETERS,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347

were read on this motion to/for STAY.

Upon the foregoing documents, the motion is determined as follows:

This is an action to foreclosure on a mortgage on residential real property located at 44-46 Market Street, Unit 10A, New York, New York. The mortgage at issue was given by Defendant Jin Hua Lin to secure a loan of \$650,000.00 that was documented by a note dated December 14, 2006. Defendant Lin apparently first defaulted on this loan on June 1, 2009. The purported holder of the mortgage at that time commenced an action to foreclose by filing a summons and complaint on November 20, 2009. A motion for a default judgment and order of reference was granted without opposition by order dated August 17, 2010. The Court records reveal that on September 16, 2010; the action was marked "Disposed/Result of Motion", and the Court file does not reveal any further proceedings were taken in the 2009 action.

Defendant Renaissance Economic Development Corporation ("Renaissance") obtained title to the property via a Sheriff's Deed dated August 20, 2012, after a public sale of the premises on August 8, 2012. The sale was conducted to satisfy a money judgment Renaissance obtained against Defendant Lin. This action was commenced on March 30, 2018, with the filing of a summons and complaint. A

pre-answer motion by Defendant Renaissance to dismiss the complaint based upon Plaintiff's lack of standing to prosecute this action was denied. Defendant Renaissance served and filed its answer and now moved pursuant to CPLR §3212; §3211[a][5] and §214[6] for summary judgment dismissing Plaintiff's complaint as barred by the statute of limitations. Plaintiff cross-moved for summary judgment on its claims, dismissal of the defenses asserted by Renaissance in its answer, a default judgment against the non-appearing parties, amendment of the caption, appointing a referee to compute and consolidating this action with the 2009 action. By order of this Court dated September 17, 2021, that motion was denied as was Renaissance's appeal of same (*see 21st Mtge. Corp. v. Jin Lin*, 210 AD3d 401 [1st Dept 2022]). Plaintiff's cross-motion for summary judgment was granted and *inter alia* an order of reference was issued.

A judgment of foreclosure and sale was issued over Defendant Renaissance's opposition on July 12, 2023. Plaintiff served notice of entry of that judgment on July 22, 2023. On September 14, 2023, the Court *sua sponte* amended the judgment upon a request from Judgment Clerk to correct misspellings in the caption and to substitute the correct description of the property annexed to the judgment. Notice of entry of the amended judgment does not appear in the Court record.

Now, Defendant Renaissance moves for renewal of the order dated September 17, 2021, pursuant to CPLR §2221[e], to dismiss the complaint based upon expiration of the statute of limitations and for injunctive relief. Defendant asserts renewal should be granted based upon a change in the law that occurred with the enactment of the Foreclosure Abuse Prevention Act ("FAPA") (L 2022, ch 821 [eff Dec. 30, 2022]). Plaintiff opposes the motion.

"Renewal is granted sparingly . . . it is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation" (*Matter of Weinberg*, 132 AD2d 190, 210 [1st Dept 1987]). As relevant here, CPLR §2221[e][2] provides that a motion for leave to renew "shall demonstrate that there has been a change in the law that would change the prior determination". Change in law can be a "new statute taking effect or a definitive ruling on a relevant point of law issued by an appellate court that is entitled to stare decisis" (CPLR Practice Commentaries, by Professor Patrick M. Connors, McKinney's Cons. Laws of NY Annotated, CPLR 2221:9A, Time to Make Renewal Motion; 2020, *citing* Siegel & Connors, New York Practice § 449 [6th ed. 2018]).

Prior to the amendment of CPLR §2221, a motion based on a change in law was considered a motion to reargue and was, pursuant to the express provisions of that section, required to be made before the time to appeal the prior order expired (*see Glicksman v Board of Education/Central Sch. Bd.*, 278 AD2d 364, 365 [2d Dept 2000]). The addition of CPLR §2221[e] reclassified a motion based on a change of law to be one for renewal but did not contain the time limitation attached to a motion to reargue. Nevertheless, subsequent appellate decisions have confirmed that CPLR §2221[e] "did not change the rule regarding the finality of judgments" (*see Matter of 160 E. 84th St. v. New York State Div. of Hous. & Community Renewal*, 203 AD3d 501 [1st Dept 2022]). That edict provides that "[a]fter entry of a final judgment, a motion for leave to renew pursuant to CPLR 2221 (e) (2) based upon 'a change in the law that would change the prior determination' must be made, absent circumstances set forth in CPLR 5015, before the time to appeal the final judgment has expired" (*Matter of Eagle Ins. Co. v Persaud*, 1 AD3d 356, 357 [2d Dept 2003], *quoting* CPLR 2221 [e] [2]). This finding comports with the Court of Appeals' holding that "a determination of a court from which no appeal has been taken ought to remain inviolate" (*In re Huie*, 20 NY2d 568, 572 [1967]). Despite being seemingly "harsh", this principle is justified as "there must be an end to lawsuits and the time to take an appeal cannot forever be extended" (*id.*).

Here, notice of the original judgment of foreclosure and sale was served more than five months before this motion was filed and no notice of appeal was filed. As a result, Defendant's time to appeal that order expired thirty-days thereafter (see CPLR §5513[a]) and this motion is patently untimely (see U.S. Bank, NA v Gallant, ___ Misc3d ___, 2023 NY Slip Op 33848[U][Sup Ct NY Cty 2023]). The Court's issuance of an amended judgment correcting typographical errors in the caption and the metes and bounds description annexed to the property did not create a new right of appeal as the changes were ministerial and had no effect on any appealable issue (see Gettinger Assocs. L.P. v Abraham Kamber & Co., 301 AD2d 370 [1st Dept 2003]; see also Panasia Estate, Inc. v Broche, 103 AD3d 426 [1st Dept 2013]; Kitchen v Port Auth., 221 AD2d 195 [1st Dept 1999]).

Accordingly, it is

ORDERED that the motion by Defendant Renaissance Economic Development Corporation is denied in its entirety, and it is

ORDERED that the temporary restraining order issued by this Court in its January 5, 2024, order to show cause is vacated.

10/18/2024

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

Francis A. Kahn III

FRANCIS A. KAHN III
HON. FRANCIS A. KAHN III
J.S.C.