

Bloom v Loancare, LLC

2024 NY Slip Op 34913(U)

September 6, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 608444/2024

Judge: Aletha V. Fields

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This opinion is uncorrected and not selected for official publication.

Mot Seq 1 – ADJ to 10/15/2024

Mot Seq 2 – ADJ to 9/9/2024

Mot Seq 2 – MD

Caption Change

**State Of New York – Supreme Court
Suffolk County – Part 81**

ELIOT BLOOM and ELIZABETH BLOOM,

Plaintiffs,

Index Number : 608444/2024

-against-

Hon. Aletha V. Fields, AJSC

LOANCARE, LLC, and FREEDOM
MORTGAGE CORPORATION

Order on Consent

Defendant.

Charles Wallshein, Esq., Melville, New York, for both plaintiffs;

KABAT CHAPMAN & OZMER, LLP, Atlanta, Georgia (Michael D. Kabat, Esq. and Aaron A. Wagner, Esq., of counsel)

GOLDBERG SEGALLA (Marc W. Brown, Esq., of counsel) for Freedom Mortgage Corporation;

DINSMORE & SHOHL, LLP, Lexington, Kentucky (K. Cassandra “Cassie” Carter, Esq., of counsel) for Freedom Mortgage Corporation

Upon the virtual chambers conference held via Microsoft Teams today at which conference all of the above-appearing lawyers and this Court were able to see and hear one another, and

Upon the part 81 rules, and

Upon consent of all parties, it is hereby

ORDERED that K. Cassandra “Cassie” Carter, Esq., an attorney admitted to practice before the courts in the commonwealth of Kentucky, who, upon an online search of attorney disciplinary information from the Kentucky Bar Association, which database is presumably housed in the Commonwealth capital, has no adverse disciplinary history, and who has the support and sponsorship of New York attorney Marc W. Brown, be, and hereby is, admitted to practice *pro hac vice* before the supreme court in the above-captioned action, subject to the following requirements (a) at all times a co-counsel admitted to practice before New York courts must be one of the attorneys of record for the client Attorney Carter represents, and (b) Attorney Carter be, and hereby is, directed to notify this Court by letter if (1) such attorney is the subject of any public discipline, or (2) is or later fails to be an attorney in good standing in any jurisdiction in which such attorney is admitted to practice; and it is further

ORDERED that Aaron A. Wager, Esq., an attorney admitted to practice before the courts in the states of Georgia, Florida, Maryland, Oregon, Texas, and Washington, and the District of Columbia, who, upon an online search of attorney disciplinary information from appropriate sources in each of the aforementioned states and district, which databases are presumably housed in Atlanta, Tallahassee, Annapolis, Salem, Austin, and Olympia, and the District of Columbia, and who has the support and sponsorship of New York attorney Michael Kabat, be, and hereby is, admitted to practice *pro hac vice* before the supreme court in the above-captioned action subject to the following requirements (a) if further litigation in this action involving Attorney Wagner's client occurs, including responding to discovery, at least one lawyer at Attorney Wagner's firm must be admitted to practice before New York courts, and (b) Attorney Wagner be, and hereby is, directed to notify this Court by letter if (1) such attorney is the subject of any public discipline, or (2) is or later fails to be an attorney in good standing in any jurisdiction in which such attorney is admitted to practice; and it is further

ORDERED that the admissions *pro hac vice* be, and each hereby is, retroactive to the date that each such attorney's client first appeared in this action; and it is further

ORDERED that in light of the stipulation of counsel (binding upon all) that as of the commencement of this action, defendant Loancare LLC did not have any interest in any of the note, the mortgage, and/or the realty that is the subject of this action, the complaint be, and hereby is, dismissed without costs against Loancare LLC, but for all process serving purposes, such as non-party discovery, attorney Michael Kabat be, and hereby is, an agent of Loancare LLC designated for service and that any service of anything may be made upon such attorney by any method permitted by applicable law as if Loancare LLC was still a party to this action¹; and it is further

ORDERED that the stipulation and decretal language of the immediately preceding paragraph means, among other things, that Loancare LLC (a) may have had an interest in the note, mortgage, and/or the realty that is the subject of this action sometime before the commencement of this action, but also may not have had such an interest, and (b) is not the same entity as the plaintiff that commenced this action.

ORDERED that the pending motion to dismiss that defendant Freedom Mortgage Corporation filed (sequence 1) be, and it hereby is, adjourned to October 15, 2024 and that all filing deadlines and other date-related matters, including adjournments, in respect of cross-motions, opposition, and replies be, and hereby are, directed to be determined as if the initial return date of this motion to dismiss was October 15, 2024; and it is further

ORDERED that in light of the stipulation regarding Loancare LLC, motion sequence 2, Loancare LLC's motion to dismiss, be, and it hereby is, DENIED without costs as academic (*Matter of Janeudi D.*, 194 AD3d 928 [2d Dept 2021]); and it is further

¹ This Court notes that because, for example, Loancare LLC could be a discovery witness, the admission of Attorney Wagner is not academic; such attorney may want to sign documents or filings related to any possible discovery.

ORDERED that in light of the dismissal as to Loancare LLC, such defendant be, and hereby is, dropped from the caption, so the caption of this action be, and hereby is:

STATE OF NEW YORK
SUPREME COURT SUFFOLK COUNTY

ELIOT BLOOM and ELIZABETH BLOOM,

Plaintiffs,

Index Number : 608444/2024

-against-

FREEDOM MORTGAGE CORPORATION,

Defendant.

And, it is further

ORDERED that plaintiff be, and hereby is, directed to file this order with CPLR 8019 (c) notice with the Suffolk County Clerk on or before October 8, 2024; and it is further

ORDERED that a separate order issue joining, but not consolidating, this action with 610545/2024, and that such issue directing joinder be contingent upon counsel for Freedom Mortgage Corporation in 610545/2024 (a different law firm from the firm representing that entity here) not objecting to the joinder; and it is further

ORDERED that on this Court's own motion, and not on consent of the parties, the remaining parties to this action be, and each hereby is, directed to file a SINGLE joint status letter between October 11, 2024 and October 18, 2024 at 5:00 p.m. indicating, without any legal argument, whether these parties consent to a Traverse hearing to determine or to assist in the determination of the pending motion to dismiss that Freedom Mortgage Corporation filed, but if they so agree sooner than October 11, 2024, then the letter may be sooner filed.

In this action, the plaintiffs allege that they own certain realty located in Suffolk County. Plaintiffs also allege that Freedom Mortgage Corporation (Freedom) commenced a 2012 foreclosure action in respect of a mortgage on record and voluntarily discontinued that action by motion that the justice assigned to that action dismissed by an order entered on April 10, 2015 (Amended Complaint [Dkt. 10]; Order [Dkt. 6]). Plaintiffs allege that Freedom commenced a 2015 action to foreclose on the same mortgage, but this Court dismissed that action by an order dated December 26, 2023 (Amended Complaint [Dkt. 10]; Order [Dkt. 8]). Freedom did not oppose the motion to dismiss the 2015 action.

Freedom commenced a third action to foreclose the same mortgage under index number 610545/2024 (the pending foreclosure action) where Eliot and Elizabeth Bloom (mortgagors) have filed a motion to dismiss. The broad outline of mortgagors' argument is that the pending foreclosure action is time barred. Mortgagors argue that because the 2012 action may have irrevocably accelerated the loan and because the 2015 action undeniably accelerated the loan

obligation, the pending foreclosure action must rely on a savings statute to be not time barred. In this action, 608444/2024 (the quiet title action) mortgagors argue that because enforcement of the mortgage is time barred, the mortgage must be cancelled (RPAPL § 1501 [4]).

Freedom has moved in this, the quiet title action, to dismiss. The broad outline of Freedom's argument is that despite the dismissal of the 2015 action, it may rely on CPLR 205-a, a savings statute, under which Freedom argues it was required "to refile and serve a foreclosure action" within six months of the expiration of the time to appeal from the order of dismissal of the 2015 action, which dismissal order was entered on Freedom's default. From this premise, Freedom argues that, in fact, it commenced (i.e., refiled) and served mortgagors in this quiet title action within the six-month period as Freedom defines it.

Based on the conference and based on mortgagors' motion in the pending foreclosure action, mortgagors' position is, in part, that contrary to Freedom's contention, Freedom did NOT serve mortgagors within the time the savings statute permits. On this analysis, a critical, and perhaps the only meaningful, issue in this quiet title action and in the pending foreclosure action is or relates to service of process in this quiet title action. This common issue of fact, imbued with common issues of law, makes joinder of the actions desirable. However, Freedom's counsel in the pending foreclosure action was not part of today's conference, so full consent to joinder is not available. Thus, the joinder order will permit Freedom's counsel in the pending foreclosure action to object, in which event, no joinder will occur without a motion (CPLR 602 [a] [allowing, among other things, to allow the court to "make such . . . orders concerning proceedings therein as may tend to avoid unnecessary costs or delay"])).

Also on this analysis, and on this Court's conclusion that mortgagors and Freedom disagree about at least two critical facts—did service occur, and if so, when did it occur, in this action—consent to a Traverse hearing might help expedite matters. Strategic considerations, legal analysis, and confidential information will influence the lawyers' decision about whether to consent to the hearing. Therefore, this Court wants to provide the lawyers adequate time to consider the possibility that was not discussed at the conference and to negotiate with each other to reach a negotiated outcome in this quiet title action and the pending foreclosure action, if a negotiated outcome is possible at this time. The ordered joint status letter aids this Court in calendaring and managing its resources.

Dated : September 6, 2024
Riverhead, New York

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Hon. Aletha V. Fields, AJSC