

Deutsche Bank Natl. Trust Co. v Letennier
2024 NY Slip Op 35045(U)
August 16, 2024
Supreme Court, Delaware County
Docket Number: Ind. No. EF2018-290
Judge: Brian D. Burns
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At a term of the Supreme Court of the State of New York, held in and for the County of Delaware, at Delhi, New York on July 24, 2024.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DELAWARE

DEUTSCHE BANK NATIONAL TRUST COMPANY,
AS TRUSTEE, ON BEHALF OF THE HOLDERS OF
THE J.P. MORGAN MORTGAGE ACQUISITION TRUST
2007-CH3 ASSET BACKED PASS-THROUGH
CERTIFICATS, SERIES 2007-CH3,

Plaintiff,

DECISION AND ORDER
(Motions #15 and #16)

-against-

Ind. No. EF2018-290

JEAN LETENNIER A/K/A JEAN MICHEL LETENNIER
A/K/A JEAN M. LETENNIER; GREGORY SCHUENEMANN;
STATE BANK OF LONG ISLAND; and KSENIA
KRAVTSOVA,

Defendants.

BEFORE: HON. BRIAN D. BURNS
SUPREME COURT JUSTICE

APPEARANCES: For Plaintiff
HINSHAW & CULBERTSON LLP
By Robert D. Bailey, Esq.

For Defendant
Joshua A. Douglass, Esq.

Defendant, although represented by counsel, filed a pro se motion seeking an order permitting an ex parte meeting in chambers and for the court to undertake a forensic accounting. The motion was made returnable at a submitted term of the court. Plaintiff filed a cross-motion seeking an order deeming defendant to be a vexatious litigant, awarding fees, costs and

sanctions, and striking frivolous non-motion filings together with related relief. Defendant filed a motion (without a return date) to strike opposing counsel's affirmation of truth on the return date of the pending motions.

Regarding defendant's motion seeking an ex parte meeting in chambers, not only is there no support in law for such a request, a judge is prohibited from engaging in ex parte communication under Part 100.3(B)(6) of the Rules of the Chief Administrative Judge governing Judicial Conduct. Further, there is no legal authority for the court to conduct a forensic accounting.

The court will now address plaintiff's cross-motion and will set forth relevant procedural history to put the motion to deem defendant a vexatious litigant in context. This action concerns real property located at 1580 State Highway 357, Unadilla, New York. Defendant Jean Michael LeTennier executed a note in favor of plaintiff's predecessor wherein defendant agreed to pay \$399,000 plus interest at the rate of 9.69 %. The note was transferred to plaintiff prior to commencement of the action. Defendant defaulted on the note and mortgage by failing to make the monthly payment of principal and interest due on September 1, 2012. The underlying action to foreclose a mortgage on real property was commenced on March 26, 2018, alleging \$381,249.99 plus interest due as of August 1, 2012. Issue was joined by the interposition of an Answer dated April 25, 2018, by defendant Jean Michael LeTennier. The remaining defendants did not appear.

Plaintiff filed a motion seeking an order granting summary judgment on December 10, 2018. Defendant filed a cross-motion seeking an order dismissing the complaint. By decision and order dated July 25, 2019, and entered on July 29, 2019, the Hon. Richard D. Northrup, Jr., granted the motion for summary judgment, and signed an order appointing a referee to compute.

Defendant's cross-motion was denied. Defendant appealed. By decision and order decided and entered December 31, 2020, the Supreme Court, Appellate Division for the Third Judicial Department affirmed this court's decision and order.

Plaintiff filed a motion seeking an order confirming the referee's report and for judgment of foreclosure and sale, which was originally returnable on February 26, 2020, but adjourned because of the COVID-19 pandemic. Defendant filed three motions seeking leave to reargue, and to compel a response to his Demand for Bill of Particulars. By decision and order dated February 2, 2022 and entered on February 4, 2022, the court denied defendant's motions and granted plaintiff's motions. The court also executed the Judgment of Foreclosure and Sale. Defendant subsequently filed an order to show cause which was denied by decision and order dated April 5, 2022, on the ground that the Third Department's affirmance of the court's summary judgment decision prohibited reexamination of the issues raised by defendant.

By decision and order dated May 31, 2022, the court denied defendant's motion for an order granting renewal and vacating the court's previous order confirming the referee report and Judgment of Foreclosure as well as the decision and order granting summary judgment entered on July 29, 2019. Defendant filed a proposed order to show cause on October 27, 2022, which again sought renewal of plaintiff's motion for summary judgment and upon renewal, vacating the court's orders granting summary judgment and Judgment of Foreclosure. By decision and order dated October 28, 2022, the court denied the order to show cause on the ground that defendant was continuing to argue the same issues that were already determined, and that the Third Department's affirmance of the court's grant of summary judgment acts to foreclose any further reexamination by this court of the issues raised by defendant. Further, the matter was stayed as a result of the filing of a bankruptcy proceeding by defendant. The Chapter 13 petition was

dismissed without prejudice in United States Bankruptcy Court for the Northern District of New York on January 9, 2023.

Defendant filed a motion on February 10, 2023, seeking an order, pursuant to CPLR R 5015(a)(2),(3),(4) and (5), vacating the orders of this court dated July 29, 2019 and May 31, 2022, respectively. Plaintiff filed a cross-motion seeking an order deeming defendant a vexatious litigant.

Defendant's motion was based on four arguments – the court did not have jurisdiction as per Article 6, Section 21, paragraph 4 of the NYS Constitution; plaintiff lacked standing as the “falsified/fabricated allonges are not affixed to the Note to satisfy UCC § 3-202(2)”; plaintiff, as a foreign corporation, was not in compliance with NYS Law §§ 1301, 1302, and 1312 to bring suit in NYS; and plaintiff did not have an equitable interest in the Note (#1890326080) of security instruments (#0023575830).

The court found that in that there has been no reversal, modification or vacatur of a prior judgment or order in this matter, CPLR 5015(a)(5) was inapplicable, and so much of the motion which sought relief under that ground was denied.

The court further found that that defendant's argument that the court lacked jurisdiction per Article 6, Section 21, paragraph 4 of the NYS Constitution was without merit, and was addressed and determined by the Appellate Division. This court again determined that it was foreclosed from reexamining that issue (see, *Carroll v Rondout Yacht Basin, Inc.*, 183 A.D.3d 1000, 121 N.Y.S.3d 691 [3rd Dept. 2020]), and defendant's repeated attempts to resurrect issues which have already been determined by the Appellate Division constituted frivolous conduct (22 NYCRR § 130-1.1(c)(1)).

The court also found that defendant's arguments that plaintiff lacked standing were foreclosed by the Appellate Division's determination on that issue, and his continued attempts to reargue that issue also constituted frivolous conduct.

The court denied so much of the motion related to newly-discovered evidence in that he did not meet his burden of demonstrating such evidence could not have been, with due diligence, been discovered earlier or would have altered the outcome (see, *Maddux v. Schur*, 53 A.D.3d 738, 739, 861 N.Y.S.2d 814 [3rd Dept. 2008]).

Finally, the court found that defendant made no showing, whatsoever, that plaintiff has engaged in misrepresentation, fraud or misconduct, and denied the relief sought on that ground.

The court denied plaintiff's motion to find defendant to be a vexatious litigant but admonished him for his repeated attempts to relitigate issues which have already been determined by the Appellate Division. The court also directed defense counsel to certify that any future filings were not frivolous.

By decision and order dated July 14, 2023, and entered on July 14, 2023, the court denied defendant's order to show cause seeking a temporary restraining order staying the previously-scheduled foreclosure auction scheduled for August 2, 2023. The court deemed the filing frivolous but declined to issue sanctions because plaintiff did not make a motion for an award of sanctions.

While public policy mandates free access to the courts, a litigant can forfeit that right by abusing the judicial process through vexatious litigation and may be enjoined from bringing any future motions without court permission (see, *Rossrock Fund II, L.P. v Toledo*, 186 A.D.3d 1441, 128 N.Y.S.3d 853 [2nd Dept. 2020]).

The court has discretion to sanction an attorney or party for frivolous conduct under 22 NYCRR § 130-1.1(a). Conduct is frivolous under 22 NYCRR § 130-1.1(c) if:

- (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
- (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
- (3) it asserts material factual statements that are false.

In determining whether conduct is frivolous, the court “shall consider, among other things the circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct, and whether or not the conduct was continued when its lack of legal or factual basis was apparent, or should have been apparent, or was brought to the attention of counsel or the party (22 NYCRR § 130-1.1(c)).” In this case, a full review of the record shows that the defendant has filed numerous motions, based on the same or similar claims, and notwithstanding each motion being denied, and notwithstanding the court’s admonishments to the defendant to refrain from filing addition motions on baseless grounds, the defendant has now done so yet again. This constitutes frivolous conduct.

The plaintiff requests that the court strike documents that the defendant filed identified as NYSCEF Documents 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 236, 237, 238, 241, 242, 243, 244, 245, 249 and 250. NYSCEF Document 221 is a document defendant filed labeled “Right of Recession and Revocation.” This document has no legal significance relative to this case. It is not responsive to any pending motion nor is it in support of any pending motion. The plaintiff’s motion to strike the same is granted.

NYSCEF Document 222 is a document titled “Cancellation of Debt.” NYSCEF Document 223 is similarly a document labeled “Cancellation of Debt.” NYSCEF Document 224 is what purports to be a “UCC Financing Statement.” Document 225 purports to be a

“UCC Financing Statement”. Document 226 purports to be an information request that the defendant filed with the New York State, Department of State. Document 227 is a document listed “Notice Assumed Name.” Document 228 purports to be a “UCC Financing Statement”. Document 229 purports to be a “Notice to Cease and Desist Conditional.” Document 230 also purports to be a “Notice to Cease and Desist Conditional.” Document 231 is a document labeled “Cancellation of Debt.” Document 232 is a document titled “Notice of Assumed Name.”

None of the above referenced documents were filed in response to or in relation to any pending motions. A court review of each document indicates that none of them are relevant or have any legal significance. Accordingly, plaintiff’s motion to strike NYSCEF Documents 221 through 232 is granted.

Plaintiff also seeks to strike NYSCEF Document 236. This document is labeled “Affirmation of Truth Forma.” The document itself is incomprehensible and seems to have no bearing whatsoever on any pending matters related to this case. Plaintiff’s motion to strike is granted.

NYSCEF Document 237 is also captioned “Affirmation of Truth Forma” and once again, the court finds this document incomprehensible. Plaintiff’s motion to strike Document 237 is granted.

NYSCEF Document 238 is captioned “Age of Majority Affidavit.” This 14-page affidavit appears to be some sort of manifesto which addresses everything from the defendant’s age to racketeering claims. The introductory paragraph of this document reads, in part, “I am acting on behalf of the birth certificate number 156-60-108112, as a living breathing soul-created by God, attained the “Age of Majority” in the year of 1978, I hereby hold the right to act as the

Executor of my estate ... “ This affidavit, in addition to being incomprehensible, has no bearing on the case and was not filed in response to any pending matters. Accordingly, plaintiff’s motion to strike NYSCEF Document 238 is granted.

Plaintiff has also asked to have NYSCEF Documents 241 and 242 stricken from the record. NYSCEF Documents 241 and 242 purport to be “Affidavits of Truth.” These documents appear to be akin to Notices to Admit. At this juncture, these documents are of no legal relevance. Plaintiff’s motion to strike documents 241 and 242 is granted.

NYSCEF Document 243 is listed as an “Affirmation.” It comprises 21 pages of miscellaneous documents, copies of a case decision, a limited power of attorney, etc., The court has reviewed this filing and finds it to be largely incomprehensible. There is no legal merit to anything contained in NYSCEF Document 243 and the same is hereby stricken from the record.

NYSCEF Document 244 is a similar compilation of unrelated documents. It too is stricken from the record.

NYSCEF Document 245 purports to be an affidavit of service of the miscellaneous documents referred to in NYSCEF Documents 241 through 244. Given that these documents have no legal meaning, the court finds that the affidavit of service is similarly of no legal consequence. Plaintiff’s motion to strike NYSCEF Document 245 is granted.

NYSCEF Documents 249 and 250 are captioned “Notice of Pendency of Action.” The filing includes 20-pages of attachments that purport to show that the JMLetenier Irrevocable Family Trust has filed or will be filing a lawsuit against John Michel Letennier. It appears that the defendant is attempting to place a lien on the property that is subject to the order of sale by

creating a trust to sue himself. This effort is in vain. The lien has no legal significance, NYSCEF Document 249 is hereby stricken from the record. NYSCEF Document 250 purports to be a copy of a letter threatening to bring “significant legal action” against the plaintiff if they proceed with the court-ordered sale. This letter is not relevant to the present case. Is not responsive to any pending matter before the court. Plaintiff’s motion to strike this from the electronic filing record is hereby granted.

In light of the frivolous motion practice described hereinabove, and the voluminous filing of meaningless documents containing baseless or incomprehensible arguments, the court finds that the defendant is a vexatious litigant. As a consequence, the court directs that all future applications the defendant files must be filed by Order to Show Cause and subject to the court’s review. In addition, the defendant is directed to refrain from filing miscellaneous documents in the electronic filing system unless they are directly in support of a court-approved order to show cause or in response to a motion or an order to show cause filed by the plaintiff.

Finally, plaintiff has demonstrated that the defendant’s conduct is frivolous and constitutes an abuse of the legal system. Accordingly, the court will award plaintiffs its costs and legal fees from the date of the order confirming the referee’s report and judgment of foreclosure and sale of February 4, 2022. Plaintiff’s counsel is directed to submit an affidavit of legal services and costs for the relevant time period to the court for its consideration in fixing the amount of legal fees.

The court has examined all other requests and arguments. To the extent they are not specifically addressed, they are denied.

Based on the forgoing, it is hereby

ORDERED that defendant’s motion is denied, be it further

ORDERED that plaintiff’s cross-motion is granted to extent described above and that defendant is hereby required to file any future applications by Order to Show Cause, subject to the court’s review, and that defendant is prohibited from filing any further miscellaneous documents unless they are in support of or in response to a motion or order to show cause properly before the court, be it further

ORDERED that the Clerk of the Court strike the documents enumerated hereinabove from the court’s file, be it further

ORDERED that the plaintiff is entitled to a judgment awarding its attorneys fees and costs as provided for hereinabove, and that counsel is to submit and affidavit of services and costs for the court’s consideration, together with a proposed judgment.

Dated: August 16, 2024
Delhi, New York

ENTER:

Brian D. Burns
Digitally signed by
Hon. Brian D. Burns
8/16/2024, 1:00:37 PM

Hon. BRIAN D. BURNS
Supreme Court Justice

To: All Parties Via NYSCEF

ENTERED
August 16, 2024 1:22 pm
Holly G. Gransbury
Acting Clerk