

JPMorgan Chase Bank, N.A. v Campbell

2025 NY Slip Op 31294(U)

April 14, 2025

Supreme Court, Kings County

Docket Number: Index No. 500908/2014

Judge: Cencerina P. Edwards

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At an IAS Term, Part FRP-1 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 14th day of April, 2025.

P R E S E N T:

HON. CENCERIA EDWARDS,

Justice.

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JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,

Plaintiff,

- against -

Index No. 500908/14

LAURET I. CAMPBELL A.K.A. LAURET L. CAMPBELL A
A.K.A. LAURET CAMPBELL, SHERICE CAMPBELL,
NEW YORK CITY ENVIRONMENTAL CONTROL
BOARD, HASEA SPIKES, NYC DEPARTMENT OF
FINANCE-PARKING VIOLATIONS BUREAU, ANN
CAMPBELL, DENISE DOE, JOCELYN CAMPBELL,

Defendants.

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The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/Cross
Motion and Affidavits (Affirmations) _____
Opposing Affidavits (Affirmations) _____

242-262, 265
268, 270-304

Upon the foregoing papers in this action to foreclose a mortgage encumbering the property at 3521 Kings Highway in Brooklyn (Block 7653, Lot 66) (Property), defendant Lauret Campbell s/h/a Lauret I. Campbell a/k/a Lauret L. Campbell a/k/a Lauret Campbell (Campbell or Defendant) moves (in motion sequence [mot. seq.] six), by order to show cause (OSC), for an order: (1) enjoining plaintiff JPMorgan Chase Bank, National Association (Chase or Plaintiff) from taking any action to sell, transfer, or encumber the Property; and/or (2) enjoining Plaintiff from conducting the scheduled April 14, 2022

foreclosure sale pending a determination on Defendant's OSC filed on April 7, 2014; and/or (3) enjoining Plaintiff from conducting the scheduled April 14, 2022 foreclosure sale, pursuant to RPAPL § 1351, and "[g]ranting such other relief as this Court deems just and proper"¹ (NYSCEF Doc No. 265).

Background

On February 2, 2014, Chase commenced this action against Campbell and others by filing a summons, an unverified complaint and a notice of pendency against the Property (NYSCEF Doc Nos. 1-2). The complaint alleges that Campbell executed notes in favor of the original lender, Residential Home Funding Corp. (Residential), which were secured by mortgages encumbering Campbell's residential Property, which were later consolidated (NYSCEF Doc No. 1). The complaint alleges that Campbell defaulted by "failing to pay portions of principal, interest or taxes, assessments, water rates, insurance premiums, escrow, or other charges . . ." (*id.* at ¶ 10).

On March 26, 2014, Campbell answered the complaint, denied the material allegations therein and asserted affirmative defenses (NYSCEF Doc No. 28).

On January 8, 2018, Chase moved for summary judgment and an order of reference (NYSCEF Doc No. 37). By a March 12, 2019 order, the court (Dear, J.) granted Chase summary judgment, struck Campbell's answer to the complaint and appointed a referee to compute the amount due and owing (NYSCEF Doc No. 161).

¹ Campbell also seemingly seeks an order vacating the Judgment of Foreclosure and Sale issued on December 3, 2019, pursuant to CPLR 5015 (a) (*see* NYSCEF Doc No. 244 at ¶¶ 75-80).

On March 13, 2018, Campbell e-filed a Consent to Change Attorneys executed by Campbell's outgoing defense counsel Jonathan Koren, Esq. and new defense counsel at the Biolsi Law Group, P.C., which was subsequently disqualified due to a conflict of interest (NYSCEF Doc Nos. 98 and 129).

On December 27, 2018, Chase moved, by OSC, for an order staying the trial, pursuant to CPLR 2201, and vacating the October 17, 2017, note of issue (NYSCEF Doc Nos. 133-141). By a January 2, 2019 decision and order (2019 Tolling Order), the court (Knipel, J.) held that:

“[i]n this five[-]year[-]old action plaintiff filed a note of issue/certificate of readiness 1 ½ years ago. Now plaintiff alleges it is not ready for trial. Accordingly, the motion is granted & n/i is stricken if plaintiff waives 1 ½ years of interest (the time on trial calendar). Otherwise, parties to appear for trial on date scheduled therefore, 1/16/19” (NYSCEF Doc No. 145).

Significantly, Chase agreed to waive the 1 ½ years' worth of interest pursuant to the 2019 Tolling Order, and the note of issue was stricken.

Subsequently, on July 1, 2019, the referee executed an Oath and Report of Amount Due, which computed the amount due the Plaintiff to be \$1,049,605.09 as of March 31, 2019 (without any mention of the 2019 Tolling Order) and determined that the Property should be sold as one parcel (NYSCEF Doc Nos. 187-188).

On August 26, 2019, Chase moved (in mot. seq. five) for an order confirming the referee's report and granting it a judgment of foreclosure and sale (NYSCEF Doc No. 178). Notably, Chase erroneously sent notice of the motion to Campbell's former defense counsel, Jonathan Koren, Esq. (*see* NYSCEF Doc No. 178 at 2). On December 3, 2019,

the court (Dear, J.) issued an order confirming the referee's report and granting Chase a judgment of foreclosure and sale, which did not account for the 2019 Tolling Order (NYSCEF Doc No. 214).

Campbell's Instant OSC

On April 13, 2022, Campbell moved, by OSC, for an order enjoining Chase from selling or encumbering the Property and/or enjoining Chase from proceeding with a foreclosure sale scheduled to take place on April 14, 2022, and vacating the Order confirming the Referee's Report and granting Chase a Judgment of Foreclosure and Sale.

Campbell submits an attorney affirmation asserting that on August 26, 2019, when Chase moved to confirm the Referee's Report and for a judgment of foreclosure and sale, Chase improperly noticed Campbell's prior defense counsel, Jonathan Koren, who no longer represented her (NYSCEF Doc No. 244 at ¶ 18). Campbell's motion annexes a copy of Chase's August 21, 2019, Notice of Motion, reflecting that Chase's prior motion was erroneously addressed to Campbell's former defense attorney Jonathan Koren, Esq. (NYSCEF Doc No. 253 at 2). Consequently, the motion for a judgment of foreclosure and sale was unopposed, since Campbell's defense counsel was never served with the motion (NYSCEF Doc No. 244 at ¶ 20).

Defense counsel also argues that Chase "failed to comply with the [2019] Tolling Order in its application for JFS" and "failed to credit Defendant for the 18 months of tolling" (*id.* at ¶¶ 19 and 77). Defense counsel asserts that "[b]ecause of Plaintiff's failure to give notice of its motion for JFS to Defendant, Defendant was deprived of the

opportunity to challenge the amounts owed and to bring to the Court's attention Plaintiff's utter disregard of the [2019] Tolling Order" (*id.* at ¶ 78).

Finally, Chase failed to serve Notice of Entry of the Judgment of Foreclosure and Sale upon Campbell's current counsel, and erroneously served former defense attorney Jonathan Koren, Esq. instead (*id.* at ¶¶ 21 and 79 and NYSCEF Doc No. 236). Defense counsel asserts that "Defendant was never served with the notice of motion for JFS, nor of Notice of Entry of the JFS Order" and "[a]s such, the JFS Order is jurisdictionally defective and void as a matter of law" (NYSCEF Doc No. 244 at ¶ 58).

Defense counsel asserts that "[o]n April 11, 2022, at 6:18 PM, [she] received an e-watch alert regarding a sale of Defendant's Property[,] after which she confirmed the sale date and saw a Notice of Sale for the first time (NYSCEF Doc No. 244 at ¶ 24). Defense counsel contends that the scheduled sale was not conducted within 90 days after the Judgment of Foreclosure and Sale was issued, in violation of RPAPL § 1351 (1), and that, even assuming the court had jurisdiction to render the Judgment of Foreclosure and Sale (although Campbell was not served with the motion), an injunction is warranted because "Plaintiff must first obtain leave of court to extend the time to conduct a foreclosure sale" (*id.* at ¶¶ 25-30).

Chase's Opposition

Chase, in opposition, submits a memorandum of law arguing that it is irrelevant that the sale did not take place within 90 days of the entry of the Judgment of Foreclosure and Sale because the Judgment of Foreclosure and Sale provided for an extension of time

within which to conduct the sale (NYSCEF Doc No. 269 at 2). Chase asserts that the Judgment of Foreclosure and Sale explicitly provides that “if the Referee does not conduct the sale within 90 days of the date of the judgment, in accordance with CPLR 2004, the time fixed by RPAPL § 1351 (1) is extended for the Referee to conduct the sale as soon as reasonably practicable” (*id.*; *see also* NYSCEF Doc No. 296 at 10). Chase also notes that it “was precluded from conducting a sale [in 2020] due to the numerous Executive and Administrative Orders and by the filing of a hardship declaration by Defendant” in connection with the Covid-19 pandemic (NYSCEF Doc No. 269 at 2).

Chase argues that Campbell’s motion to vacate the Judgment of Foreclosure and Sale, pursuant to CPLR 5015 (a), should be denied because Campbell did not seek vacatur within one year of notice of entry of the Judgment (*id.* at 4). Chase argues that “[e]ven if the one-year rule did not apply, Defendant’s delay of over two years after she was served with the Notice of Entry of the Judgment of Foreclosure and Sale bars her from relief” even though Campbell was served through her former defense counsel (*id.*). Chase contends that Campbell’s OSC should be denied because she fails to offer a reasonable excuse for her default and a meritorious defense (*id.* at 5). Chase claims that the Judgment of Foreclosure and Sale was properly served on Campbell’s former counsel, Attorney Koren, because her Consent to Change Counsel was subsequently “stricken” when Chase moved to disqualify Campbell’s new counsel due to a conflict, and thus, “representation of Defendant reverted to Attorney Koren” (*id.* at 6).

Chase argues that Campbell is not entitled to an injunction because she failed to meet the strict requirements for its issuance (*id.* at 10-12). Chase further argues that “in the event a preliminary injunction is issued, Defendant should be required to post an undertaking pursuant to CPLR 6312 (b) . . .” “of not less than \$1,049,605.09 - the amount owed according to the Judgment of Foreclosure and Sale” (*id.* at 12-13). Finally, Chase asserts that Campbell’s OSC is “moot” since the April 14, 2022 foreclosure sale was already cancelled (*id.* at 14).

Discussion

It is well settled that the court’s interests of justice powers allow the vacatur of a judgment on grounds not promulgated by CPLR 5015 (a) in order “to relieve a party from a judgment [or order] for sufficient reason and in the interest of substantial justice” (*Matter of Cassini*, 182 AD3d 13, 55 [2d Dept 2020]). However, “[a] court’s inherent power to exercise control over its judgments is not plenary and should be resorted to only to relieve a party from judgments taken through [fraud,] mistake, inadvertence, surprise or excusable neglect” (*id.*, quoting *McKenna v Nassau Cnty.*, 61 NY2d 739, 742 [1984]).

Here, vacatur of the December 3, 2019 Order Confirming Referee Report and Judgment of Foreclosure and Sale is warranted both because: (1) Chase mistakenly served Campbell’s former defense counsel with notice of Chase’s motion to confirm the Referee’s Report and for a Judgment of Foreclosure and Sale, and (2) because the Referee’s Report and the Judgment of Foreclosure and Sale overlooked and did not account for the 2019 Tolling Order. Notably, Chase does not mention or even address the 2019 Tolling Order in

its opposition, which was inadvertently omitted from the Referee's calculations of the amounts due. Accordingly, it is hereby

ORDERED that Campbell's motion (mot. seq. six) is only granted to the extent that the December 3, 2019 Order Confirming Referee's Report and Judgment of Foreclosure and Sale (NYSCEF Doc No. 214) is hereby vacated; otherwise Campbell's motion seeking an injunction enjoining Chase from taking any action to sell, transfer, or encumber the Property pursuant to the 2019 Judgment of Foreclosure and Sale is denied as moot; and it is further

ORDERED that the appointed referee shall issue a new oath and referee's report within 90 days after service of this decision an order with notice of entry thereof, which ascertains the amounts that are due and owing under the subject mortgages and accounts for the 2019 Tolling Order.

This constitutes the decision and order of the court.

E N T E R,

April 14, 2025



Hon. Cenceria P. Edwards, CPA J. S. C.