

AV Bradford, LLC v Sun W. Mtge. Co., Inc.

2025 NY Slip Op 34846(U)

December 10, 2025

Supreme Court, Kings County

Docket Number: Index No. 500576/2025

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 500576/2025
Motion Date: 10-20-25
Mot. Seq. No.: 1

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AV BRADFORD, LLC,

Plaintiff,

-against-

DECISION/ORDER

SUN WEST MORTGAGE COMPANY, INC..

Defendant.
-----X

The following papers, which are e-filed with NYCEF as items 4-35, were read on this motion:

In this action to cancel and discharge a mortgage pursuant to RPAPL Article 15, the defendant, Sun West Mortgage Company, Inc. ("Defendant"), moves, pursuant to CPLR 3211(a)(3) and (7), for an order dismissing the complaint filed by plaintiff AV Bradford, LLC ("Plaintiff") and awarding attorney's fees and costs (Motion Seq. 1).

BACKGROUND

This is an action pursuant to RPAPL 1501(4) to quiet title to real property located at 405 Bradford Street, Brooklyn, New York 11207, designated as Block 3776, Lot 11 (the "Property"). Specifically, the Plaintiff seeks to discharge a mortgage on the ground that the six-year statute of limitations to foreclose has expired.

The relevant procedural history is undisputed. On or about September 25, 2009, the prior owner executed a reverse mortgage in favor of the Defendant. On August 18, 2015, the Defendant commenced a foreclosure action accelerating the debt (the "Foreclosure Action"). However, when commencing the Foreclosure Action, the Defendant filed a Notice of Pendency indexed against Block 377, Lot 11, rather than the correct Block 3776, Lot 11. Subsequent amended notices filed in 2019 and 2021 repeated this error.

A Judgment of Foreclosure and Sale ("JFS") was entered in the Foreclosure Action on March 22, 2023. By deed dated January 7, 2025, and recorded on February 12, 2025, the Plaintiff

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acquired title to the Property. The Plaintiff alleges that because the Notices of Pendency were recorded against the wrong block, they failed to provide constructive notice of the Foreclosure Action.

DISCUSSION

I. Standing (CPLR 3211(a)(3))

The branch of the Defendant's motion seeking dismissal for lack of standing is DENIED. On a motion to dismiss for lack of standing, the burden is on the moving defendant to establish, prima facie, the plaintiff's lack of standing as a matter of law (*Wilmington Trust, N.A. v. Teo*, 204 A.D.3d 735, 736 [2d Dept. 2022]; *New York Community Bank v. McClendon*, 138 A.D.3d 805, 806 [2d Dept. 2016]). To defeat the motion, the plaintiff need only raise a question of fact (*Sizova v. Union Mutual Fire Insurance Co.*, 217 A.D.3d 1007, 1008 [2d Dept. 2023]). Here, the proof Defendant submitted did not demonstrate Plaintiff's lack of standing as a matter of law.

Even if the Defendant had met its prima facie burden, the proof submitted by the Plaintiff raised a question of fact. Plaintiff submitted a deed recorded on February 12, 2025, demonstrating that it became the owner of the Property on January 7, 2025. Plaintiff also submitted proof that it is now validly registered with the New York Department of State. Courts have consistently held that a plaintiff LLC's failure to obtain a Certificate of Authority prior to commencing an action is not a fatal jurisdictional defect (*Basile v. Mulholland*, 73 A.D.3d 597 [1st Dept. 2010]). Furthermore, the mere maintenance of a lawsuit does not constitute "doing business" within the state (*De Ran Landscaping Serv., Inc. v. De Ran Indus., Inc.*, 109 A.D.2d 1040 [3d Dept. 1985]). Even where a plaintiff is required to register, the failure to do so does not warrant dismissal. The appropriate remedy is to stay the action to afford the plaintiff an opportunity to come into compliance with LLC Law § 808(a) (*Matter of Mobilevision Med. Imaging Servs., LLC v. Sinai Diagnostic & Interventional Radiology, P.C.*, 66 A.D.3d 685 [2d Dept. 2009]). In this case, because the Plaintiff has already cured the defect by applying for or obtaining the necessary certificate, a stay is unnecessary, and the action should proceed.

Lastly, since Plaintiff provided an affirmation from Brookstone Holdings LLC consenting to the sale, Defendant's claim that the conveyance violated a deed restriction requiring third-party consent is without merit.

II. Failure to State a Cause of Action (CPLR 3211(a)(7))

The branch of the Defendant's motion seeking dismissal for failure to state a cause of action is DENIED. On a motion to dismiss under CPLR 3211(a)(7), the court must accept the facts as alleged as true and determine only whether they fit within any cognizable legal theory (*Leon v. Martinez*, 84 N.Y.2d 83, 87 [1994]; *USCHAG Corp. v. Flagstar Bank, FSB*, 220 A.D.3d 823, 823-24 [2d Dept. 2023]). The Plaintiff has sufficiently pleaded that the mortgage debt was accelerated on August 18, 2015, and that the statute of limitations expired on August 18, 2021, pursuant to CPLR 213(4) (see *Collins v. Bank of New York Mellon*, 227 A.D.3d 948, 950 [2d Dept. 2024]). The Defendant argues that the 2023 JFS cuts off the Plaintiff's rights. This argument fails. A critical issue in this matter is whether the Plaintiff is a bona fide purchaser for value. CPLR 6501 provides that the filing of a notice of pendency constitutes constructive notice only when properly indexed (*5303 Realty Corp. v. O&Y Equity Corp.*, 64 N.Y.2d 313, 318 [1984]). Where a notice of pendency is indexed against the wrong block, it does not provide constructive notice to a subsequent purchaser (*Del Pozo v. Impressive Homes, Inc.*, 95 A.D.3d 1272, 1273 [2d Dept. 2012]; *JPMorgan Chase Bank, N.A. v. Mule*, 230 A.D.3d 1234, 216 N.Y.S.3d 730 [2d Dept. 2024]).

Accepting the allegations as true, the Notices of Pendency were indexed against Block 377, not Block 3776. Therefore, the Plaintiff was not on constructive notice of the Foreclosure Action.

The Defendant's contention that the existence of the JFS itself—independent of the notice of pendency—establishes as a matter of law that the Plaintiff is not a good faith purchaser is unavailing. The Court finds no authority for the proposition that a Judgment of Foreclosure and Sale, in the absence of a properly indexed Notice of Pendency or actual notice, binds a subsequent purchaser who was not a party to the action. Consequently, the Plaintiff has stated a valid cause of action to discharge the mortgage.

For the foregoing reasons, it is hereby

ORDERED that the Defendant's motion to dismiss is **DENIED** in its entirety.

This constitutes the Decision and Order of the Court.

Dated: December 10, 2025

PPS

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020