

Lima One Capital LLC v 4221 Barnes, LLC
2025 NY Slip Op 35644(U)
January 2, 2025
Supreme Court, Bronx County
Docket Number: Index No. 802126/2024E
Judge: Myrna Socorro
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART IA9-----X
Lima One Capital LLC

Plaintiff,

-against-

Index No. 802126-2024E

Motion Seq. #1

4221 BARNES, LLC; RIANA BARKSDALE; NEW YORK CITY ENVIRONMENTAL CONTROL BUREAU; INVESTORS BANK; and "JOHN DOE No. 1" through "JOHN DOE No. 100" inclusive, the name of the last 100 defendants being fictitious, the true names of said defendants being unknown to plaintiff, it being intended to designate fee owners, tenants or occupants of the lien premises and/or persons or parties having or claiming an interest in or a lien upon the lien premises, if the aforesaid individual defendants are living, and if any or all of said individual defendants be dead, their heirs at law, next of kin, distributees, executors, administrators, trustees, committees, devisees, legatees, and assignees, lienors, creditors and successors in interest of them and generally all persons having or claiming under, by, through, or against the said defendants named as a class, of any right, title, or interest in or lien upon the premises described in the complaint herein,

Defendants.

AMENDED
DECISION AND ORDER
Hon. Myrna Socorro, J.S.C.

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Recitation as required by CPLR §2219 of the papers filed by Defendants in motion sequence no. 1 as a motion to dismiss plaintiff's complaint, marked fully submitted on May 15, 2024 in which a Decision and Order was issued on December 20, 2024

Papers	NYSCEF Doc. No.
Defendants' Notice of Motion to Dismiss, Affirmation and Affidavit in Support, Memorandum of Law and Exhibit	#6-20
Plaintiff's Affirmation and Affidavit in Reply and Exhibits	#22-25
Defendants' Reply Affirmation	#26

Upon the foregoing papers, defendant's motion to dismiss is DENIED.

Plaintiff commenced the above captioned action on January 4, 2024 (NYSCEF Doc. No. 1). In their Complaint, Plaintiff alleges that on January 27, 2020, Defendants 4221 Barnes LLC ("4221"), by member Riana Barksdale ("Defendant Barksdale"), acknowledged and delivered a note (the "Note"), whereby 4221 bound itself to Plaintiff in the amount of \$507,000.00 with interest thereon. Further,

Plaintiff alleges that on that same date Defendant Barksdale executed and delivered to Plaintiff a guaranty in the amount of \$507,000.00. Finally, Plaintiff alleges that on that same date, as collateral security for the payment of the aforesaid indebtedness, 4221, by Defendant Barksdale, executed, acknowledged, and delivered a mortgage in the sum of \$507,000.00 (the "Mortgage").

Plaintiff states in their Complaint that for reasons unknown to them, the Mortgage was never recorded in the Office of the Bronx County Clerk¹. Accordingly, Plaintiff filed this action to obtain an Order, pursuant to New York Real Property Actions and Proceedings Law (RPAPL) Article 15, declaring the aforesaid Mortgage is a valid lien and encumbrance, and deeming copies of the Mortgage as originals for the purposes of recording with the Clerk of Bronx County.

Defendant Barksdale now moves to dismiss Plaintiff's Complaint pursuant to CPLR §§3211(a)(1), (3), and (7). Defendants argue they are entitled to dismissal under CPLR §3211(a)(1) because Plaintiff has failed to attach the documents necessary to sustain their action. Further, Defendant has attached an Affidavit of Defendant Barksdale wherein she states, "this mortgage is a fraud, and a sham," (NYSCEF Doc. #7). Defendant Barksdale argues that she is entitled to dismissal of Plaintiff's Complaint based on CPLR §3211(a)(1).

In the alternative, Defendant Barksdale argues the Plaintiff lacks standing to assert their cause of action, and therefore she is entitled to dismissal under CPLR §3211(a)(3). Defendant argues that because Plaintiff stated in their Complaint that they are not in possession of the original Note, the Plaintiff has failed to establish that they were in physical possession of the Note at the commencement of this action, and therefore do not have standing to maintain their claim.

As for Defendant's third argument under CPLR §3211(a)(7) for failure to state a claim, Defendant alleges that Plaintiff filed their claim under RPAPL Article 15 which supports actions to remove cloud of title when there are adverse interests in the same real property. According to Defendant, Plaintiff seeks an addition to title, and therefore filed their claim under the improper provision of RPAPL.

Plaintiff responds in their Opposition (NYSCEF Doc. No. 22) that dismissal under CPLR 3211(a)(1) is improper because Defendant produces no documentary evidence to refute any of the allegations in the Complaint. Plaintiff continues that Defendant Barksdale's allegations of fraud are baseless, and that she has failed to meet any elements under §3106(b) which are required to successfully claim a defense of fraud.

In response to Defendant's argument under §3211(a)(3), Plaintiff contends that because the

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The mortgage would have been recorded with the New York City Department of Finance, Office of the City Register for Bronx County, not the Bronx County Clerk's Office.

Defendant is moving under §3211(a)(3), the burden is on her to establish, *prima facie*, that Plaintiff lacks standing, and it is not Plaintiff's burden to affirmatively establish its standing. Plaintiff argues that they have sufficiently established standing as they have plead they are the current holders of the Mortgage.

CPLR §3211

In a motion to dismiss under CPLR §3211, the pleadings are afforded a liberal construction and the benefit of every possible favorable inference. *Goshen v. Mut. Life Ins. Co.*, 98 NY 2d 314; 746 NYS. 2d 858 (2002).” Also see *Chanko v American Broadcasting Cos. Inc.* 27 NY 3d 46; 29 NYS 3d 879 (2016), wherein the Court of Appeals stated similarly as in *Goshen*:

“When considering these pre-answer motions to dismiss the complaint for failure to state a cause of action, we must give the pleadings a liberal construction, accept the allegations as true and accord the plaintiffs every possible favorable inference”

In *Kolchins v Evolution Mkts., Inc.* 31 NYS 3d 100; 73 NYS 3d 519 (2018) the Court of Appeals held:

“...a CPLR 3211(a)(1) motion to dismiss, we must ‘accept the facts as alleged in the complaint as true, accord plaintiff[] the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. . . Dismissal is warranted only if the document evidence ‘establishes a defense to the asserted claims as a matter of law. . . Thus, the defendant bears the burden of demonstrating that the proffered correspondence conclusively refutes plaintiff’s factual allegations. . .”

Similarly, the First Department has held:

“[O]n such a motion, the complaint is to be construed liberally and all reasonable inferences must be drawn in favor of the plaintiff” (*Alden Global Value Recovery Master Fund, L.P. v KeyBank N.A.*, 159 AD3d 618 [1st Dept 2018] citing *Leon*). “[T]he criterion is whether the proponent of the pleading *has* a cause of action, not whether he has stated one” and the court “determine[s] only whether the facts as alleged fit within any cognizable legal theory” (*Siegmund Strauss, Inc. v East 149th Realty Corp.*, 104 AD3d 401 [1st Dept 2013] citing *Leon*).

CPLR §3211(a)(1)

CPLR §3211(a)(1) states that a “party may move for judgment dismissing one or more causes of

action asserted against him on the ground that a defense is founded upon documentary evidence.” “A motion to dismiss on the ground that the action is barred by documentary evidence pursuant to CPLR §3211(a)(1) may be granted only where the documentary evidence utterly refutes the plaintiff’s factual allegations, conclusively establishing a defense as a matter of law.” *Qureshi v Vital Transportation, Inc.*, 173 AD3d 1076, 1077 [2d Dept 2019].

“Judicial records, as well as documents reflecting out-of-court transactions such as mortgages, deeds, contracts, and any other papers, the contents of which are “essentially undeniable,” would qualify as “documentary evidence” in the proper case” *Fontanetta v Doe*, 73 AD3d 78, 84-85 [2d Dept 2010]. “In order to be documentary, the evidence must be unambiguous, authentic, and undeniable; thus, affidavits are not considered documentary evidence.” (*Treeline 1 OCR, LLC v Nassau County Indus. Dev. Agency*, 82 AD3d 748, 752 [2d Dept 2011]).

Defendant’s argument to dismiss based on CPLR §3211(a)(1) is based on an Affidavit by the Defendant Barksdale (NYSCEF Doc. No. 7) claiming that the mortgage is a fraud, and a sham and provides no documentary evidence to refute plaintiff’s allegations. . As stated above, affidavits are not considered documentary evidence. *Treeline*, 82 AD3d 748, 752 [2d Dept 2011]. As such, defendant has not satisfied the element of documentary evidence refuting the plaintiff’s factual allegations.

Additionally, Defendant argues that the Mortgage annexed as Exhibit “A” to Plaintiff’s Complaint is fraudulent and not sufficient to support their cause of action. Within the affidavit, Defendant Barksdale states the Mortgage should not be recorded. This Court notes however, that nowhere in Defendant’s Affidavit does Barksdale dispute the signature on the mortgage document.

Accordingly, Defendant has not put forward documentary evidence which utterly refutes the plaintiff’s factual allegations and conclusively establish a defense as a matter of law and is not entitled to dismissal under §3211(a)(1).

CPLR §3211(a)(3)

CPLR §3211(a)(3) states that “[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that: the party asserting the cause of action has not legal capacity to sue.” When the Defendant is moving for dismissal of the complaint, “the burden [is] on him to make a *prima facie* demonstration that plaintiff lack[s] standing.” *DLJ Mortgage Capital v. Mahadeo*, 166 AD3d 512 [1st Dept 2018].

Upon review of the motion papers, this Court finds that, accepting the facts as alleged in the Complaint as true, Defendant Barksdale is not entitled to dismissal under CPLR §3211(a)(3). In the Affidavit of Carlie Balsa, it states that Plaintiff has been in physical possession of the original Note,

“[s]ince the inception of the subject loan on January 27, 2020.” Further, in paragraphs 15 and 19 of the Complaint, Plaintiff plead that it is the current holder of the Mortgage. Accordingly, Plaintiff has standing to maintain their cause of action.

CPLR §3211(a)(7)

CPLR 3211(a)(7) states: “[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that the pleading fails to state a cause of action...”

A review of the Complaint in this matter reveals that Plaintiff is alleging that as the current holder of the Mortgage, they are aggrieved because the Mortgage is not recorded as against the premises and Plaintiff has no adequate remedy at law. Further, annexed to Complaint as Exhibit “A”, is a copy of the Mortgage which Plaintiff alleges is signed by Defendant Barksdale and which bears a seal from a Notary Public.

Therefore, the plaintiff’s pleadings, being afforded a liberal construction, the benefit of every possible favorable inference, accepting the allegations as true and determining only whether the facts as alleged fit within any cognizable legal theory, survive defendant’s motion to dismiss as defendant has not met their burden of demonstrating that conclusively refute’s plaintiff’s factual allegations.

As such defendant’s motion is **DENIED**.

The Court notes that a Decision and Order was issued on December 20, 2024, which contained a typographical error in the decretal orders, and by this Amended Decision and Order is correcting said typographical error.

Accordingly, it is hereby

ORDERED, that the Decision and Order dated December 20, 2024 is hereby recalled; and it is further

ORDERED, that the Clerk of the Court is directed to vacate NYSCEF Doc. #27 as it had a typographical error; and it is further

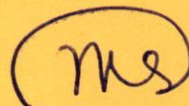
ORDERED that Defendants motion to dismiss pursuant to CPLR §§3211(a) (1), (3), and (7) is **DENIED**; and it is further

ORDERED, that a Notice of Entry of this Decision and Order shall be served and filed within twenty (20) days from the date hereof; and it is further

ORDERED, that Defendant shall serve and file their Answer within thirty (30) days from the date of Notice of Entry.

This constitutes the Decision and Order of the Court.

Dated: January 2, 2025

A handwritten signature in dark ink, appearing to read 'Ms', is written above a horizontal line.

Hon. Myrna Socorro, J.S.C.