

JP Morgan Chase Bank, Natl. Assn. v Ching J. Lu

2016 NY Slip Op 31744(U)

September 20, 2016

Supreme Court, New York County

Docket Number: 155630/2013

Judge: Manuel J. Mendez

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ

PART 13

Justice

JP MORGAN CHASE BANK, NATIONAL ASSOCIATION,
Plaintiff,

INDEX NO. 155630/2013
MOTION DATE 07/20/2016
MOTION SEQ. NO. 003
MOTION CAL. NO

-against-

CHING J. LU a/k/a CHING JUNG LU, LONGJUN XIE,
and 408 West 57th OWNERS CORP.,

Defendants.

The following papers, numbered 1 to were read on this motion to vacate a default judgment, and consolidate.

	<u>PAPERS NUMBERED</u>
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1-3</u>
Answering Affidavits — Exhibits _____	<u>5-6; 7-9</u>
Replying Affidavits _____	<u>10-11</u>

Cross-Motion: Yes No

Upon a reading of the foregoing cited papers, it is ordered that this motion to vacate a default judgment, and consolidate is denied.

408 West 57th Owners Corp. (herein “Defendant Coop”) is the owner of a cooperative building located at 408 West 57th Street, New York, New York (herein “the building”). Ching-Jung Lu (herein “Defendant Lu”) purchased 120 shares of stock (herein “Shares”) in the cooperative and became the proprietary leaseholder of apartment 10K in the building (herein “the apartment”) as of August 23, 1996.

Defendant Lu executed a Note on December 3, 2007, payable to Plaintiff, with the shares and proprietary lease used as collateral for a loan of \$80,000 from Plaintiff to Defendant Lu. (Def. 408 West Aff. In Opp. Exh. C & Plaintiff Aff. In Opp. Exh. E). Defendant Lu defaulted on the loan by failing to make the required payments in June of 2011. Plaintiff then mailed Defendant Lu the required notices regarding the default, and its intent on collecting on the debt owed (“Help for Homeowners” sent on August 3, 2011, “Notice of Intent to Foreclose” sent on October 3, 2011, and “Notice of Default, Acceleration & Intent to Sell” sent on April 23, 2012- Def. Coop Aff. In Opp. Exhs. E, F, and G respectively).

A non-judicial foreclosure auction was held on May 23, 2012 wherein Defendant Longjun XIE (herein “Defendant XIE”) was the successful bidder. Defendant Lu sent Defendant Coop an unsworn letter dated November 15, 2012, stating that it did not have the right to transfer title of the shares or the lease for the apartment. (Def. Coop Aff. In Opp. Exh. H). Subsequently, Defendant Coop stated in an email to the parties that it would not transfer the shares and lease without a judicial determination on the parties’ rights. (Id. at Exh. I).

Plaintiff commenced this action by Summons and Complaint on June 19, 2013, seeking a declaratory judgment: (1) declaring that the non-judicial sale held on May 23, 2012 for the apartment was valid, (2) deeming Plaintiff had a right to transfer the

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

stock and proprietary lease for the apartment to Defendant Xie, and (3) declaring that Defendant Lu had no right to the stock or proprietary lease for the apartment. (Plaintiff Aff. In Opp. Exh. D). The Defendants were served with the Summons and Complaint (NYSCEF Doc #'s 6-17), and Defendant Coop joined issue (NYSCEF Doc # 4). Defendant Lu never appeared in this action.

Plaintiff moved for summary judgment against Defendant Coop on October 17, 2013. In an Order dated January 30, 2014, and entered on May 5, 2014, this Court granted Plaintiff's motion, disposing of the action, declaring that the non-judicial sale on May 23, 2012 was valid, that Plaintiff had the right to transfer the stock and proprietary lease for the apartment to any purchaser subject to Defendant Coop's approval, and that Defendant Lu had no right to the stock, proprietary lease, or occupancy rights of the apartment. (Plaint. Aff. In Opp. Exh. A).

A second non-judicial foreclosure sale took place on September 14, 2014, after the first sale to Defendant XIE was rescinded. Prior to the second sale, Plaintiff sent Defendant Lu a "Notice of Sale" on August 14, 2014 (Def. Coop Aff. In Opp. Exh. M), and Plaintiff advertised the auction in the New York Daily News on August 26, 2014, September 2, 2014, and September 9, 2014 (Id. at Exh. N). Defendant Coop was the successful bidder of the stock and lease at the second sale. (Plaint. Aff. In Opp. Exh. F).

Defendant Coop served Defendant Lu with a Notice to Quit, Memorandum of Sale, and Terms of Sale on April 20, 2015. (Def. Coop Aff. In Opp. Exh. O). After Defendant Lu failed to vacate the apartment, Defendant Coop commenced a holdover proceeding in the Housing Part of New York City Civil Court on June 2, 2015, to evict Defendant Lu from the apartment. (Id. at Exh. Q). After an inquest was held in the landlord-tenant action on July 23, 2015, the Hon. Peter M. Wendt entered a judgment of possession in favor of Defendant Coop. (Id. at Exh. S).

Defendant Lu commenced an action in New York County Supreme Court, Index No. 159432/2015, on September 14, 2015, against Plaintiff and Defendant Coop, seeking a declaratory judgment: (1) declaring Defendant Lu's rights to the apartment, (2) voiding the sale of the apartment, (3) declaring that Defendant Coop had no rights to the apartment, and (4) enjoining Defendant Coop from continuing with the holdover proceeding. (Def. Coop Aff. In Opp. Exh. A). Defendant Lu simultaneously filed an Order to Show Cause seeking to stay the holdover proceeding in Housing Court, and to consolidate the holdover proceeding with her newly commenced Supreme Court action. (Id. at Exh. T). A temporary restraining order was granted, staying the eviction (Id.), and Plaintiff and Defendant Coop cross-moved to dismiss.

In an Order dated January 26, 2016, the Hon. Debra James denied Defendant Lu's preliminary injunction request, and granted Plaintiff's and Defendant Coop's cross-motions to dismiss. It was held that Defendant Lu failed to establish a prima facie case that she did not receive proper service of the notice of sale, nor did her

complaint contain allegations regarding the reasonableness of the sale, or that she had tendered payment for the debt she owed to Plaintiff. It was also held that the cross-motions to dismiss were granted because Plaintiff was collaterally estopped from asserting a claim for declaratory judgment pursuant to this Court's January 30, 2014 Order. (Def. Coop Aff. In Opp. Exh. U).

Defendant Lu brought an Order to Show Cause on February 2, 2016, under Motion Sequence No. 002, seeking to stay the eviction proceeding in Housing Court, to consolidate that action with this Supreme Court action, and to vacate the default judgment granted by this Court on January 30, 2014 which was entered on May 5, 2014 and November 6, 2015. This Court declined to sign the Order to Show Cause. (Plaint. Aff. In Opp. Exh. I).

On February 5, 2016, Defendant Lu made an application to the Appellate Division, First Department appealing Judge James' Order, and to stay the eviction in the landlord-tenant action. The motion was denied as moot on March 31, 2016. (Def. Coop Aff. In Opp. Exh. V).

Defendant Lu was evicted from the apartment on February 9, 2016. (Def. Coop Aff. In Opp. Exh. W).

Defendant Lu now moves under Motion Sequence NO. 003 to consolidate the Housing Court action with this action, and to vacate her default and the summary judgment Order granted on January 30, 2014 and entered on May 5, 2014 and November 6, 2015. (NYSCEF Doc #'s 33-46).

CPLR § 5015(a)(1) allows the court to vacate a default judgment where a party asserts a reasonable excuse for the default and raises a potentially meritorious claim. "Assessment of the sufficiency of the excuse proffered for the delay and the adequacy of the merit of the action are consigned to the sound discretion of the court" (Bengal House Ltd. v 989 3rd Ave., Inc., 118 A.D.3d 575, 576, 988 N.Y.S.2d 586 [1st Dept., 2014])

Defendant Lu has failed to establish a reasonable excuse for her default in this action. The excuse proffered by her counsel that she "did not pay too much attention to papers she occasionally received" because she relied on Defendant Coop's "assurance" that it did not have the right to transfer the shares and lease for the apartment, is not a reasonable excuse. (Aff. In Supp. NYSCEF Doc. #34 ¶29). Defendant Lu relies on her unsworn statement that Defendant Coop did not have any rights to transfer (NYSCEF Doc # 42, see also cited above), but provides no evidence that Defendant Coop actually provided her any assurances regarding her apartment. This conclusory statement does not provide a reasonable excuse for Defendant Lu's continued inattention to the many notices she was given regarding the loss of rights to her apartment, the subsequent sale thereof, or why it took her over two years to appear in this action.

Furthermore, Defendant Lu has not established that she has any potentially meritorious defenses warranting vacatur of the Order granting summary judgment.

“The doctrine of Collateral Estoppel precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party or those in privity, whether or not the tribunals or causes of action are the same. The issue must have been material to the first action or proceeding and essential to the decision rendered therein, and it must be the point actually to be determined in the second action or proceeding such that a different judgment in the second action or proceeding would destroy or impair rights or interests established by the first.” (see *Ryan v. New York Telephone Company*, 62 N.Y. 2d 494, 467 NE 2d 487, 478 N.Y.S. 2d 823 [1984]).

Under the Doctrine of Res Judicata a final judgment on the merits of an action precludes the parties or their privies from re-litigating issues that were or could have been raised in that action. Once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or seeking a different remedy (*Parker v. Blauvelt Volunteer Fire Co., Inc.*, 93 N.Y.2d 343, 690 N.Y.S.2d 478, 712 N.E.2d 647 [1999] citing to *Matter of Reilly v. Reid*, 45 N.Y.2d 24, 407 N.Y.S. 2d 645 [1978]). For res judicata to apply the issue must have been material to the first action or proceeding and essential to the decision rendered therein (*Ryan v. New York Telephone Co.*, 62 N.Y. 2d 494, 478 N.Y.S. 2d 823 [1984]). “Under res judicata, or claim preclusion, a valid final judgment bars future actions between the same parties on the same cause of action” (*Amalgamated Bank v Helmsley-Spear, Inc.*, 109 A.D.3d 418, at 419, 970 N.Y.S.2d 522, at 2 [2013] citing to, *Parker v. Blauvelt Volunteer Fire Co., Inc.*, 93 N.Y.2d 343, 690 N.Y.S.2d 478, 712 N.E.2d 647 [1999]).

“Collateral estoppel...is but a component of the broader doctrine of Res Judicata which holds that, as to the parties in a litigation..., a judgment on the merits by a court of competent jurisdiction is conclusive of the issues of fact and questions of law necessarily decided therein in any subsequent action.” (*Gramatan Home Investors Corp. v. Lopez*, 46 N.Y.2d 481 [1979], citing to *Matter of Shea*, 309 N.Y. 605, 132 N.E.2d 864 [1956]).

This Court held that Defendant Lu did not have any rights to the apartment in its Order dated January 30, 2014. The Housing Court also determined that Defendant Coop is entitled to possession of the unit in its Order dated July 23, 2015. The Appellate Division, First Department denied Defendant Lu’s appeal. An Order by Judge James, citing this Court’s January 30, 2014 Order, held that Defendant Lu had not

satisfied her burden of proving that she had not received notice of the second sale. Further, Defendant Lu has since been evicted from the apartment. The foregoing Orders, and subsequent eviction, collaterally estopp Defendant Lu from attempting to relitigate these issues, and renders the relief requested in this motion moot.

Accordingly, it is ORDERED that Defendant Ching J. Lu a/k/a Ching Jung Lu's motion to vacate her default, and to consolidate the Housing Court action with this action, is hereby denied.

ENTER:



Dated: September 20, 2016

MANUEL J. MENDEZ

J.S.C.

MANUEL J. MENDEZ

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE