

Security Pac. Natl. Bank v Evans

2011 NY Slip Op 32876(U)

October 19, 2011

Supreme Court, New York County

Docket Number: 22899/1992

Judge: Emily Jane Goodman

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: EMILY JANE GOODMAN
Justice

PART 17

Index Number : 022899/1992
SECURITY PACIFIC NATIONAL BK
vs.
EVANS, TRACIE
SEQUENCE NUMBER : 014
REARGUMENT/RECONSIDERATION

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s) _____

Answering Affidavits — Exhibits _____ | No(s) _____

Replying Affidavits _____ | No(s) _____

Upon the foregoing papers, it is ordered that this motion is

Attached

Decided per

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

FILED

OCT 28 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 10/19/11

[Signature]

EMILY JANE GOODMAN, J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

[* 2]
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 17

-----X
SECURITY PACIFIC NATIONAL BANK,

Plaintiff,

-against-

Index No.: 22899/92

TRACIE EVANS, ARNOLD LEPELSTAT, MELVYN
GORDON, PEOPLE OF THE STATE OF NEW YORK,
NEW YORK CITY ENVIRONMENTAL CONTROL
BOARD, UNITED STATES OF AMERICA and
BOARD OF MANAGERS OF GRAMERCY PLACE
CONDOMINIUM,

Defendants.
-----X

FILED

OCT 28 2011

NEW YORK
COUNTY CLERK'S OFFICE

EMILY JANE GOODMAN, J.S.C.:

In this protracted action that began in 1992, Defendant Evans moves to re-argue this Court's Decision and Order dated June 27, 2011, maintaining that the Court misapprehended facts and/or law. The motion is granted to the extent stated herein.

Evans complains that the Court erred when it excused the lack of good faith affidavit under NYCRR 202.7. She complains that the Court erred when it rejected her argument on the basis that "the Court has attempted to have the parties work together on settlement and discovery, to no avail, and, Plaintiff's attorney maintains that he did attempt to resolve the issues with Evans' counsel." Evans states that NYCRR 202.7. does not "deal with whether or not "the Court" attempted to have the parties work together on settlement" but requires that the attorneys "confer together on their own." No appellate case (ór any case)

is cited for this argument, and counsel fails to note that Plaintiff's attorney represented that he attempted to resolve the issues with Evans' counsel (although counsel disputes this representation).

Evans also contends that the Court erred in determining that the request time period for discovery commenced as of January 31, 2007 (though Evans did not propose any alternative dates in the prior motion). Evans maintains that she is entitled to all documents referenced in the January 31, 2007 Stipulation of Settlement, but cites no reasons for this position. Evans also claims, for the first time, that she should receive discovery surrounding the January 29, 2007 letter from Citimortgage, that counsel states was turned over to him, to update Evans' credit report, as well as discovery surrounding another letter dated January 29, 2007, indicating that Evans was not in default. Evans further claims, for the first time, that the credit report at issue was dated January 30, 2007, and therefore, she should be able to seek discovery surrounding this report.¹

¹Counsel's previous arguments sought discovery outside of the issue on remand by the First Department. The First Department held that "the record presents triable issues of fact as to whether Citimortgage breached the implied covenant of good faith by failing to confirm that its letters, rather than the credit report, gave an accurate account of defendant's payment history, and whether the erroneous credit report was the cause of defendant's inability to perform her obligations under the settlement agreement...If Citimortgage indeed refused to confirm the veracity of the information contained in the letters, its actions could well have had the "effect of destroying ...the

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The Court agrees with Evans' counsel, that the discovery concerning the documents, dated one or two days before the period set in the prior Decision is the proper subject of discovery and was not included, merely due to oversight. Although Plaintiff opposes the motion to reargue, it fails to address Evans' arguments, related to discovery of these documents.

Accordingly, it is hereby

ORDERED that the motion is granted only to the extent that the relevant time period for discovery is modified to January 29, 2007 (as opposed to January 31, 2007) through no later than May 14, 2009, and, earlier than January 29, 2007, to the extent that the discovery is narrowly tailored to address circumstances surrounding the letters dated January 29 and 30 and the credit report of January 30, and all such discovery is limited to the issues of whether Citimortgage breached the implied covenant of good faith by failing to confirm that its letters, rather than the credit report, gave an accurate account

right of [defendant] to receive the fruits of the contract." The prior Decision correctly found that "Evans' concern that Bankers Trust closed in 1999, that she does not know what happened to her original note, and that a satisfaction must be granted by the proper party under Paragraph 7 of the Settlement Agreement (which only applies "upon receipt of the Settlement Funds"), was not the subject of the appellate court's modification of this Court decision, nor was it even raised to this Court prior to rendering the Decision and Order, dated January 14, 2008. The Court also correctly held that "Plaintiff's authority to enter into the Settlement Agreement is also not proper for discovery at this late date."

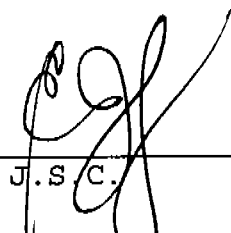
of defendant's payment history, and whether the erroneous credit report was the cause of defendant's inability to perform her obligations under the settlement agreement; and it is further

ORDERED that Evans shall issue a new Document Request, in conformity with this Decision and Order, within 10 days of receipt of a copy of this Decision and Order with Notice of Entry.

This constitutes the Decision and Order of the court.

Dated: October 19, 2011

ENTER:



J.S.C.

EMILY JANE GOODMAN

FILED

OCT 28 2011

**NEW YORK
COUNTY CLERK'S OFFICE**