

**Campbell v JP Morgan Chase Bank N.A.**

2013 NY Slip Op 34258(U)

January 2, 2013

Supreme Court, Bronx County

Docket Number: Index No. 21289/12E

Judge: Alexander W. Hunter, Jr.

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: PART 23A**

-----X  
Alma Campbell, Daniel Shaw, Michael Shaw,  
& Robert Shaw

Index No.: 21289/12E

Plaintiffs,

Decision and Order

-against-

JP Morgan Chase Bank N.A., fka Chemical Bank  
and First American Title, fka United General Title,

Defendants.

-----X  
**HON. ALEXANDER W. HUNTER, JR.**

Defendant JPMorgan Chase Bank, N.A. successor by merger to Chemical Bank, sued herein as JP Morgan Chase Bank, N.A. fka Chemical Bank's ("Chase") motion for an order pursuant to C.P.L.R. 3212(a)(5) and 3211(a)(7), dismissing the complaint with prejudice as to Chase, is granted.

The cause of action is for a breach of a mortgage contract, negligence, unjust enrichment, and violations of RPAPL § 1921. Plaintiffs seek to recover money damages resulting from Chase's alleged failure to record a satisfaction of mortgage encumbering plaintiffs' property.

On or about November 6, 1990, plaintiffs entered into a mortgage installment loan agreement with Chase's predecessor, Chemical Bank, in the principal amount of \$30,000.00 on the real property located at 3302 Wickham Avenue, Bronx, New York (the "subject property"). The Chase mortgage was paid in full by 1996. At plaintiffs' request, satisfaction of the mortgage was recorded with the City register on June 21, 2010.

In December 2004, while in the process of re-mortgaging the subject premises, a title search revealed the \$30,000.00 Chase mortgage as an outstanding lien on the subject premises. In the complaint, plaintiffs allege that this caused plaintiffs to make a second payoff in the amount of \$30,000.00 in January 2005.

Defendant Chase asserts that plaintiffs' claim pursuant to RPAPL § 1921 fails to state a cause of action since the damage provisions of RPAPL § 1921 was amended and only became effective November 7, 2005. Plaintiff's claim is based upon Chase's alleged failure to record a satisfaction of mortgage within thirty (30) days of the payoff date in April 1996. Since RPAPL § 1921 does not provide for retroactive application of its damage provisions, it is not applicable to plaintiffs' claims.

Defendant Chase also argues that all claims against Chase are time-barred by the applicable statute of limitations and therefore should be dismissed. Plaintiffs commenced the

instant action on or about June 26, 2012, sixteen years after plaintiffs allege that they satisfied the mortgage to Chemical Bank in 1996. As such, plaintiffs' claim for failure to record the satisfaction of mortgage would begin to accrue in April 1996. Plaintiffs should have commenced their action for breach contract by June 26, 2012, within the six year statute of limitations for breach of contract claims. The statute of limitations for plaintiffs' second cause of action for Chase's violation of RPAPL § 1921 is also six years and accrues when full payment is tendered to the holder of the mortgage. A full payment was made in April 1996. Therefore, the statute of limitations expired in April 2002. As to plaintiffs' second full payment on or about January 2005, the statute of limitations expired in January 2011. Defendant Chase avers that plaintiffs' negligence cause of action is barred by the three year statute of limitations.

Finally, defendant Chase argues that plaintiffs have failed to state a cause of action for unjust enrichment. In order to plead an unjust enrichment cause of action, the plaintiff must allege that 1) the other party was enriched; 2) at plaintiff's expense; 3) and that it is against equity to permit the other party to retain what is sought to be recovered. **Mandarin Trading Ltd. v. Wildenstein**, 16 N.Y.3d 173 (2011). Chase contends that plaintiffs have failed to plead sufficient facts to plead a cause of action for unjust enrichment. Moreover, unjust enrichment causes of action are governed by a six year statute of limitations. Therefore, not only do plaintiffs fail to state a cause of action for unjust enrichment, but that claim, even if sufficiently pled, would be barred by the statute of limitations.

Contrary to defendant Chase's arguments, plaintiffs argue that the statute of limitation was tolled until Chase recorded the satisfaction of the mortgage on June 21, 2010. Plaintiffs aver that according to the mortgage agreement, Chase was obligated to record a satisfaction of the mortgage after receipt of plaintiffs' final payment in April 1996. Plaintiffs also refer to General Obligations Law §17-101, which provides that the statute of limitations begins to run anew in breach of contract actions when a defendant acknowledges its obligations under a contract through letters by its attorneys, indicating intent to fulfill its obligations. Plaintiffs analogize that in this case, by finally recording the satisfaction of mortgage in 2010, Chase acknowledged and honored its obligations under the agreement.

Plaintiffs assert that they have clearly set forth sufficient facts to plead a cause of action for unjust enrichment. Plaintiffs aver that defendant Chase was enriched by a second \$30,000.00 payoff check in December 2004 and it would be patently unfair and against good conscience to permit Chase to keep the funds it received due to its breach.

In reply, Chase asserts that after an extensive search of its records, Chase discovered that it sent a Satisfaction of Mortgage to the borrower, Arnold Shaw, on May 6, 1996. The letter directs Arnold Shaw to record the Satisfaction of Mortgage. However, Arnold Shaw failed to do so. Furthermore, Chase has no record of receiving the second payoff check in the amount of \$30,000.00. Chase notes that plaintiffs have failed to provide any proof to the contrary.

Chase avers that its recording of the satisfaction of the mortgage in 2010 did not toll the

applicable statute of limitations. Defendant Chase argues that it is plaintiffs' burden to establish that they are entitled to the tolling provisions of the C.P.L.R. Plaintiffs have failed to do so, and therefore, plaintiffs' claims as to Chase must be dismissed.

In a motion to dismiss pursuant to C.P.L.R. 3211(a)(5) on the ground that the cause of action is barred by the statute of limitations, the burden lies with defendant to establish a prima facie showing that the action is time-barred. **Kennedy v. Fischer**, 78 A.D.3d 1016 (2<sup>nd</sup> Dept. 2010). Once such a showing is made, then the burden shifts to plaintiff to raise a question of fact as to the applicable statute of limitations. **DeStaso v. Condon Resnick, LLP**, 90 A.D.3d 809 (2<sup>nd</sup> Dept. 2011). The onus is upon plaintiff to establish that the statute of limitations was tolled. **Cox v. Kingsboro Medical Group**, 88 N.Y.2d 904 (1996).

A cause of action for a breach of contract accrues on the date the contract is breached. **See, Ely-Cruikshank Co., Inc. v. Bank of Montreal**, 81 N.Y.2d 399 (1993). Moreover, plaintiffs' knowledge of the wrong is not necessary to commence the running of the statute of limitations in contract causes of action. **Varga v. Credit-Suisse**, 5 A.D.2d 289 (1<sup>st</sup> Dept. 1958) *affd.* 5 N.Y.2d 865 (1958). A cause of action for negligence accrues on the date of the injury, even if the injured party is unaware of the wrong or injury. **Kirkland v. American Title Ins. Co.**, 692 F. Supp. 153 (E.D.N.Y. 1988). A cause of action premised upon a violation of RPAPL 1921 is governed by a six year statute of limitations and accrues when the full amount is tendered to the mortgagee along with written request that the satisfaction of the mortgage be sent. **Key Bank of New York v. Del Norte Inc.**, 251 A.D.2d 740 (3d Dept. 1998); RPAPL § 1921(1). A claim for unjust enrichment is also governed by a six year statute of limitations. **Fleetwood Agency Inc. v. Verde Electric Corp.**, 85 A.D.3d 850 (2<sup>nd</sup> Dept. 2011).

A review of the mortgage agreement does not indicate that Chase was obligated to record a satisfaction of the mortgage. Both defendant Chase and plaintiffs submitted a copy of the original note marked paid in full, which was enclosed with Chase's letter dated May 6, 1996 instructing Arnold Shaw to record a satisfaction of mortgage. It is unclear why Arnold Shaw failed to do so. Assuming arguendo that Chase was required to record satisfaction of the mortgage, plaintiffs commenced this action in June 2012, years after plaintiffs' causes of action expired. This court finds that plaintiffs have failed to establish that the statute of limitations was tolled until June 2010. Therefore, plaintiffs' complaint must be dismissed as time-barred.

On a motion to dismiss under C.P.L.R. 3211(a)(7), "a complaint should not be dismissed on a pleading motion so long as, when the plaintiff is given the benefit of every favorable inference, a cause of action exists." **Rovello v. Orofino Realty, Co.**, 40 N.Y.2d 633, 634 (1976); **see also, Leon v. Martinez**, 84 N.Y.2d 83 (1994). Affidavits submitted by plaintiff can be considered to remedy any defects in the complaint. **Id.** at 635. "The test is whether the pleadings give adequate notice to the court and the adverse party of the transactions or occurrences intended to be proved." **Stern v. Consumer Equities Assocs.**, 160 A.D.2d 993, 994 (2<sup>nd</sup> Dept. 1990).

Viewing the complaint in the light most favorable to plaintiff, this court finds that plaintiffs do not make out a claim cognizable at law for a cause of action based on RPAPL § 1921. The complaint merely alleges that Defendant Chase failed to record the satisfaction of mortgage within the thirty day period as required by RPAPL § 1921. However, RPAPL § 1921(1) specifically requires the mortgagor to send a written request for the satisfaction of the mortgage. There is no indication that such a written demand was made to the Chase. Therefore, Chase was not required by RPAPL § 1921 to record a satisfaction of mortgage based upon receipt of the final payment in April 1996.

Accordingly, defendant Chase's motion to dismiss plaintiffs' complaint with prejudice, is granted and the complaint is dismissed with costs and disbursements to defendant Chase as taxed by the Clerk upon the submission of an appropriate bill of costs.

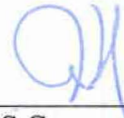
The Clerk is directed to enter judgment accordingly.

Movant is directed to serve a copy of this order with notice of entry on all parties and file proof thereof with the clerk's office.

This constitutes the decision and order of this court.

Dated: January 2, 2013

ENTER:



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J.S.C.

**ALEXANDER W. HUNTER JR.**