

Great Wall Realty Corp. v Wong
2014 NY Slip Op 31093(U)
March 13, 2014
Sup Ct, Queens County
Docket Number: 700536/2013
Judge: Marguerite A. Grays
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MEMORANDUM

SUPREME COURT : QUEENS COUNTY
IA PART 4

GREAT WALL REALTY CORP.,

Plaintiff/Counter-
Defendant,

-against-

ANTONIO WONG, JR. CHRIS LIN

Defendant(s)

and QUONTIC BANK,

Defendant/Counter-
Claimant,

QUONTIC BANK,

Third-Party Plaintiff(s),

-against-

AGOSTINHO WONG, et al.

Third-Party Defendant(s)

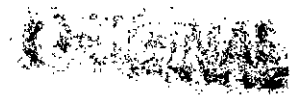
Hon. Marguerite A. Grays

Index
Number 700536 2013

Motion
Date January 17, 2014

Motion
Cal. Number 32

Motion Seq. No. 1



FILED
MAR 22 2014
COUNTY CLERK
QUEENS COUNTY

In this action to recover damages for fraud, unjust enrichment and for declaratory judgment, defendant and third party plaintiff Quontic Bank seeks an order appointing a temporary receiver for the improved real property known as 35-44 28th Street, Astoria, New York (Block 339, Lot 165).

Plaintiff Great Wall Realty Corp. (Great Wall) commenced this action on February 15,

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QUEENS COUNTY

2013. Great Wall is the owner of real property known as 35-44 28th Street, Astoria, New York (Block 339, Lot 165), which is improved by a multi-unit apartment building and parking lot. Said real property is its sole asset. Plaintiff alleges that defendant Antonio Wong Jr. (Junior) forged the signature of his grandfather, Agostinho Wong, on a corporate resolution dated May 15, 2012, which purported to transfer ownership of the shares of stock in Great Wall from Agostinho Wong to Junior, and appointed Junior as president, treasurer and secretary and defendant Chris Lin as vice president of Great Wall. It is further alleged that defendants Junior and Lin used the forged corporate resolution to obtain a loan in the sum of \$1,100,000.00 from private lenders in July 2012, and a second loan from Quontic Bank in the sum of \$2,500,000.00, in January 2013. Each loan was secured by a mortgage encumbering the Astoria real property. The July 2012 mortgage was fully satisfied and paid at the closing of the January 9, 2013 mortgage. In connection with each of these loans and mortgages, defendants Junior and Lin executed various documents representing that they were the sole owners and officers of Great Wall.

Plaintiff Great Wall alleges that Agostinho Wong, aged 90, and his wife Anna C. Wong, aged 86 are the sole officers, directors and shareholders of Great Wall; that the May 15, 2012 corporate resolution transferring ownership to Junior is a forgery; that the loans and mortgages were procured through fraud; that Junior and Lin were not authorized to enter into these loan and mortgage transactions; that Junior and Lin are not officers of Great Wall; that Great Wall never received any of the loan proceeds; and that Junior and Lin used the loan

proceeds for their own personal uses and benefits. It is further alleged that Agostinho Wong and Anna C. Wong first learned of the July 2012 mortgage on January 7, 2013, and that they first learned of the January 9, 2013 mortgage on February 7, 2013.

Great Wall, in its first cause of action against Junior and Lin for fraud in connection with the Quontic Bank loan and mortgage, seeks to recover compensatory and punitive damages. The second cause of action against Junior and Lin for unjust enrichment in connection with the Quontic Bank loan and mortgage, seeks to recover compensatory and punitive damages. The third cause of action seeks to quiet title with respect to the January 9, 2013 mortgage, and seeks a declaratory judgment to the effect that the Quontic Bank's loan, mortgage, and related assignment of leases and rents, are null and void, and a discharge of the January 9, 2013 mortgage.

It is noted that Quontic Bank has not included a copy of its answer or its third party complaint in its moving papers. Quontic Bank asserts that Great Wall made payments in connection with the January 9, 2013 loan in March and April 2013, and thereafter did not make any further payments. Quontic Bank sent Great Wall a default notice June 3, 2013, but has not, to date, commenced an action to foreclose on said mortgage. Nor has the lender commenced an action to recover on the note.

Quontic Bank now seeks an order appointing a receiver to take possession of the mortgaged property and to collect the rents. Although the notice of motion seeks an appointment of a receiver pursuant to CPLR 6401, the supporting affirmation and affidavit

seek the appointment of a receiver under the mortgage and loan documents, as a matter of right, regardless of the fact that the lender has not commenced a mortgage foreclosure action.

Plaintiff Great Wall and third party defendants Agostinho Wong, Anna C. Wong, David Wong, Estevao Wong, Antoinio Wong, Francisco Wong, Ida Wong [Aida Wong], Alberto Wong and Luis C. Wong assert, in opposition, that as the central issue in this action is the validity of the corporate resolution and the mortgage given to Quontic Bank, the within motion for an appointment of a receiver is governed by CPLR 6401 and not Real Property Law 254(10). It is asserted that Quontic Bank is not entitled to the appointment of a receiver, as it has failed to demonstrate that the appointment of a receiver is necessary to conserve the property and to protect the bank's interests, as there has been no showing of mismanagement, waste or looting of the property; the real estate taxes and water/sewer charges are current and the property is insured. It is further asserted that the bank cannot establish that the improved real property's value is insufficient to collateralize the loan, as the bank's documents demonstrate that the property was appraised on September 4, 2012 with a market value of \$5,000,000.00, which is nearly \$2,500,000.00 more than the amount claimed to be presently due and owing on the loan.

Quontic Bank, in reply, asserts in pertinent part, that pursuant to Section 2.04 of the mortgage, it is entitled to the appointment of a receiver, upon the happening of any event of default, and that said section does not require the lender to institute a foreclosure action before seeking the appointment of a receiver.

The excerpts of the deposition transcripts submitted by Quontic Bank in support of its motion, as well as the complete deposition transcript of Agostinho Wong submitted by plaintiff in opposition to the motion, are not signed, and do not contain a proper certification as required by CPLR 3116 (b). In addition, there is no proof that the deposition transcripts of Agostinho Wong and Anna C. Wong were forwarded to the respective individuals for review pursuant to CPLR 3116 (a). Accordingly, none of the transcripts are in admissible form (*see* CPLR 3116; *see generally Marks v Robb*, 90 AD3d 863, 864 [2d Dept 2011]), and will be not be considered by the court.

As neither Quontic Bank nor Great Wall and the opposing third party defendants seek relief on any of their respective claims, the court need not make any determination as to the validity of the corporate resolution and mortgage, at this juncture. Therefore, the mortgage given by Great Wall to Quontic Bank, shall be treated at this juncture, as valid solely for the purposes of determining whether a receiver should be appointed.

Section 2.04 of the subject mortgage, entitled “Waiver of Personal Service; Appointment of Receiver” provides as follows: “After the happening of any Event of Default and immediately upon the commencement of any action, suit or other legal proceedings by the Mortgagee to obtain judgment for the principal of, or interest on, the Note and other sums required to be paid by the Mortgagor pursuant to any provisions of this Mortgage, or of the Documents, or of any nature in the enforcement of the Note or of this Mortgage, the Mortgagor does hereby (a) waive personal service of process and consent to service by

certified mail to the address of the Mortgagor set forth on the cover page of this Mortgage (with copies to be sent as provided in section 3.03), and (b) if required by the Mortgagee, consent to the appointment of a receiver or receivers of the Mortgaged Property or any part thereof or any business or businesses conducted thereon and of all the earnings, revenues, rents, issues, profits and income thereof. After the happening of any Event of Default, or upon the commencement of any proceedings to foreclose this Mortgage or to enforce the specific performance hereof or in aid thereof or upon the commencement of other judicial proceedings to enforce any right of the Mortgagee, the Mortgagee shall be entitled, as a matter of right, if it shall so elect, without the giving of notice to any other party and without regard to the adequacy of any security for the Mortgage indebtedness, forthwith either before or after declaring the unpaid principal of the Note to be due and payable, to the appointment of such receiver or receivers”.

The above provision for appointing a receiver is broader than the provision construed by Real Property Law §254(10), and gives the mortgagee the right to seek the appointment of receiver in the “Event of Default”, regardless of whether it has commenced an action to foreclose the mortgage or for other relief to enforce the mortgage, and without regard for the adequacy of the security for the debt .


Section 2.01 of said mortgage defines, in pertinent part, an “Event of Default” as a default “in the payment of any monthly installment due on the Note, when and as the same shall become due and payable...”. It is undisputed that Great Wall has failed to make any

payments due under the note after April 2013. In addition, the mortgagee has submitted a copy of its notice of default, addressed to Great Wall and dated June 3, 2013. The court therefore finds that as an "Event of Default" has occurred under the terms of the subject mortgage, Quontic Bank is entitled to the appointment of a temporary receiver.

The court makes no determination as to whether Quontic Bank is also entitled to a receiver pursuant to CPLR 6401, as it is clear from its moving papers that it is not seeking such relief, despite the wording of the notice of motion.

Accordingly, defendant Quontic Bank's motion for the appointment of temporary receiver is granted, and the name of the receiver to be appointed shall be set forth in the order to be entered hereon.

Settle Order.



J.S.C.

MAR 13 2014