

Oceanfirst Bank v Cox
2014 NY Slip Op 31452(U)
May 30, 2014
Supreme Court, Suffolk County
Docket Number: 12-37822
Judge: Jerry Garguilo
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SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 47 - SUFFOLK COUNTY

PRESENT:

Hon. JERRY GARGUILO
Justice of the Supreme Court

MOTION DATE 11-18-13
ADJ. DATE 2-26-14
Mot. Seq. # 001 - MG

-----X
OCEANFIRST BANK,

Plaintiff,

- against -

BRIAN COX, SUSAN COX, HSBC BANK USA, N.A. AS TRUSTEE FOR THE REGISTERED HOLDERS OF NOMURA ASSET ACCEPTANCE CORPORATION, ALTERNATIVE LOAN TRUST, SERIES 2006-S1 C/O OCWEN LOAN SERVICING, LLC, PEOPLE OF THE STATE OF NEW YORK, COMMISSIONER OF TAXATION AND FINANCE, CLERK OF THE SUFFOLK COUNTY DISTRICT COURT, TARGET NATIONAL BANK, HOUSEHOLD FINANCE CORPORATION III, ATLANTIC CREDIT & FINANCE, INC. A/P/O BANK OF AMERICA, UNITED STATES OF AMERICA (EASTERN DISTRICT),

“JOHN DOE #1” through “JOHN DOE #20,” the last 20 names being fictitious and unknown to plaintiff, the persons or parties intended being the tenants, occupants, persons or corporations, if any having or claiming an interest in or lien upon the premises described in the Complaint,

Defendants.
-----X

STAGG, TERENZI, CONFUSIONE & WABNIK
Attorney for Plaintiff
401 Franklin Avenue, Suite 300
Garden City, New York 11530

DeLISA LAW GROUP, PLLC
Attorney for Defendants Cox
475 Montauk Highway
West Islip, New York 11795

Upon the following papers numbered 1 to 21 read on this motion for summary judgment; Notice of Motion/ Order to Show Cause and supporting papers 1-13; Notice of Cross Motion and supporting papers ; Answering Affidavits and supporting papers 14-18; Replying Affidavits and supporting papers 19-21; Other ; (~~and after hearing counsel in support and opposed to the motion~~) it is,

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ORDERED that the motion by the plaintiff for an order pursuant to CPLR 3212 granting summary judgment in its favor against the defendants, for an order striking the answer of defendants Brian Cox and Susan Cox, for a default judgment against the remaining non-appearing defendants, for leave to amend the caption of this action pursuant to CPLR 3025 (b) and for an order of reference appointing a referee to compute the sum due and owing plaintiff pursuant to Real Property Actions and Proceedings Law § 1321, is granted; and it is further

ORDERED that the caption is hereby amended by substituting defendants "Mr. Cox" and Southville Petroleum Corp. as "John Doe #1" and "John Doe #2" and by striking therefrom defendants named as "John Doe #3 - #20"; and it is further

ORDERED that plaintiff is directed to serve a copy of this order amending the caption of this action upon the Calendar Clerk of this Court; and it is further

ORDERED that the caption of this action hereinafter appear as follows:

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK**

-----X
OCEANFIRST BANK,

Plaintiff,

- against -

BRIAN COX, SUSAN COX, HSBC BANK USA,
N.A. AS TRUSTEE FOR THE REGISTERED
HOLDERS OF NOMURA ASSET ACCEPTANCE
CORPORATION, ALTERNATIVE LOAN TRUST,
SERIES 2006-S1 C/O OCWEN LOAN SERVICING,
LLC, PEOPLE OF THE STATE OF NEW YORK,
COMMISSIONER OF TAXATION AND FINANCE,
CLERK OF THE SUFFOLK COUNTY DISTRICT
COURT, TARGET NATIONAL BANK,
HOUSEHOLD FINANCE CORPORATION III,
ATLANTIC CREDIT & FINANCE, INC. A/P/O
BANK OF AMERICA, UNITED STATES OF
AMERICA (EASTERN DISTRICT), MR. COX and
SOUTHVILLE PETROLEUM CORP.,

Defendants.

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In this residential foreclosure action, the plaintiff seeks to foreclose a mortgage on the premises known as 20 Stonegate Drive, St. James, New York. On June 8, 2005, Brian Cox executed a promissory note agreeing to pay the principal sum of \$648,000.00 per year in return for a loan received from Columbia Home Loans, LLC. To secure said note, Brian and Susan Cox executed a mortgage on the same date on the subject property. The mortgage was recorded on June 24, 2005 in the Suffolk County Clerk's Office. Cox defaulted on his monthly payment of principal and interest on August 1, 2010 and each month thereafter. By assignment dated March 7, 2011 and recorded in the Suffolk County Clerk's office on April 13, 2011, the mortgage and note were assigned by Columbia Home Loans, LLC to the plaintiff. Thereafter, the plaintiff sent Cox a letter of default. Cox failed to cure his default.

The plaintiff commenced the instant action on December 18, 2012. The Coxes served an answer.

In support of the plaintiff's motion, the plaintiff submits, among other things, the note and mortgage, the notice of default letter, the summons and complaint, the notice pursuant to RPAPL § 1304, affidavits of service for the summons and complaint, an affidavit of service for the instant summary judgment motion upon defendants' counsel, an affidavit of merit, and a proposed order appointing a referee to compute.

"[I]n an action to foreclose a mortgage, a plaintiff establishes its case as a matter of law through the production of the mortgage, the unpaid note, and evidence of default" (*Republic Natl. Bank of N.Y. v O'Kane*, 308 AD2d 482, 482, 764 NYS2d 635 [2d Dept 2003]; see *Argent Mtge. Co., LLC v Mentosana*, 79 AD3d 1079, 915 NYS2d 591 [2d Dept 2010]). Here, the plaintiff produced the note and mortgage executed by the mortgagor, as well as evidence of nonpayment thereby establishing its prima facie entitlement to judgment as a matter of law (see *Argent Mtge. Co., LLC v Mentosana*, *supra*; *Republic Natl. Bank of N.Y. v O'Kane*, *supra*).

Since the plaintiff made a prima facie showing of entitlement to judgment as a matter of law, it was incumbent on the defendants "to demonstrate the existence of a triable issue of fact as to a bona fide defense to the action, such as waiver, estoppel, bad faith, fraud, or oppressive or unconscionable conduct on the part of the plaintiff" (see *Cochran Inv. Co., Inc. v Jackson*, 38 AD3d 704, 834 NYS2d 198, 199 [2d Dept 2007] quoting *Mahopac Natl. Bank v Baisley*, 244 AD2d 466, 467, 664 NYS2d 345 [2d Dept 1997]).

In opposition, the Coxes assert that the plaintiff has failed to establish standing. Specifically, the Coxes state that the plaintiff submitted a document entitled "Allonge to Promissory Note" which bears an indorsement to the plaintiff by Columbia Home Loans, LLC but is undated and provides no proof that it was effectuated prior to the commencement of this action. They also assert that there is no indication that it was physically attached to the original note. In addition, the Coxes assert that the plaintiff failed to demonstrate ownership through factual details of delivery of the note.

The Court finds the Coxes' contention that the plaintiff lacks standing to be lacking in merit. Annexed to the plaintiff's motion papers is a copy of the assignment which specifically states that both the note and the mortgage were assigned to the plaintiff by Columbia Home Loans, LLC. The assignment is dated prior to the commencement of this action. In addition, George Maceli, the assistant

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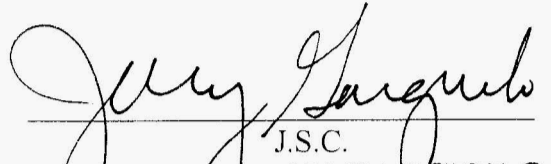
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vice president of plaintiff, states in his affidavit that the plaintiff is the owner and holder of the note, which was transferred and delivered to the plaintiff prior to the commencement of this action. Thus, there is sufficient evidence establishing that the plaintiff was in physical possession of the note prior to the commencement of this action.

In light of the foregoing, the plaintiff's motion is granted.

The proposed order appointing a referee to compute pursuant to RPAPL §1321 is signed as modified by the court.

Dated: 5/30/14



J.S.C.
HON. JERRY GARGUILO

____ FINAL DISPOSITION X NON-FINAL DISPOSITION

At an I.A.S. Term Part 47 of the
Supreme Court, held in and for the
County of SUFFOLK at the Supreme
Courthouse, on the 30th day of MAY, ~~2013~~ 2014

PRESENT: HONORABLE Jerry Garguilo
Justice

COPY

HON. JERRY GARGUILO -----X

OCEANFIRST BANK.

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Plaintiff.

-against-

ORDER

BRIAN COX, SUSAN COX, HSBC BANK USA, N.A. AS
TRUSTEE FOR THE REGISTERED HOLDERS OF NOMURA
ASSET ACCEPTANCE CORPORATION, ALTERNATIVE
LOAN TRUST, SERIES 2006-S1 C/O OCWEN LOAN
SERVICING, LLC, PEOPLE OF THE STATE OF NEW YORK,
COMMISSIONER OF TAXATION AND FINANCE, CLERK OF
THE SUFFOLK COUNTY DISTRICT COURT, TARGET
NATIONAL BANK, HOUSEHOLD FINANCE
CORPORATION III, ATLANTIC CREDIT & FINANCE, INC.
A/P/O BANK OF AMERICA, UNITED STATES OF AMERICA
(EASTERN DISTRICT).

"JOHN DOE #1" through "JOHN DOE #20," the last twenty names
being fictitious and unknown to plaintiff, the persons or parties
intended being the tenants, occupants, persons or corporations, if any,
having or claiming an interest in or lien upon the premises, described
in the complaint.

Defendants.

----- X

UPON the summons, verified complaint and notice of pendency of action all duly filed
herein, and due proof that all the defendants have been duly served with said summons, or have
voluntarily appeared in this action, and upon the affidavits of service and the notice(s) of
appearance annexed to the motion papers, and upon reading and filing the answer interposed by

defendants BRIAN COX and SUSAN COX, and upon reading and filing the affidavit of George J. Maceli sworn to October 11, 2013, and the notice of motion and affirmation of Patrique Denize, attorney for the plaintiff, both dated October 24, 2013 and now

On motion of STAGG, TERENZIL, CONFUSIONE & WABNIK, LLP, attorneys for plaintiff, and after due deliberation having been had thereon, it is

ORDERED, that plaintiff's motion for summary judgment be and the same is hereby granted; and it is further

ORDERED, that the answer of defendants BRIAN COX and SUSAN COX be and the same is hereby stricken; and it is further

ORDERED, that the default of all other defendants with the exception of those that put in a notice of appearance is confirmed; and it is further

ORDERED, that by reason of certain defaults as alleged in the Verified Complaint, that all of the defendants have been duly served with the Summons and Verified Complaint, except defendants "JOHN DOE #3" through "JOHN DOE#20" who were not served copies of the Summons and Verified Complaint and are not necessary parties to this action, and it is further

ORDERED, that the time for all defendants to appear or answer has not been extended nor has such extension been requested and all of the defendants, with the exception of defendants BRIAN COX, SUSAN COX and UNITED STATES OF AMERICA (EASTERN DISTRICT), are now in default for want of pleading and that none of the defendants are infants, incompetents or absentees; and it is further

186 West Main Street
Smithtown, NY
is 11787

ORDERED, that Kevin Fitzgerald,
631-360-7272

hereby appointed Referee to ascertain and compute the amount due to the plaintiff upon the note and mortgage upon which this action was brought and to examine and report whether the mortgaged premises can be sold in one parcel; and it is further

ORDERED, that MR. COX be substituted for "JOHN DOE #1" and SOUTHVILLE PETROLEUM CORP. be substituted for "JOHN DOE #2" as a party defendants in the caption of this action; and it is further

ORDERED, that the defendants captioned as "JOHN DOE #3" through "JOHN DOE #20," not having been served with copies of the summons and verified complaint, are neither necessary nor proper party defendants and their name(s) are hereby stricken from the caption of this action; and it is further

ORDERED, that by accepting this appointment the Referee certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36) including, but not limited to section 36.2 (c) ("Disqualifications from appointment"), and section 36.2 (d) ("Limitations on appointments based upon compensation").

JSC

ORDERED, that pursuant to CPLR 8003 (a) in the discretion of the Court a fee of \$ 500.00 shall be paid to the Referee for the computation stage and upon filing of his/her report.

GRANTED
MAY 30 2014
Judith A. Pascale
CLERK OF SUFFOLK COUNTY

May 30, 2014

J.S.C.

HON. JERRY GARGUILO