

Brown v Nationstar Mtge., LLC

2015 NY Slip Op 31090(U)

June 26, 2015

Supreme Court, Wayne County

Docket Number: 75016/2012

Judge: Daniel G. Barrett

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This opinion is uncorrected and not selected for official publication.

At a Term of the Supreme Court held in and for the County of Wayne at the Hall of Justice in the Village of Lyons, New York on the 4th day of February, 2015.

PRESENT: Honorable Daniel G. Barrett
Acting Supreme Court Justice

STATE OF NEW YORK
SUPREME COURT COUNTY OF WAYNE

WAYNE BROWN,

Petitioner,

-vs-

NATIONSTAR MORTGAGE, LLC,

Respondent

DECISION
Index No. 75016

2012

Petitioner Wayne Brown initiated this proceeding by filing an Order to Show Cause which requested the following forms of relief:

1. Staying the enforcement of the Judgment of Foreclosure, staying the Petition for Removal after Foreclosure Sale set for a hearing on July 9, 2014, in the Macedon Town Court and enjoining Respondent, Nationstar, from commencing further eviction proceedings against Petitioner pending the disposition of an action to be filed by Petitioner against Respondent;
2. Declaring, nunc pro tunc, the Modification Agreement to be a legally binding contract and permitting Petitioner to pay the arrears dating back to February 1, 2014;
3. Vacating and relieving Petitioner from the Judgment of Foreclosure, rescinding the foreclosure sale to Respondent, dismissing the Petition for Removal after Foreclosure Sale set for hearing on July 9, 2014, at Macedon Town Court, and permitting Petitioner to redeem the property by reinstating the terms of the Modification Agreement;
4. Awarding Petitioner legal fees and costs for making the instant application.

The Order provided that service of this proceeding on the Respondent be made by serving the Margolin & Weinreb Law Group, LLP by regular mail and facsimile.

Service of this proceeding was properly made and jurisdiction was acquired over the Respondent.

In a prior Order dated October 17, 2014, this Court has ruled on all the outstanding issues except for the relief regarding the Modification Agreement.

A hearing on this issue was conducted on February 4, 2015. At the hearing the Petitioner testified. As with all other aspects of this application, Respondent defaulted. At the conclusion of this hearing the Court had contact with counsel from Margolin & Weinreb Law Group, LLP who advised the Court that his firm was retained by the Aldridge Connors firm in Atlanta, Georgia to conduct the eviction of the Petitioner from his premises but had not been retained to represent the Respondent in the matter involving the Order to Show Cause. Counsel assured the Court that all the pleadings germane to the Order to Show Cause were forwarded to the Aldridge Connors firm. In addition, counsel for Margolin & Weinreb provided a letter from the REO manager of the Respondent who upon learning of the dispute with Petitioner instructed their supervising attorneys, identified as Aldridge Connors, to notify the Margolin & Weinreb firm to cease all eviction activities and to close its file.

The Court finds the Respondent had ample notice of these proceedings and is somewhat perplexed by its inactivity concerning this matter.

Petitioner testified he received a letter dated December 13, 2013, addressed to him from the Respondent bearing the label "Letter Acknowledgment". This letter recited the enclosure of a "Modification Agreement". The letter explained that by signing the Letter Acknowledgment and the Modification Agreement, Petitioner is agreeing to make a qualifying payment of \$1,891.14 for the Modification Agreement to become effective.

The Petitioner also received a letter dated December 13, 2013, from the Respondent which apprised him that he had been pre-approved for a temporary modification of this mortgage loan that will lower his monthly payments in accordance with the complete terms set forth in the Modification Agreement. This letter explained that the basis terms of his modification are as follows:

Beginning on February 1, 2014, his loan will be modified to temporarily lower his payments to \$176.41. The modification will be in effect for two years, during which time all payments will be applied to the interest only. After that time your payment will return to the original terms of the loan.

To take advantage of this opportunity the letter directed the Petitioner to take the enclosed Modification Agreement to a notary public. Sign the Modification Agreement in front of the notary public and have the notary notarize your signature. Return the original, signed and notarized Modification Agreement along with the initial payment of \$1,891.14.

The letter specified that the offer to modify the terms of the mortgage expires on December 31, 2013.

Petitioner specified that he fully complied with the requirements set forth in both letters dated December 13, 2013. He mailed the appropriate notarized paperwork to the Respondent including two postal orders totaling \$1,891.14. On or about December 27, 2013, Petitioner sent these items by Federal Express. Proof was submitted showing the Respondent received these items on December 30, 2013.

Petitioner never received acknowledgment from Respondent regarding receipt of the executed documents and the money orders totaling \$1,891.14.

On January 14, 2014, without Petitioner's knowledge a foreclosure sale was conducted and the Respondent was the buyer.

In March, 2014, Petitioner received a 90 Day Notice to Quit from the attorneys for the Respondent. This was Petitioner's first notice that a foreclosure sale had been conducted and the Respondent was the purchaser. Initially Petitioner attempted to contact the Respondent, then he retained an attorney to contact the Respondent. Despite contacting the Respondent, no meaningful response was received from the Respondent.

On June 26, 2014, Petitioner was served with a Notice of Petition for removal from his residence which lead to the filing of the Order to Show Cause in this matter.

The purpose of this hearing is to determine if the Loan Modification Agreement is enforceable. Though not dispositive, despite ample notice to the Respondent, there is no opposition to this application.

The Petitioner signed the Loan Modification Agreement consistent with the written instructions of the Respondent. Respondent never provided the Petitioner with a copy of the Loan Modification Agreement which the Petitioner signed. Despite the fact that the contract provided in evidence did not contain the signature of the Respondent, it is enforceable because there is objective evidence that the parties intended to be bound. (Gallagher v. Long Island Plastic Surgical Group, P.C., 113 A.D. 3d 652, 978 N.Y.S. 2d 334). Respondent prepared the terms of the written contract and provided it to the Petitioner with instructions to sign the contract and return to the Respondent by the end of December with a payment of \$1,891.14. Petitioner provided proof that he signed the Loan Modification Agreement, sent the Agreement with tow postal money orders totaling \$1,891.14. In addition, Petitioner provided proof that the Loan Modification Agreement and the funds were received by the Respondent on December 31, 2013.

The Petitioner has requested that the Court compel the Respondent to abide by its agreement. Equity is available to place a party to a contract in the legal position it would have occupied if the agreement had been performed. (Monclova v. Arnett, 3 N.Y. 2d 33, 143 N.E. 2d 375, 163 N.Y.S. 2d 652).

In an action involving specific performance, it is the court's duty, in so far as possible, to place the parties in the same situation they would have been in if the contract had been performed according to its terms. (Colonie Motors, Inc. v. Heritage Corp. of New York, 61 A.D. 2d 1105, 403 N.Y.S. 2d 574).

Specific performance is an equitable remedy whereby the court, by its decree, compels a party to do precisely what it ought to have done without being coerced. (Crumb v. Lintern, 4 Misc. 2d 624, 158 N.Y.S. 2d 824).

It is the finding of this Court that the Loan Modification Agreement is an enforceable Agreement. To place the parties in the position they would occupy had the Agreement been performed according to its terms, this Court is directing that the Agreement be performed according to its terms with the two year interest free period commencing on September 1, 2015, with monthly payments of \$176.41. Consistent with the Loan Modification Agreement the payments during these two years will be applied to interest only. After that time the payment will return to the original terms of the loan.

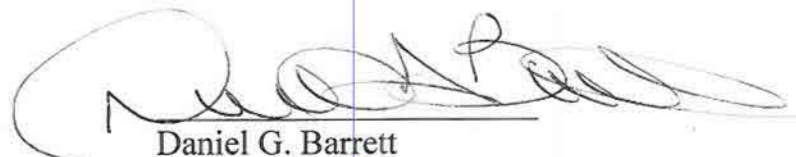
The Court is not awarding attorney fees to the Petitioner on this application.

Until an attorney is identified as representing the Respondents in this matter, papers may be served on the John Hudson, REO manager for Solutions Servicing, the REO manager of Nationstar Mortgage, LLC at Solution Star, 760 Highway 121 BYP, STE 100, Lewisville, Texas 75067.

Counsel for Petitioner to prepare an Order consistent with this Decision.

Dated: June 26, 2015
Lyons, New York

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SUPREME AND COUNTY COURT



Daniel G. Barrett
Acting Supreme Court Justice