

JP Morgan Chase Bank, N.A. v Juliano
2017 NY Slip Op 30173(U)
January 19, 2017
Supreme Court, Suffolk County
Docket Number: 007598-2011
Judge: John H. Rouse
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INDEX NO. 007598-2011

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 12 - SUFFOLK COUNTY

PRESENT:

Hon. John H. Rouse
Acting Supreme Court Justice

MOTION DATE: 08/10/2016
ADJ. DATE: 01/04/2017
Mot. Seq. 005-MG

MOTION DATE: 08/10/2016
ADJ. DATE: 01/04/2017
Mot. Seq. 006-MD

MOTION DATE: 08/10/2016
ADJ. DATE: 01/04/2017
Mot. Seq. 007-MD
CASEDISP

JP MORGAN CHASE BANK, NATIONAL ASSOCIATION,

Plaintiff

-against-

DECISION & ORDER

JOHN JULIANO, ESQ., as Temporary Administrator for the ESTATE OF JUSTINE DENICOLA; PETER DINICOLA a/k/a Peter De Nicola, a/k/a Peter M. Denicola; JP MORGAN CHASE BANK, NA and PEOPLE'S UNITED BANK, SUCCESSOR IN INTEREST TO BANK OF SMITHTOWN,

Defendants

TO:

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Upon the reading and filing of the following papers in this matter:

(1) Notice of Motion by Defendant, People's United Bank dated July 5, 2016, Affirmation of James E. Durso, Esq. in support of motion affirmed on July 5, 2016 with Exhibits A-F attached; Affidavit of Eben Duval in support of motion sworn to on April 1, 2016 with Exhibits A-F attached; Memorandum of Law in Support of Motion for Summary Judgment dated July 5, 2016 with Exhibits A-E attached; and

(2) Notice of Cross Motion by Plaintiff dated September 16, 2016 with Affirmation of Ellis M. Oster, Esq, affirmed on September 16, 2016 with Exhibits A-H attached and supplemental bound Exhibits I-R; Proposed Order granting Summary Judgment and Default Judgment for Plaintiff; Affirmation by Ellis M. Oster, Esq. of Settlement Conference Compliance, affirmed on September 16, 2016; and

(3) Reply Affirmation by Ellis M. Oster, Esq. for Plaintiff, affirmed on November 30, 2016; and

(4) Affirmation of James E. Durso, Esq. in further support of People's United Bank's motion for summary judgment affirmed on December 6, 2016; and

(5) Notice of Cross Motion by Defendant Peter Denicola dated December 3, 2016 with Exhibit 1 attached thereto; and

(6) Affirmation in Opposition to Cross Motion by Peter Denicola by Austin T. Schufelt, Esq. Affirmed on December 5, 2016 with Exhibits 1-3 attached thereto; it is:

ORDERED that Plaintiff's cross motion (Seq. #006) to substitute the assignee of the note and mortgage US BANK NATIONAL ASSOCIATION AS TRUSTEE of NRZ PASS-THROUGH TRUST IV, for the Plaintiff JP MORGAN CHASE BANK, NATIONAL ASSOCIATION and also to amend the caption to reflect the assignment of the note and mortgage from JP MORGAN CHASE BANK, NATIONAL ASSOCIATION to US BANK NATIONAL ASSOCIATION AS TRUSTEE of NRZ PASS-THROUGH TRUST IV, is granted to the extent that the caption shall hereafter be

US BANK NATIONAL ASSOCIATION AS TRUSTEE of
NATIONAL ASSOCIATION to NRZ PASS-THROUGH
TRUST IV,

Plaintiff

-against-

JOHN JULIANO, ESQ., as Temporary Administrator for the
ESTATE OF JUSTINE DENICOLA; PETER DINICOLA
a/k/a Peter De Nicola, a/k/a Peter M. Denicola; JP MORGAN
CHASE BANK, NA and PEOPLE'S UNITED BANK,
SUCCESSOR IN INTEREST TO BANK OF SMITHTOWN,

Defendants

ORDERED that the motion for summary judgment (Seq. #005) by Defendant, People's United Bank, is granted in that the mortgage that encumbers property described as Suffolk County Tax Map as District 1000, Section 051.00, Block 03.00 and Lot 003.007 that was recorded by the Bank of Smithtown on November 13, 2008 and was assigned to People's United Bank and had been recorded is superior to the mortgage that was recorded on September 25, 2009 as a "correction mortgage" and which is alleged to secure a note now held by Plaintiff US Bank National Association as Trustee of National Association to NRZ Pass-Through Trust IV, the successor in interest to Washington Mutual Bank, FA and JP Morgan Chase Bank, National Association; and it is further

ORDERED that the Plaintiff's Cross Motion for summary judgment (Seq. #006) upon its claim for an equitable mortgage superior to the mortgage recorded on November 13, 2008 by Bank of Smithtown, the predecessor in interest to Defendant People's United Bank, is denied,

ORDERED that the Plaintiff's action with respect to Defendant People's United Bank is dismissed as People's United Bank's mortgage is superior to the mortgage Plaintiff seeks to foreclose; and it is further

ORDERED that Plaintiff's motion for a default judgment against Peter DeNicola and the Estate of Justine Denicola is denied, and the case as against these Defendants is dismissed as abandoned; and it is further

ORDERED the cross motion by Peter Denicola (Mot. 007) is denied as moot as the case is dismissed in its entirety.

DECISION

Plaintiff upon its cross motion moves (Mot. #006) to substitute US Bank National Association as Trustee of National Association to NRZ Pass-Through Trust IV for JP Morgan Chase Bank, National Association and amend the caption to reflect the assignment of the note and mortgage on July 8, 2014. Without opposition this portion of the Plaintiff's motion is granted.

The Defendant, People's United Bank, now moves (Mot. #005) for summary judgment to dismiss the action against it as it holds a first mortgage superior to that being foreclosed upon by Plaintiff. Plaintiff, US Bank National Association as Trustee of National Association to NRZ Pass-Through Trust IV, cross moves for equitable subrogation of its mortgage in place of the first mortgage held by People's United Bank.

It is undisputed that Plaintiff seeks to foreclose a Correction Mortgage recorded with respect to a certain parcel of property identified on Suffolk County Tax Map as District 1000, Section 051.00, Block 03.00 and Lot 003.007. (Hereinafter "Lot 7") The mortgage held by People's United Bank was recorded against Lot 7 on November 13, 2008 and the Correction Mortgage was not recorded until September 25, 2009. This Correction Mortgage was filed to change the description of the property as being against Lot 7 where it had been recorded against the wrong parcel, Lot 8.

The movant has submitted proof that the fee simple ownership of the property was conveyed from Neil M. Rego to Peter DeNicola in a deed recorded on October 1, 1993. By Deed recorded on September 9, 2004 Peter DeNicola conveyed fee title to the property to Justine A. DeNicola.

Nonetheless, Plaintiff, in opposition to the Defendant's motion and upon its cross motion, seeks to subordinate People's United Bank's first mortgage with allegations based solely upon information and belief. Specifically, Plaintiff surmises that Justine Denicola (now deceased) may have informed the original mortgagee, the Bank of Smithtown, that she was indebted to Washington Mutual thereby putting the Bank of Smithtown on inquiry notice with respect to the mortgage originated by Washington Mutual erroneously secured by Lot 8.

People's United Bank is the successor in interest to the Bank of Smithtown. The Bank of Smithtown originated the Home Equity Line of Credit with Justine Denicola. Plaintiff US Bank National Association as Trustee of National Association to NRZ Pass-Through Trust IV is the successor in interest to the mortgage originated by Washington Mutual.

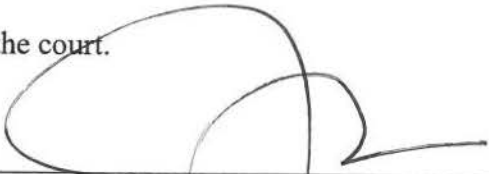
Defendant, People's United Bank, has made a *prima facie* showing that its mortgage was recorded prior to that recorded by the Plaintiff. In opposition, Plaintiff alleges that its loan to Justine DeNicola and Peter DeNicola was used to satisfy a note dated August 18, 2003 held by Greenpoint Mortgage Funding, Inc. for the principal amount of \$324,000, that was secured by a mortgage on the subject property executed by Peter DeNicola when he was the sole record owner of the premises. The fact that a prior mortgage had been satisfied did nothing to put People's United Bank on notice of the earlier mortgage filed against a different parcel of property. Moreover, it was four years before Plaintiff's predecessor in interest sought to correct the error in its mortgage and it did not bring an action at that point in time to quiet title -- a time when evidence might have been more readily available to all parties. There are no equities that weigh in favor of subordinating the mortgage held by People's United Bank to that held by US Bank National Association as Trustee of National Association to NRZ Pass--through Trust IV. Accordingly, People's United Bank motion for summary judgment is granted and the cross motion by Us Bank National Association as Trustee of National Association to NRZ Pass-Through Trust IV for equitable subrogation is denied, and the case against People's United Bank is dismissed.

Plaintiff, upon its cross motion (Mot. #006) further moves for a default judgment against Peter DeNicola and the Estate of Justine DeNicola. This action was commenced on March 8, 2011. It is only now that Plaintiff moves for a Default Judgment against Peter DeNicola and the Estate of Justine DeNicola, together with an appointment of a referee. Plaintiff has not alleged or demonstrated that these Defendants defaulted within one year, or that there is just cause for this court to conclude the case has not been abandoned by Plaintiff. *Wells Fargo Bank, N.A. v Bonanno*, __AD3d__ (2nd Dept. January 11, 2017); *HSBC Bank USA, N.A. v Grella*, __AD3d__ (2nd Dept. December 7, 2016). Accordingly, the motion for Default Judgments is denied and the case, as against Peter DeNicola and the Estate of Justine Denicola, is dismissed as abandoned.

The motion by Peter Denicola (Mot. 007) is denied as moot.

The foregoing shall constitute the decision and order of the court.

Dated: January 19, 2017



JOHN H. ROUSE, Acting J.S.C.

FINAL DISPOSITION