

U.S. Bank N.A. v Seon Yeong Kang

2019 NY Slip Op 31072(U)

April 15, 2019

Supreme Court, New York County

Docket Number: 850184/2017

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 32

Justice

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INDEX NO. 850184/2017

U.S. BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL
CAPACITY BUT SOLELY AS TRUSTEE FOR THE RMAC TRUST,
SERIES 2016-CTT,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 001

- v -

SEON YEONG KANG, CITY CONNECTIONS REALTY INC., NEW
YORK CITY PARKING VIOLATIONS BUREAU, BOARD OF
MANAGERS OF ATELIER CONDOMINIUM, JOHN DOE NUMBER
ONE THROUGH JOHN DOE NUMBER TEN

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 23, 24, 25, 26, 27,
28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 47, 48, 49, 51

were read on this motion to/for JUDGMENT - SUMMARY

The motion by plaintiff for summary judgment is granted and the cross-motion by
defendant Kang to dismiss is denied.

Background

This mortgage foreclosure action arises out of a property owned by defendant Kang
("defendant") located at 632 West 42nd Street in Manhattan. Defendant executed a note in
December 2007 for \$656,000 and secured a mortgage for the premises. Curiously, plaintiff
claims that defendant defaulted on his monthly payments beginning on September 1, 2011
despite the fact that there was a previous foreclosure action brought by plaintiff's predecessor in
2010. Plaintiff contends it sent a notice of default to defendant on June 5, 2017.

In support of his cross-motion defendant argues that this case is time-barred because of
the 2010 foreclosure action brought against defendant. Defendant but contends that the statute of

limitations began to run when plaintiff's predecessor brought the previous case in 2010, which makes the instant action (commenced in 2017) untimely. (The 2010 action was dismissed in December 2012).

In opposition to defendant's cross-motion, plaintiff argues that the statute of limitations was tolled by defendant's bankruptcy filing in May 2012. According to plaintiff, the bankruptcy filing was resolved on December 18, 2013. Plaintiff contends that the instant action is timely if the 19-month bankruptcy stay is considered a toll of the statute of limitations.

Discussion

"The filing of a petition for protection under the Bankruptcy Code imposes an automatic stay of any mortgage foreclosure actions. CPLR 204(a) provides that [w]here the commencement of an action has been stayed by statutory prohibition, the duration of the stay is not a part of the time within which the action must be commenced. Pursuant to CPLR 204(a), the Bankruptcy Code's automatic stay tolls the limitations period for foreclosure actions" (*Lubonty v U.S. Bank Natl. Assoc.*, 159 AD3d 962, 74 NYS3d 279 [2d Dept 2018] [internal quotations and citations omitted]).

Here, the previous complaint was filed on February 5, 2010 (NYSCEF Doc. No. 45) and the statute of limitations would ordinarily expire on February 5, 2016 (assuming the six-year statute began to run when the complaint was filed). However, defendant filed a bankruptcy petition on May 3, 2012 and the debtor (defendant) was dismissed on December 18, 2013 (NYSCEF Doc. No. 48). This tolled the statute of limitations for 594 days (one year, seven months and fifteen days). This makes the instant action timely-- adding the 594 days extended the limitations period to September 2017 and the instant complaint was filed in August 2017 (*see* NYSCEF Doc. No. 1).

Because defendant did not raise any other arguments in opposition to plaintiff's motion or in support of his cross-motion, plaintiff's motion is granted.

Accordingly, it is hereby

ORDERED that the motion for summary judgment against defendant Seong Yeong Kang is granted and that defendant's answer is stricken; and the branch of the motion for default judgment against the remaining defendants is granted without opposition; and it is further

ORDERED that Shari S. Laskowitz, Esq. % Ingram, 250 Park Ave, 6th floor, NY, NY 10177 212-907-9696 is hereby appointed Referee in accordance with RPAPL § 1321 to compute the amount due to Plaintiff for principal, interest and other disbursements advanced as provided for in the note and mortgage upon which this action is brought, and to examine whether the mortgaged property can be sold in parcels; and it is further

ORDERED that the Referee may take testimony pursuant to RPAPL § 1321; and it is further

ORDERED that by accepting this appointment the Referee certifies that she/he is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2 (c) ("Disqualifications from appointment"), and §36.2 (d) ("Limitations on appointments based upon compensation"), and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall immediately notify the Appointing Judge; and it is further

ORDERED that, pursuant to CPLR 8003(a), and in the discretion of the court, a fee of \$350 shall be paid to the Referee for the computation of the amount due and upon the filing of her/his report and the Referee shall not request or accept additional compensation for the

computation unless it has been fixed by the court in accordance with CPLR 8003(b); and it is further;

ORDERED that the Referee is prohibited from accepting or retaining any funds for herself/himself or paying funds to him/herself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED that plaintiff shall forward all necessary documents to the Referee within 30 days of the date of this order and shall *promptly* respond to every inquiry made by the referee (promptly means within two business days); and it is further

ORDERED that plaintiff must bring a motion for a judgment of foreclosure and sale within 30 days of receipt of the referee's report; and it is further

ORDERED that if plaintiff fails to meet these deadlines, then the Court may *sua sponte* vacate this order and direct plaintiff to move again for an order of reference and the Court may *sua sponte* toll interest depending on whether the delays are due to plaintiff's failure to move this litigation forward; and it further

ORDERED that "John Doe#1" through "John Doe#10" be removed as party defendants in this action and the caption of this action be amended to reflect these changes; and it is further

ORDERED that the caption shall read as follows:

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

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U.S. BANK NATIONAL ASSOCIATION, NOT IN
ITS INDIVIDUAL CAPACITY BUT SOLELY AS
TRUSTEE FOR THE RMAC TRUST, SERIES
2016-CTT,

Plaintiff(s),

v.

SEON YEONG KANG, CITY CONNECTIONS
REALTY INC., NEW YORK CITY PARKING
VIOLATIONS BUREAU, BOARD OF
MANAGERS OF ATELIER CONDOMINIUM
Defendant(s).

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and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being removed and added pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address (www.nycourts.gov/supctmanh)).

ORDERED that Plaintiff shall serve a copy of this Order with notice of entry on all parties and persons entitled to notice, including the Referee appointed herein.

Next Conference: July 30, 2019 at 2:15 p.m. If a motion for a judgment of foreclosure and sale has been made prior to the conference, then an adjournment may be obtained; consult the foreclosure rules of this Part in order to obtain an adjournment. If a conference is necessary, come prepared to explain the reasons for the delay.

4.15.19

DATE

ARLENE P. BLUTH, J.S.C.

HON. ARLENE P. BLUTH

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE