

<b>George v 1429 Pac. Inc.</b>
2020 NY Slip Op 33241(U)
September 25, 2020
Supreme Court, Kings County
Docket Number: 3109/14
Judge: Lawrence S. Knipel
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At an IAS Term, Part Comm 6 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 25<sup>th</sup> day of September, 2020.

P R E S E N T:

HON. LAWRENCE KNIPEL,

Justice.

-----X  
ANIL GEORGE,

Plaintiff,

- against -

Action No. 1  
Index No. 3109/14

1429 PACIFIC INC,

Defendant

-----X  
BANK OF AMERICA, N.A.,

Plaintiff,

- against -

Action No. 2  
Index No. 518845/18

1429 PACIFIC INC, ANIL GEORGE, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, PORTFOLIO RECOVERY ASSOCIATES LLC, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, NEW YORK CITY PARKING VIOLATIONS BUREAU, STATE OF NEW YORK and "John Doe" and/or "Jane Doe" #1-10 inclusive, the last ten names being fictitious and unknown to plaintiff, the persons or parties intended being the tenants, occupants, persons, corporations or heirs at law, if any, having or claiming an interest in or lien upon the premises described in the complaint,

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Doc. Nos.

Notice of Motion/Order to Show Cause/  
Petition/Cross Motion and  
Affidavits (Affirmations) Annexed\_\_\_\_\_

32-39

Opposition (Affirmations) Annexed\_\_\_\_\_

43-48, 52-55

Upon the foregoing papers, defendant Anil George (George) moves, in Action No. 2 (in motion sequence [mot. seq.] two) for an order: (1) consolidating Action Nos. 1 and 2, pursuant to CPLR 602 (a), and (2) extending his time within which to file a note of issue in Action No. 1.

***Background***

***Action No. 1***

On or about February 28, 2014, George commenced Action No. 1, a quiet title action, seeking compensatory and punitive damages and a declaratory judgment that the November 21, 2013 transfer of George's title to his residential property at 1429 Pacific Street in Brooklyn (Property) to defendant 1429 Pacific Inc. (1429 Pacific) is void. Essentially, George seeks to recover his Property from 1429 Pacific on the ground that the Property was fraudulently conveyed with a forged power of attorney.

***Action No. 2***

On or about September 18, 2018, Bank of America, N.A. (BOA) commenced Action No. 2 against George and others seeking to foreclose on the Property. George allegedly executed an April 22, 2008 promissory note in favor of BOA's predecessor for

\$801,000.00, which was secured by a mortgage on the Property. The foreclosure complaint in Action No. 2 alleges that George defaulted by failing to make the mortgage payments due on June 1, 2008 and monthly thereafter.

On or about February 28, 2019, George answered the complaint in Action No. 2, denied the material allegations therein and asserted several affirmative defenses. George also asserted two counterclaims for an award of attorney's fees and a declaratory judgment "canceling and discharging" the mortgage as time-barred. On or about March 20, 2019, BOA replied to George's counterclaims and asserted affirmative defenses.

### *George's Motion to Consolidate*

George now moves, in Action No. 2, for an order, pursuant to CPLR 602 (a), consolidating Action Nos. 1 and 2 on the grounds that "[b]oth actions involve common questions of law and fact, the same parties and the same real property and both actions beg the question, who is the owner of [the Property]?" George's counsel also asserts that "[b]oth actions involve common witnesses and testimony" and "[t]he time of the witnesses, jurors, parties and the Court will be used more efficiently if the actions are consolidated." George argues that "[t]he potential for inconsistent results, the waste of scarce judicial resources and the added burden on the litigants that would result from failing to consolidate these actions all militate in favor of granting the instant motion."

U.S. Bank National Association, not in its individual capacity but solely as Trustee

for the RMAC Trust, Series 2016-CTT (US Bank), successor in interest to BOA<sup>1</sup>, in opposition, argues that George's motion to consolidate Action Nos. 1 and 2 should be denied because "[d]efendant's Quiet Title Action has no bearing on this foreclosure action or Defendant's default under the Note and Mortgage." US Bank notes that "[d]efendant's allegations in the Quiet Title Action relate solely to Defendant's allegations that the Premises was fraudulently conveyed to 1429 Pacific . . . *after the origination* of [BOA's] Mortgage" and "[BOA] is not even a named party in the Quiet Title Action as its interest i[s] unaffected by the allegations regarding the Deed to the Premises" (emphasis added).

US Bank further notes that "[a]ny discovery in both actions is further unrelated as discovery in the Foreclosure will center around Defendant's default and the alleged defenses contained in the defendant[']s Answer[ ], whereas discovery in the Quiet Title Action will center around Defendant's allegations of fraud against [1429] Pacific." Essentially, US Bank contends that there are no common questions of law or fact in Action Nos. 1 and 2 that warrant consolidation, pursuant to CPLR 602 (a), since "[the] Note and Mortgage were originated well prior to the alleged fraudulent Deed of the Premises to [1429] Pacific." US Bank further argues that BOA would be prejudiced by any delay caused by consolidation of Action Nos. 1 and 2 because "Defendant has been in default since 2008 and [BOA] wishes to proceed to discovery and with the Foreclosure

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<sup>1</sup>According to US Bank's counsel, the note and mortgage were ultimately transferred and assigned to US Bank on January 2, 2020.

action expeditiously[,]” since it “continues to advance carrying charges on the Premises  
...”

Defendant 1429 Pacific, in opposition, similarly argues that the foreclosure action and the quiet title action do not involve common questions of law or fact, since the foreclosure action (Action No. 2) “does not concern *who* is the owner of the mortgaged premises” and the quiet title action (Action No. 1) “does not concern the issue of whether George defaulted under the Note and Mortgage.” For this reason, 1429 Pacific contends that there is no danger of inconsistent determinations.

#### *Discussion*

“A motion for consolidation is addressed to the sound discretion of the court, and absent a showing of substantial prejudice by the party opposing the motion, consolidation is proper where there are common questions of law and fact” (*RCN Constr. Corp. v Fleet Bank, N.A.*, 34 AD3d 776, 777 [2006]). “A motion to consolidate should be granted absent a showing of prejudice to a substantial right by a party opposing the motion” (*Hanover Ins. Group v Mezansky*, 105 AD3d 1000, 1001 [2013]).

Here, consolidation is not warranted because George has not demonstrated that Action Nos. 1 and 2 involve common questions of law and fact. The validity of the November 21, 2013 deed to the Property at issue in Action No. 1 has absolutely nothing to do with George’s alleged payment default under the April 22, 2008 note and mortgage.

Consequently, George's motion to consolidate Action Nos. 1 and 2 is denied.

In addition, George has failed to provide any basis to extend the time within which to file a note of issue in Action No. 1. Accordingly, it is hereby

**ORDERED** that George's motion in Action No. 2 (in mot. seq. two) is denied in its entirety.

This constitutes the decision and order of the court.

E N T E R,

\_\_\_\_\_  
J. S. C.

Justice Lawrence Knipel