

Mahabir v Snyder Realty Group, Inc.
2021 NY Slip Op 31887(U)
June 2, 2021
Supreme Court, Kings County
Docket Number: 518053/2020
Judge: Francois A. Rivera
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 52 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 2nd day of June 2021

HONORABLE FRANCOIS A. RIVERA

-----X

ASHRAM MAHABIR,

Plaintiff

DECISION & ORDER

Index No. 518053/2020

-against-

THE SNYDER REALTY GROUP, INC.,

Defendant

DEUTSCHE BANK NATIONAL TRUST COMPANY,
as Trustee for Saxon Asset Securities Trust 2007-3,

Nominal Defendant

-----X

Recitation in accordance with CPLR 2219 of the papers considered on the notice of motion filed on January 28, 2021 under motion sequence one by the plaintiff Ashram Mahabir (hereinafter Mahabir), for an order: (1) pursuant to CPLR 3212 granting the plaintiff summary judgment against the defendant the Synder Realty Group, Inc, (hereinafter SRG), and (2) directing the Kings County Register to strike/vacate/discharge the July 2, 2009 Deed to SRG recorded under CRFN 2013000209856.

- Notice of Motion
- Affirmation in Support
- Affidavit in Support
- Exhibits 1-7
- SRG's cross motion papers also served as opposition to plaintiff's motion

Recitation in accordance with CPLR 2219 of the papers considered on the notice of cross motion filed on March 9, 2021 under motion sequence two by the defendant SRG for an order pursuant to CPLR 3211 (a) (5) dismissing the complaint of Mahabir on the basis that the action is time barred.

- SRG's Notice of Cross Motion
- Affirmation in Support
- Affidavit in Support
- Exhibits A-C
- Affidavit in Opposition to SRG's Cross Motion
- Affirmation in Opposition to Plaintiff's Motion
And in Further Support of SRG's Cross Motion
- Exhibit A-E
- Affidavit in Opposition to SRG's Cross Motion and in Reply To Plaintiff's
Motion
- Exhibits 1

BACKGROUND

On September 24, 2020, Mahabir commenced the instant action by filing a summons, verified complaint and notice of pendency with the Kings County Clerk's office (KCCO). On November 25, 2020, Mahabir filed a supplemental summons and amended verified complaint with the KCCO.

On January 21, 2021, SRG filed an answer with counterclaims with the KCCO. On January 25, 2021, Mahabir joined issue by filing a reply to SRG's counterclaims with the KCCO.

The amended verified complaint alleges seventy-eight allegations of fact in support of four denominated causes of action. The first cause of action seeks a judgment declaring that the July 2, 2009 deed transfer of the subject property to the defendant is void and rescinded. The second cause of action seeks to quiet title to the subject property pursuant to Article 15 of the RPAPL. The third cause of action is for unjust enrichment. The fourth cause of action is pursuant to RPAPL 265-a for home equity theft.

The amended verified complaint alleges the following salient facts. The action seeks to recover the Deed to a property known as and located at 860 Herkimer Street,

Brooklyn, NY 11233; Block 1710, Lot 31 (hereinafter the Subject Property) which was fraudulently obtained by SRG through a foreclosure rescue scam. SRG falsely represented to Mahabir that it would pursue a short sale on Mahabir's behalf to resolve the default of his mortgage if he conveyed the subject property to the SRG. Ultimately, SRG refused to deliver on its promise and representation and instead took title to the subject property. SRG did nothing about the note and mortgage which led to a foreclosure commenced against Mahabir under Index Number 31250/2008 and has progressed to a Judgment of Foreclosure and Sale. Mahabir no longer has title to the subject property and cannot not resolve the foreclosure or engage in loss mitigation.

SRG induced Mahabir to sign a Deed and related transfer documents transferring the subject property to SRG after falsely representing to the Mahabir that it would pursue a short sale on the plaintiff's behalf. SRG made such representations knowing that it intended to do nothing to satisfy the mortgage or relieve plaintiff from liability thereunder. Mahabir has remained fully liable on the mortgage and faces foreclosure and a deficiency judgment under Index Number 31250/2008, though Mahabir no longer holds title to the property. As a result, plaintiff is unable to seek loss mitigation to protect himself and his future financial credit. Plaintiff was caused to be divested of title of the subject premises for nominal consideration, while remaining fully liable on the mortgage debt and in the foreclosure action. Plaintiff claims entitlement to recovery of the Deed to be able to adequately pursue loss mitigation and protect himself from the crippling financial impact of the foreclosure that he was left exposed to after being induced to transfer his property for essentially no consideration.

LAW AND APPLICATION

It is well established that summary judgment may be granted only when it is clear that no triable issue of fact exists (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]). The burden is upon the moving party to make a prima facie showing that he or she is entitled to summary judgment as a matter of law by presenting evidence in admissible form demonstrating the absence of material facts (*Guiffirda v Citibank*, 100 NY2d 72 [2003]).

A failure to make that showing requires the denial of the summary judgment motion, regardless of the adequacy of the opposing papers (*Ayotte v Gervasio*, 81 NY2d 1062 [1993]). If a prima facie showing has been made, the burden shifts to the opposing party to produce evidentiary proof sufficient to establish the existence of material issues of fact (*Alvarez*, 68 NY2d at 324).

Pursuant to CPLR 3212 (b) a court will grant a motion for summary judgment upon a determination that the movant's papers justify holding, as a matter of law, that there is no defense to the cause of action or that the cause of action or defense has no merit. Further, all of the evidence must be viewed in the light most favorable to the opponent of the motion (*Marine Midland Bank v Dino & Artie's Automatic Transmission Co.*, 168 AD2d 610 [2nd Dept 1990]).

CPLR 3001 provides that the Supreme Court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed

(see *Peters v Smolian*, 154 AD3d 980, 983 [2nd Dept 2017], citing CPLR 3001). To constitute a justiciable controversy, there must be a real dispute between adverse parties, involving substantial legal interests for which a declaration of rights will have some practical effect (see *Cong. Machon Chana v Machon Chana Women's Inst., Inc.*, 162 AD3d 635 [2nd Dept 2018], quoting *Chanos v MADAC, LLC*, 74 AD3d 1007, 1008 [2nd Dept 2010]).

Mahabirs' testimonial evidence was limited solely to his affidavit. His affidavit contained many conclusory allegations of fact. The affidavit and other documentary submissions did not establish prima facie entitlement to judgment in any of the cause of actions asserted against the defendant. Accordingly, the motion is denied without regard to the sufficiency of the defendant's opposition papers (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

SRG's cross motion seeks an order dismissing Mahabir's complaint pursuant to CPLR 3211 (a) (5) on the basis that the causes of action contained therein are time barred. On a motion pursuant CPLR 3211 (a) (5) to dismiss a complaint as time-barred, the moving defendant must establish, prima facie, that the time in which to commence the action has expired (*Aurilia v Carbonara*, 185 AD3d 767 [2nd Dept 2020]). The statute of limitations for a claim or counterclaim begins to run when the claim accrues, and the period concludes when the claim is interposed (see CPLR 203 [a]); *Farro v Schochet*, 190 AD3d 698, 699 [2nd Dept 2021]).

In the case at bar, SRG presented no evidence establishing when the plaintiff's claim accrued on any of the causes of action the plaintiff asserted. SRG attempted to use

the date that the plaintiff transferred the deed to the subject property to it as the accrual date. However, plaintiff's complaint alleges that the fraud occurred not when it transferred the deed to SRG but rather when SRG reneged on its promises to assist with mortgage arrears. SRG offered no evidence establishing when plaintiff alleged that the promise was allegedly broken. Accordingly, SRG did not make a prima facie showing of entitlement to dismissal of the complaint as time barred.

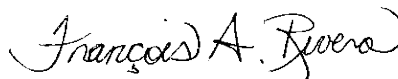
CONCLUSION

The motion of plaintiff Ashram Mahabir for an order pursuant to CPLR 3212 granting summary judgment against the defendant the Snyder Realty Group, Inc, and directing the Kings County Register to strike/vacate/discharge the July 2, 2009 Deed to Snyder Realty Group Inc. is denied.

The motion of Snyder Realty Group Inc, for an order pursuant to CPLR 3211 (a) (5) dismissing the complaint of Ashram Mahabir on the basis that the action is time barred is denied.

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.