

Alexander v B.N.C.M. Inc.

2022 NY Slip Op 32018(U)

June 21, 2022

Supreme Court, Kings County

Docket Number: Index No. 6513/2011

Judge: Francois A. Rivera

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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 21st day of June 2022

HONORABLE FRANCOIS A. RIVERA

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JONATHAN ALEXANDER,

Plaintiffs,

- against -

B.N.C.M. INC., WILMINGTON TRUST NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A., AS TRUSTEE FOR BNC MORTGAGE LOAN TRUST SERIES 2007-3, MORTGAGE PASS-THROUGH CERTIFICATIONS, SERIES 2007-3,

Defendant.

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ORDER

Index No.: 6513/2011

Cal. No. 5, MS. 4

Oral Argument: 6/2/2022

Recitation, as required by CPLR 2219(a), of the papers considered in review of this Motion:

<u>Papers</u>	<u>NYSCEF Dkt. Nos.</u>
Notice of Motion	3
Affirmation of Harry K. Tiwari dated February 8, 2022	15
Exhibits	16-30
Affidavit of Ronald E. Casperite, duly sworn on November 5, 2020	7
Exhibits	8-14
Memorandum of Law	4
Wilmington Trustee’s Statement of Undisputed Material Facts	5
Affirmation of Service	31

Upon the foregoing papers, defendant Wilmington Trust National Association, as successor trustee to Citibank, N.A., as trustee for BNC Mortgage Loan Trust Series 2007-3, Mortgage Pass-Through Certificates, Series 2007-3 (“Wilmington Trustee”) moves this Court for

an Order: (i) pursuant to CPLR 3215, granting Wilmington Trustee default judgment against plaintiff Jonathan Alexander (“Plaintiff”) on its counterclaim to cancel and expunge the Order recorded in the Rockland County Clerk’s Office on October 27, 2011 in Instrument No. 2012-00014739 (the “Satisfaction”) as *void ab initio*, pursuant to Real Property Law (“RPL”) § 329 and Article 15 of the New York Real Property Actions and Proceedings Law (“RPAPL”) and reinstate the mortgage dated April 19, 2007 and recorded in the Rockland County Clerk’s Office on April 30, 2007 in Instrument No. 2007-00021773 (the “Mortgage”), *nunc pro tunc*; (ii) pursuant to CPLR 3212, granting Wilmington Trustee summary judgment against Plaintiff and dismissing the Complaint; and (iii) granting Wilmington Trustee such other and further relief as may be just, equitable and proper (“Wilmington Trustee’s Motion”). (Dkt. Nos. 3-31).

Upon the foregoing cited papers, and after an on the record court appearance on June 2, 2022, the Decision/Order on this motion is as follows:

ORDERED, that Wilmington Trustee’s Motion for summary judgment and dismissal of the complaint is denied pursuant to CPLR 3212(a) for failure to join issue; and it is further

ORDERED, that Wilmington Trustee’s Motion for default judgment as to its counterclaim against Plaintiff is granted pursuant to CPLR 3215; and it is further

ORDERED, that Wilmington Trustee has established proof of service of its Answer with Counterclaim on Plaintiff pursuant to Justice Montelione’s Decision and Order which, in part, stated that “[Wilmington Trustee’s] proposed answer and counterclaim shall be deemed served within 20 days of service of a copy of this Order with notice of entry upon all parties appearing in this action,” dated February 3, 2021, and Wilmington Trustee having served notice of entry of Justice Montelione’s Decision and Order on March 3, 2021 (Dkt. No. 27) and Plaintiff having failed to file a reply to the counterclaim and his time to do so has expired; and it is further

ORDERED, that although Wilmington Trustee's Answer with Counterclaim is unverified, Wilmington Trustee has submitted the affidavit of Ronald E. Casperite, a senior loan analyst with PHH Mortgage Corporation, and has submitted a limited power of attorney to establish its role as servicing agent and attorney in fact for Wilmington Trustee, and Mr. Casperite's affidavit provides proof of the facts constituting its counterclaim against Plaintiff (Dkt. Nos. 7-8); and it is further

ORDERED, that the Order recorded in the Rockland County Clerk's Office on October 27, 2011 in Instrument No. 2012-00014739 (the "Erroneous Satisfaction") is *void ab initio*, pursuant to RPL § 329 and Article 15 of the RPAPL; and it is further

ORDERED, that the Rockland County Clerk is directed to cancel and expunge the Satisfaction from the land records; and it is further

ORDERED, that the Rockland County Clerk is directed to reinstate the mortgage executed by Tzirel Schoenwald, Leah Schoenwald, and Simon Schoenwald (collectively, the "Mortgagors"), in the amount of \$446,250.00, dated April 19, 2007 and recorded on April 30, 2007 in Instrument No. 2007-00021773 in the Rockland County Clerk's Office (the "Mortgage"), *nunc pro tunc*; and it is further

ORDERED, that the Rockland County Clerk is directed to reinstate the assignment of mortgage to Citibank National Association, as Trustee for Lehman Brothers – BNC Mortgage Loan Trust 2007-3 dated March 19, 2008, which was recorded in the Rockland County Clerk's Office on July 25, 2008 in Instrument Number 2008-00034407, *nunc pro tunc*; and it is further

ORDERED, that the Rockland County Clerk is directed to reinstate the loan modification agreement dated December 1, 2008, which was recorded in the Rockland County Clerk's Office on August 10, 2009 in Instrument Number 2009-00028147, *nunc pro tunc*; and it is further

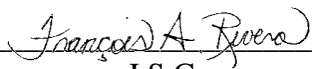
ORDERED, that the Rockland County Clerk is directed to reinstate all “related and supporting documents” referenced in the Erroneous Satisfaction, including the documents under reference numbers: 2008-00010171, Su-2008-002190, and 2009-00007734, *nunc pro tunc*; and it is further

ORDERED, that the Mortgage is a valid lien against the premises known as 13 Brockton Road, Spring Valley, New York 10977 (Section: 50.5 Block: 1 Lot: 42) (the “Property”) as of April 30, 2007; and it is further

ORDERED, that upon payment of all applicable recording fees, the Rockland County Clerk is directed to accept for recording a certified copy of this Decision and Order against the Property and indexed against the Mortgagors, if applicable, to reflect the relief granted herein and otherwise amend the real property records to show that Wilmington Trustee holds the Mortgage encumbering the Property.

This constitutes the Decision and Order of the Court.

ENTER:



J.S.C.