

Caputo v 6901 LLC

2023 NY Slip Op 33610(U)

September 22, 2023

Supreme Court, Kings County

Docket Number: Index No. 511156/2023

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF KINGS ; CIVIL TERM: PART 16

-----x
 ANDREA CAPUTO,

Plaintiff,

Decision and order

- against -

Index No. 511156/2023

6901 LLC

Defendant,

September 22, 2023

-----x
 PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #2

The plaintiff has moved seeking summary judgement. it is entitled to attorney's fees pursuant to the mortgage. The defendant opposes the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

According to the complaint the plaintiff is the mortgagee and holder of mortgage in the amount of \$900,500. The mortgage was actually consolidated from two prior mortgages and was recorded on June 10, 2009. In 2017 a lawsuit was filed against Caputo alleging that pursuant to a default of the mortgage, which occurred in 2011, Caputo was entitled to collect rents via an assignment from the mortgagor but was also required to pay for all necessary charges and expenses of the property. The lawsuit included nine causes of action essentially alleging that Caputo collected the rents but failed to satisfy her obligations to pay all necessary expenses. The seventh cause of action alleged that due to Caputo's conduct the mortgage should be cancelled and "Caputo is precluded from obtaining any remedy concerning this

Consolidated Mortgage Note" (see, Complaint ¶125 to 6901 LLC v. Caputo, Index Number 507756/2017 [NYSCEF Doc. No. 2]). The eight cause of action asserted the entire mortgage was a 'sham' since it was not supported by any consideration and could not support any foreclosure initiated by Caputo at all.

That lawsuit was dismissed in an order dated November 18, 2019 and the decision was appealed. The parties await an appellate determination. In any event, pursuant to Article 12 of the mortgage, Caputo seeks the reimbursement of legal fees. As noted, the defendant opposes the motion.

Conclusions of Law

Where the material facts at issue in a case are in dispute summary judgment cannot be granted (Zuckerman v. City of New York, 49 NYS2d 557, 427 NYS2d 595 [1980]). Generally, it is for the jury, the trier of fact to determine the legal cause of any injury, however, where only one conclusion may be drawn from the facts then the question of legal cause may be decided by the trial court as a matter of law (Marino v. Jamison, 189 AD3d 1021, 136 NYS3d 324 [2d Dept., 2021]).

Article 12 of the consolidated mortgage states that "if any action or proceeding be commenced (except an action to foreclose said mortgage of to collect the debt secured thereby), to which action or proceeding the party of the first part is made a party,

or in which it becomes necessary to defend or uphold the lien of said mortgage, all sums paid by the party of the first part for the expense of any litigation to prosecute or defend the rights and lien created by said mortgage (including reasonable counsel fees), shall be paid by the party of the second part..." (see, Consolidated Mortgage, ¶12 [NYSCEF Doc. No. 2]). Thus, the above paragraph requires the defendant to pay all fees in two scenarios, the first is any action where Caputo is a party, regardless of the nature of that lawsuit, and second in any action, even if Caputo is not a party, where it is necessary to defend and uphold the lien. The clause first states that in "any action" where Caputo is a party then Caputo is entitled to fees. Next, the clause states "or in which it becomes necessary to defend or uphold the lien of said mortgage" (id). The disjunctive 'or' serves to separate and describe another instance where Caputo would be entitled to legal fees. There is no reasonable way to read that paragraph as encompassing one scenario, namely only actions seeking to uphold the lien. If that were true then the word 'or' serves no purpose and really makes no sense. Therefore, the nature of the 2017 action is really not relevant since an action was filed in which Caputo was a party. The fact the majority of that action concerned money damages does not mean the clause is inapplicable.

Therefore, there are no questions of fact that Caputo may be

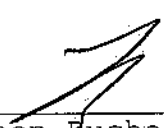
reimbursed for "all sums paid" by her in the 2017 action. Thus, the motion seeking summary judgement is granted.

However, the precise amount that Caputo is owed is certainly subject to review. Therefore, the parties will be notified of a hearing before a judicial hearing officer where Caputo may present evidence demonstrating the actual sums she paid for "reasonable attorney's fees" and other expenses if any. The defendant may offer evidence of any representation pursuant to any insurance policy or other reasons Caputo did not actually pay for such legal services. The court will review the conclusions of the hearing officer.

So ordered.

ENTER:

DATED: September 22, 2023
Brooklyn NY



Hon. Leon Ruchelsman
JSC