

Federal Home Loan Mtge. Corp v Roy

2024 NY Slip Op 33882(U)

October 22, 2024

Supreme Court, Onondaga County

Docket Number: Index No. 002827/2024

Judge: Joseph E. Lamendola

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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.

STATE OF NEW YORK
SUPREME COURT ONONDAGA COUNTY

**FEDERAL HOME LOAN MORTGAGE CORP, AS
TRUSTEE FOR TH EBENEFIT OF THE FREDDIE
MAC SEASONED CREDIT RISK TRANSFER
TRUST, SERIES 2020-3,**

DECISION

(Summary Judgment)

Index No: 002827/2024

Plaintiff,

v.

**PREYAS ROY AS EXECUTOR AND HEIR
AND DISTRIBUTE OF THE ESTATE OF
GEETA ROY; et al.,**

Defendants.

Before: Hon. Joseph E. Lamendola, JSC

Plaintiff commenced the instant foreclosure action with the filing of a verified complaint on March 15, 2024. A verified answer was filed on behalf of Defendant Preyas Roy as Executor, Heir, and Distributee of the Estate of Geeta Roy, on April 22, 2024. On April 23, 2024, Defendant New York State Department of Taxation and Finance entered a Notice of Appearance waiving service of all papers/notices except for discontinuance, judgment of foreclosure and sale, notice of sale, referees report of sale, and all surplus monies proceedings. The remaining Defendants have defaulted in appearance.

By Notice of Motion dated August 13, 2024, Plaintiff sought summary judgment and dismissal of all affirmative defenses set forth by the Answering Defendant Preyas Roy, as well as default judgment against the non-appearing Defendants, *inter alia*. On September 27, 2024, Defendant Preyas Roy (hereinafter "Defendant") filed in opposition to Plaintiff's motion for summary judgment and the dismissal of Defendant's affirmative defense arising under RPAPL §1304.

To prevail on a motion for summary judgment, Plaintiff must set forth a *prima facie* showing of entitlement to such relief by producing the mortgage, the unpaid promissory note, and evidence of the default in repayment of the loan. *Bank of New York Mellon v. Slavin*, 156 AD3d 1073, 1076 [3rd Dept., 2017] In support of its motion, Plaintiff proffered, *inter alia*, a copy of the note and mortgage, as well as proof of default in repayment of the mortgage. Defendant does not dispute this showing in the opposition papers.

The sole issue before the Court is whether Plaintiff failed to comply with the requirements of RPAPL §1304 as a condition precedent to commencement of the instant residential foreclosure action. RPAPL §1304 requires that the lender, assignee, or mortgage loan servicer provide *the borrower* at least 90 days' notice of his default. The 90-day notice must further advise the borrower, *inter alia*, of the number of days the loan has been in default, the monetary amount of the default; and certain resources available to the borrower to aid in curing the default and avoiding foreclosure.

Defendant argues that as executor of the Estate of Geeta Roy, they step into the decedent's shoes for the purpose of pursuing the decedent's rights and interests with respect to her real property. (*citing Russo v. Rozenholc*, 130 AD3d 492, 296 [1st Dept., 2015] (allowing executor to assert breach of contract claim arising from decedent's contract with his tenants)) Defendant argues that this principal should extend the RPAPL §1304 notice requirement to include not just the borrower, but the borrower's executor as well. However, as Defendant concedes, this argument has already been considered and rejected by the Appellate Division, Second Department which held:

“...the defendant [executor] was not a “borrower” for purposes of RPAPL 1304. The defendant did not sign the subject home equity line mortgage,

the home equity line agreement, or the amendments to those agreements, and is not named a “borrower” on the mortgage instrument. The decedent is the sole signatory on those documents. Accordingly...RPAPL 1304 is inapplicable to the instant case.”

HSBC Bank USA v. Shah, 185 AD3d 794, 796 [2nd Dept., 2020]

The Third Department has also considered and rejected this argument. *Federal Natl. Mtg Assn v. Johnson*, 177 AD3d 1149 [3rd Dept, 2019] (only the individual borrower listed on the documents is a borrower entitled to RPAPL 1304 notice).

Defendant asks this court to ignore the Appellate Division precedents as “the issue of whether an estate’s executor is entitled to RPAPL §1304 notice has yet to be broached in the Fourth Department.” (NYSCEF Doc. #48, pg. 4) Defendant’s request ignores that this court is bound by the doctrine of *stare decisis* which requires the court to follow precedents set by the Appellate Divisions of other departments until the Court of Appeal or the Fourth Department issues a decision to the contrary. See *Mountain View Coach Lines v. Storms*, 102 AD3d 663, 664 [2nd Dept., 1984]

The Court would additionally note that the approach taken by the Courts in *Shah* and *Johnson* are consistent with the plain language of RPAPL §1304 which specifies that the 90-day notice is to be provided to the *borrower*. There is no reference to providing notice to any other party on behalf of the borrower or in the borrower’s stead. “As the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof.” *Majewski v. Broadalbin-Perth Cent. School Dist.*, 91 NY2d 577, 583 [1998] Where the language of a statute is “plain and unambiguous, there is neither need nor warrant to look elsewhere for its meaning.” *Meltzer v. Koenigsberg*, 203 NY 523, 525 [1951] If the legislature had meant for §1304 Notice to be provided to borrower(s)

and anyone in their stead, such as an executor or administrator, such expansive language would have been utilized. It is entirely foreseeable and common for foreclosure actions to be brought as the result of a default in payment following the death of the borrower.

Accordingly, as the Plaintiff was not required to provide RPAPL §1304 notice to the Defendant executor, and the Plaintiff having made a *prima facie* showing of its entitlement to summary judgment, and the Defendant having failed to raise a triable issue of fact or law in opposition, Plaintiff's motion for summary judgment as against the answering Defendant must be granted.

This is the decision of the Court.

DATED: October ²², 2024
Syracuse, New York



HON. JOSEPH E. LAMENDOLA, JSC

PAPERS CONSIDERED:

1. Notice of Motion, filed August 13, 2024 (NYSCEF #34/44)
2. Affirmation in Support together with Exhibits A through C, filed August 13, 2024 (NYSCEF #35-38)
3. CPLR 3408 Affirmation, filed August 13, 2024 (NYSCEF #39)
4. Statement of Material Facts, filed August 13, 2024 (NYSCEF #40)
5. Memorandum of Law, filed August 13, 2024 (NYSCEF #41)
6. Affirmation in Opposition, filed September 27, 2024 (NYSCEF #47)
7. Memorandum of Law in Opposition, filed September 27, 2024 (NYSCEF #48)
8. Defendant's Response to Statement of Material Facts, filed September 27, 2024 (NYSCEF #49)
9. Affirmation in Reply, filed September 27, 2024 (NYSCEF #50)