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Mortgage Electronic Registration Systems, Inc. v. Joseph Ventura et al.

CV054003168S

**SUPERIOR COURT OF CONNECTICUT, JUDICIAL DISTRICT OF ANSONIA -
MILFORD, AT MILFORD**

2006 Conn. Super. LEXIS 1154

April 20, 2006, Decided

April 20, 2006, Filed

NOTICE: [*1] THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff lender moved for summary judgment against defendants, a husband and a wife, as to liability only.

OVERVIEW: A careful legal common sense reading of the lender's complaint alleged that the husband was indebted to the lender. The court found that because the husband and quit claimed his interest in the property to the wife, she was the owner of the equity of redemption. Consequently, she was properly named as a party defendant. The lender's allegations were not questions of fact and/or did not make legal sense as written. However, there was no question that the named lender was the correct party to bring the action. Consequently, the lender was entitled to summary judgment as to the husband's and the wife's liability only.

OUTCOME: The motion for summary judgment was granted as to liability only.

CORE TERMS: mortgage, summary judgment, question of fact, equity of redemption, endorsement in blank, foreclosure, incorrect, gibberish, genuine, bearer

LexisNexis(R) Headnotes

Real Property Law > Financing > Mortgages & Other Security Instruments > Foreclosures > General Overview
[HN1] A foreclosure of a mortgage is really the foreclosure of one's equity of redemption.

JUDGES: John W. Moran, Judge Trial Referee.

OPINION BY: John W. Moran

OPINION

MEMORANDUM OF DECISION RE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AS TO DEFENDANTS JOSEPH VENTURA AND TINA GALKA-VENTURA DATED JULY 20, 2005 (# 116)

The plaintiff seeks summary judgment against defendants Joseph Ventura and Tina Galka-Ventura (hereinafter "defendants") as to liability only. The defendants object to the same.

In its "motion" in opposition to plaintiff's motion for summary judgment,¹ the defendants present several grounds in opposition.

¹ The use of "motion" is incorrect. See Conn. Practice Book § 11-2. The "motion" should be correctly entitled "Defendants' Objection to Plaintiff's Motion for Summary Judgment." Further, the defendants' order page is incorrect as to a "motion" as motions are granted or denied. However, use of sustained/overruled applies to an objection. There should be correct consistency.

[*2] The defendants firstly claim "there is a question of fact as to whether the Defendant Tina Galka-Ventura is liable to **MERS**." This is NOT a question of fact. A careful legal common sense reading of the plaintiff's complaint alleges Joseph Ventura is indebted to the plaintiff. The plaintiff properly alleges that the defendant Joseph Ventura quitclaimed his interest to Tina Galka-Ventura. She is the owner of the equity of redemption.

[HN1] A foreclosure of a mortgage is really the foreclosure of one's equity of redemption. The defendant Tina Galka-Ventura is properly named as a defendant because the plaintiff seeks to foreclose her equity of redemption and further obtain legal possession of the mortgaged real estate.

The defendants secondly claim there is a genuine issue of material fact as to whether a debt is owed to the plaintiff. This is NOT a question of fact.

The affidavit of Kim Blanc clearly states that Chase Home Finance, LLC services the note and mortgage in this case. The note is bearer paper, by virtue of the endorsement, in blank. The complaint in this case lists the plaintiff as "Mortgage Electronic Registration Systems, Inc.--c/o Chase Home Finance, LLC."

The obvious plain [*3] meaning of this is that Chase Home Finance, LLC services the note and mortgage in this case. In our current times where many mortgages are bundled and bought and sought in the mortgage investment world, the servicing of notes and mortgages by third-party companies is the rule rather than the exception.

The defendants thirdly claim that there is a material question of fact as to what entity is the holder of the note securing the aforementioned property in Oxford, Connecticut. This claim as written does not make legal sense. Notes do not secure property. Query, is the claim merely limited to the owner of the note? If so, the note due to the endorsement in blank is bearer paper. Further, the mortgage first page recites that "**MERS**" is Mortgage Electronic Registration Systems, Inc. **MERS** is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. Thus, there is no question that the named plaintiff is the correct party to bring this action.

As regards the issue of supplemental affidavits claimed by the defendants, it is simply stated that this is a non-issue. The court merely permitted the plaintiff at its discretion to resubmit an affidavit [*4] that erroneously contained gibberish. The original affidavit was legally valid and comprehensible. The additional affidavit was identical in substance to the affidavit containing gibberish and neither added to or detracted in substance.

This court concludes that there are no genuine issues of fact as to liability herein as to the defendants Joseph Ventura and Tina Galka-Ventura. The plaintiff's Motion for Summary Judgment as to defendants Joseph Ventura and Tina Galka-Ventura is hereby granted limited to liability only.

The Court

John W. Moran, Judge Trial Referee