SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT

Deutsche Bank National Trust Company v. Neuman

Deutsche Bank Natl. Trust Co. v. Neuman, 2023 NY Slip Op 01662 (App. Div. 2023) · No. 2020-08111 · Decided March 29, 2023

SUMMARY

The Appellate Division, Second Department affirmed the denial of Leah Luria's motion to vacate foreclosure-related orders and a notice of sale and to dismiss the foreclosure complaint as time-barred. The court held that the circumstances did not constitute unique or unusual grounds warranting exercise of the court's inherent power to vacate the orders in the interests of substantial justice.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Francesca E. Connolly, J.P.; Linda Christopher, J.; William G. Ford, J.; Barry E. Warhit, J.
JURISDICTION	New York
DECIDED	March 29, 2023
DOCKET	2020-08111
DISPOSITION	affirmed
PROCEDURAL POSTURE	Leah Luria appealed from an order of the Supreme Court, Rockland County, denying her motion under CPLR 5015(a) to vacate prior foreclosure orders and a notice of sale and, under CPLR 3211(a)(5), to dismiss the foreclosure complaint against her as time-barred.
STANDARD OF REVIEW	A court's discretionary authority to vacate its own judgment in the interests of substantial justice is limited and is reviewed under the requirement that unique or unusual circumstances warrant such relief.
PRECEDENTIAL VALUE	Published opinion; precedential New York Appellate Division decision
PARTIES	Leah Luria v. Deutsche Bank National Trust Company

TOPICS

foreclosure · motions to dismiss · civil procedure · appellate procedure · remedies

PRACTICE AREAS

foreclosure · civil procedure · appellate procedure · remedies

QUESTIONS PRESENTED

1. Whether the Supreme Court properly denied Luria's motion under CPLR 5015(a) to vacate the order of reference, the order and judgment of foreclosure and sale, and the notice of sale.
2. Whether Luria was entitled to dismissal of the foreclosure complaint against her under CPLR 3211(a)(5) as time-barred.

HOLDINGS

1. The Supreme Court properly denied Luria's motion to vacate the foreclosure orders and notice of sale because the circumstances were not unique or unusual and did not warrant relief under CPLR 5015(a) or the court's inherent power.
2. The court declined to grant dismissal of the complaint as time-barred because the denial of Luria's requested relief from the foreclosure orders resolved the motion against her, making the remaining contentions unnecessary to address.

KEY QUOTATIONS

> *"A court's inherent power to exercise control over its judgments is not plenary, and should be resorted to only to relieve a party from judgments taken through [fraud], mistake, inadvertence, surprise or excusable neglect"* (at 2)

> *"A court should only exercise its discretionary authority to vacate a judgment in the interests of substantial justice where "unique or unusual circumstances . . . warrant such action""* (at 2)

FACTUAL BACKGROUND

In January 2004, Joseph Neuman executed a $460,000 promissory note and mortgage encumbering property in Monsey. He defaulted on the mortgage obligations in January 2009, and Deutsche Bank commenced foreclosure proceedings in July 2015. Leah Luria was served with the summons and complaint but did not appear or answer. After foreclosure orders were entered and a sale was scheduled, Luria sought to vacate the orders and dismiss the complaint as time-barred.

PROCEDURAL HISTORY

The plaintiff commenced a mortgage foreclosure action in July 2015 after Joseph Neuman defaulted in January 2009. Luria was served but failed to appear or answer. The Supreme Court granted the plaintiff's motion for, among other relief, a default judgment against the remaining defendants and issued an order of reference in December 2016, followed by an order and judgment of foreclosure and sale in July 2017. Luria later moved to vacate those orders and dismiss the complaint as time-barred; the Supreme Court denied the motion, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Woodson v Mendon Leasing Corp., 100 NY2d 62, 68
- Nash v Port Auth. of N.Y. & N.J., 22 NY3d 220, 225-226
- Aurora Loan Servs., LLC v Dorfman, 170 AD3d 786, 788
- Matter of McKenna v County of Nassau, Off. of County Attorney, 61 NY2d 739, 742
- LaSalle Bank, N.A. v Delice, 175 AD3d 1283
- Cox v Marshall, 161 AD3d 1140, 1142
- MTGLQ Invs., L.P. v Balan, 203 AD3d 717, 719

OPINION

PER CURIAM.

Deutsche Bank Natl. Trust Co. v Neuman (2023 NY Slip Op 01662) Deutsche Bank Natl. Trust Co. v Neuman 2023 NY Slip Op 01662 Decided on March 29, 2023 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on March 29, 2023 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department FRANCESCA E. CONNOLLY, J.P. LINDA CHRISTOPHER WILLIAM G. FORD BARRY E. WARHIT, JJ. 2020-08111 (Index No. 32882/15) [*1]Deutsche Bank National Trust Company, etc., respondent, vJoseph Neuman, et al., defendants, Leah Luria, appellant. Jeremy Rosenberg, Chestnut Ridge, NY, for appellant.

Houser LLP, New York, NY (David S. Yohay and Kathleen M. Massimo of counsel), for respondent. DECISION & ORDER In an action to foreclose a mortgage, the defendant Leah Luria appeals from an order of the Supreme Court, Rockland County (Thomas P. Zugibe, J.), dated September 22, 2020.

The order denied that defendant's motion pursuant to CPLR 5015(a) to vacate an order of the same court (Thomas E. Walsh II, J.) dated December 5, 2016, an order and judgment of foreclosure and sale (one paper) of the same court dated July 3, 2017, and a notice of sale, and thereupon pursuant to CPLR 3211(a)(5) to dismiss the complaint insofar as asserted against her as time-barred.

ORDERED that the order dated September 22, 2020, is affirmed, with costs. In January 2004, the defendant Joseph Neuman executed a note in favor of First Financial Equities, Inc. (hereinafter First Financial), promising to repay a loan in the principal sum of $460,000.

As security for the note, Neuman executed a mortgage encumbering certain real property located in Monsey. By assignment of mortgage, Mortgage Electronic Registration Systems, Inc., as nominee for First Financial, assigned the mortgage to the plaintiff.

In January 2009, Neuman defaulted on his mortgage obligations. In July 2015, the plaintiff commenced the instant action to foreclose the mortgage against Neuman, among others. It is undisputed that the defendant Leah Luria (hereinafter the defendant) was served with a copy of the summons and complaint, and she failed to appear or answer the complaint. Subsequently, the plaintiff moved, inter alia, for summary judgment on the complaint insofar as asserted against Neuman, to strike Neuman's answer, for leave to enter a default judgment against the remaining defendants, for an order of reference, and for leave to amend the caption to substitute the defendant in place of "John Doe #1."

By order dated December 5, 2016, the Supreme Court granted the plaintiff's motion and appointed a referee to compute the amount due to the plaintiff. The Supreme Court issued an order and judgment of foreclosure and sale dated July 3, 2017. A foreclosure sale was scheduled to be held on October 22, 2019, but the defendant moved by order to show cause dated October 18, 2019, pursuant to CPLR 5015(a) to vacate the order dated December 5, 2016, the order and judgment of foreclosure and sale, and the notice of sale, and [*2]thereupon pursuant to CPLR 3211(a)(5) to dismiss the complaint insofar as asserted against her as time-barred.

By order dated September 22, 2020, the court denied the defendant's motion. The defendant appeals. The Supreme Court properly denied those branches of the defendant's motion which were to vacate the order dated December 5, 2016, the order and judgment of foreclosure and sale, and the notice of sale. CPLR 5015(a) provides that a court "which rendered a judgment or order may relieve a party from it upon such terms as may be just."

In addition to the specific grounds set forth in CPLR 5015(a), a court may, in its discretion, vacate its own judgment "for sufficient reason and in the interests of substantial justice" (Woodson v Mendon Leasing Corp., 100 NY2d 62, 68; see Nash v Port Auth. of N.Y. & N.J., 22 NY3d 220, 225-226; Aurora Loan Servs., LLC v Dorfman, 170 AD3d 786, 788).

However, "[a] court's inherent power to exercise control over its judgments is not plenary, and should be resorted to only to relieve a party from judgments taken through [fraud], mistake, inadvertence, surprise or excusable neglect" (Matter of McKenna v County of Nassau, Off. of County Attorney, 61 NY2d 739, 742 [internal quotation marks omitted]; see LaSalle Bank, N.A. v Delice, 175 AD3d 1283).

A court should only exercise its discretionary authority to vacate a judgment in the interests of substantial justice where "unique or unusual circumstances... warrant such action" (Cox v Marshall, 161 AD3d 1140, 1142 [internal quotation marks omitted]; see MTGLQ Invs., L.P. v Balan, 203 AD3d 717, 719).

Here, "the circumstances presented were not unique or unusual and did not warrant the invocation of a court's inherent power to vacate an order in the interests of substantial justice" (Cox v Marshall, 161 AD3d at 1142).

In light of the foregoing, the parties' remaining contentions need not be addressed. CONNOLLY, J.P., CHRISTOPHER, FORD and WARHIT, JJ., concur. ENTER: Maria T. Fasulo Clerk of the Court