Four RH Corp. v. R&N Realty Holding, Inc.

Four RH Corp., 2026 NY Slip Op 02105 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2026) · No. 2021-01521, 2021-01522 · Decided April 8, 2026

SUMMARY

The Appellate Division, Second Department, reversed an order and judgment granting Bank of America, N.A. priority over the plaintiff's mortgage in a foreclosure action. The court held that evidence of a $22,000 payment did not unequivocally establish an oral subordination agreement under the part-performance exception to the Statute of Frauds. The complaint was reinstated against the defendant, and the defendant's equitable-subrogation counterclaim was reinstated for further proceedings.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Betsy Barros, J.P.; Paul Wooten, J.; Laurence L. Love, J.; Susan Quirk, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	April 8, 2026
DOCKET	2021-01521, 2021-01522
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	In a mortgage-foreclosure action, the plaintiff appealed from an order and an order and judgment entered after a nonjury trial. The lower court confirmed a referee's report, dismissed the complaint against Bank of America, N.A., and declared Bank of America's mortgage superior to the plaintiff's mortgage.
STANDARD OF REVIEW	The court reviewed the order and judgment on the law and the facts. It also reviewed issues raised on the appeal from the order pursuant to CPLR 5501(a)(1).
PRECEDENTIAL VALUE	Published New York Appellate Division decision

PARTIES	Four RH Corp. v. Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP

TOPICS

foreclosure · mortgages · statute of frauds · appellate procedure · equitable relief

PRACTICE AREAS

real estate · mortgage foreclosure · contracts · civil procedure · equitable remedies

QUESTIONS PRESENTED

1. Whether the appeal from the prior order had to be dismissed after entry of the order and judgment.
2. Whether the $22,000 payment constituted part performance unequivocally referable to an alleged oral agreement subordinating Four RH's mortgage to Bank of America's mortgage.
3. Whether the lower court properly dismissed Four RH's foreclosure complaint against Bank of America and declared Bank of America's mortgage superior.
4. Whether Bank of America's equitable-subrogation counterclaim should remain dismissed as academic after reversal of the mortgage-priority determination.

HOLDINGS

1. The appeal from the order must be dismissed because the right of direct appeal from that order terminated upon entry of the order and judgment, although the issues raised on the order appeal were reviewable on the appeal from the order and judgment.
2. The $22,000 payment was not unequivocally referable to an alleged oral agreement to subordinate Four RH's mortgage, so the part-performance exception to the Statute of Frauds could not support enforcement of the alleged agreement.
3. The lower court erred in confirming the referee's report, granting summary judgment declaring Bank of America's mortgage superior, and dismissing the complaint against Bank of America.
4. Bank of America's alternative equitable-subrogation counterclaim had to be reinstated and considered on remand because reversal of the mortgage-priority determination made its dismissal as academic improper.

KEY QUOTATIONS

> *“"Unequivocally referable" conduct is conduct which is inconsistent with any other explanation”* (at 2)

> *“It is insufficient that the oral agreement gives significance to plaintiff's actions. Rather, the actions alone must be unintelligible or at least extraordinary, explainable only with reference to the oral agreement”* (at 2)

FACTUAL BACKGROUND

R&N Realty Holding, Inc. acquired the subject property and executed a first mortgage to Greenpoint Mortgage Funding, followed by a second mortgage to Four RH Corp. In 2009, the Greenpoint mortgage was paid from proceeds of a new mortgage ultimately assigned to Bank of America, which would otherwise have left Four RH's mortgage in first position. Bank of America claimed that Four RH agreed to subordinate its mortgage in exchange for a $22,000 payment, but the evidence also supported explanations that the payment was for interest or a short payoff. Four RH's alleged subordination agreement was not in writing and was not pleaded by Bank of America.

PROCEDURAL HISTORY

Four RH Corp. commenced the foreclosure action in 2010. Bank of America, successor to BAC Home Loans Servicing, asserted counterclaims seeking a declaration of mortgage priority or, alternatively, equitable subrogation. After a nonjury trial, a court attorney referee recommended dismissal of the complaint against Bank of America and a declaration that Bank of America's mortgage had priority based on an alleged oral subordination agreement. Supreme Court, Queens County, adopted the recommendation and effectively dismissed the equitable-subrogation counterclaim as academic. The Appellate Division dismissed the appeal from the order, reversed the order and judgment insofar as appealed from, reinstated the complaint and equitable-subrogation counterclaim, and remitted for further proceedings.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

Remand to the Supreme Court, Queens County, for further proceedings consistent with the decision, including consideration of Bank of America's reinstated equitable-subrogation counterclaim.

CASES CITED

- Matter of Aho, 39 NY2d 241, 248
- Toobian v Golzad, 193 AD3d 778, 780
- Korman v Corbett, 183 AD3d 608, 610
- Messner Vetere Berger McNamee Schmetterer Euro RSCG v Aegis Group, 93 NY2d 229, 235
- Barretti v Detore, 95 AD3d 803, 806
- Gendler v Guendler, 174 AD3d 507, 509
- Alayoff v Alayoff, 112 AD3d 564, 566

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