UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Gustavia Home, LLC v. Rutty

No. 18-1771 (L); 18-1772 (Con), United States Court of Appeals for the Second Circuit (September 16, 2019)

SUMMARY

In a foreclosure action, the Second Circuit held that a plaintiff establishes standing by demonstrating it held the promissory note prior to commencing the action, and a bankruptcy court order authorizing the transfer of the note conclusively addresses challenges based on the lender's bankruptcy. Physical possession of a note endorsed in blank is sufficient to enforce it, without needing to prove where the note was stored between transfer and possession. The court affirmed summary judgment for the plaintiff, applying New York law requiring proof of the mortgage, note, and default to establish a prima facie case.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Richard C. Wesley; Denny Chin; Richard J. Sullivan
JURISDICTION	Federal
DECIDED	September 16, 2019
DOCKET	18-1771 (L); 18-1772 (Con)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment of the United States District Court for the Eastern District of New York (Cogan, J.) granting summary judgment in favor of plaintiff-appellee and ordering foreclosure.
STANDARD OF REVIEW	De novo review of summary judgment.
PRECEDENTIAL VALUE	Unpublished
PARTIES	Robert R. Rutty v. Gustavia Home, LLC

TOPICS

foreclosure | summary judgment | standing | mortgages | bankruptcy

PRACTICE AREAS

Foreclosure | Real Estate | Mortgage | Bankruptcy | Appellate Procedure

QUESTIONS PRESENTED

1. Whether the district court erred in granting summary judgment in favor of Gustavia in the foreclosure action, specifically regarding Gustavia's standing to foreclose given the bankruptcy of the original lender.
2. Whether the district court erred in denying Rutty's motion to cancel and expunge the deeds.

HOLDINGS

1. Gustavia established its prima facie entitlement to summary judgment by producing the mortgage, note, and evidence of default, and by demonstrating it had possession of the note prior to commencing the action. The bankruptcy court order authorizing the transfer conclusively addressed the standing issue. The burden shifted to Rutty, who failed to raise a genuine issue of material fact.
2. Rutty waived any challenge to the order denying his motion to cancel and expunge deeds by failing to raise any argument in his appellate brief.

KEY QUOTATIONS

> *"Summary judgment is proper only when, construing the evidence in the light most favorable to the non-movant, 'there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'"* (at 4)

> *"A plaintiff establishes its standing in a mortgage foreclosure action by demonstrating that, when the action was commenced, it was either the holder or assignee of the underlying note."* (at 5)

> *"There is simply no requirement that an entity in possession of a negotiable instrument that has been endorsed in blank must establish how it came into possession of the instrument in order to be able to enforce it."* (at 6)

FACTUAL BACKGROUND

In 2006, Rutty obtained a $134,000 loan from People's Choice Home Loan, Inc. on a property in New York City. He executed a promissory note and a mortgage granted to Mortgage Electronic Registration Systems Inc. (MERS) as nominee for People's Choice. People's Choice filed for bankruptcy in 2007 and was dissolved in 2008. Gustavia was assigned the mortgage in March 2016 and the note was transferred simultaneously. After Rutty failed to pay, Gustavia brought this diversity action to foreclose.

PROCEDURAL HISTORY

The district court granted summary judgment in favor of Gustavia in a foreclosure action. Rutty appealed, arguing lack of standing due to the bankruptcy of the original lender. The Second Circuit vacated and remanded for further proceedings. On remand, Gustavia produced a bankruptcy court order authorizing the transfer of the note. The district court again granted summary judgment. Rutty appealed again.

DISPOSITION

affirmed

CASES CITED

- Garcia v. Hartford Police Dep't, 706 F.3d 120, 126-27 (2d Cir. 2013)
- Doninger v. Niehoff, 642 F.3d 334, 344 (2d Cir. 2011)
- Wells Fargo Bank, N.A. v. Walker, 141 A.D.3d 986, 987 (3d Dep't 2016)
- R.B. Ventures, Ltd. v. Shane, 112 F.3d 54, 59 n.2 (2d Cir. 1997)
- JPMorgan Chase Nat'l Ass'n v. Weinberger, 142 A.D.3d 643, 644 (2d Dep't 2016)
- Aurora Loan Servs., LLC v. Taylor, 25 N.Y.3d 355, 361-62 (2015)
- Capstone Bus. Credit, LLC v. Imperia Family Realty, LLC, 70 A.D.3d 882, 883 (2d Dep't 2010)
- U.S. Bank, N.A. v. Collymore, 68 A.D.3d 752, 754 (2d Dep't 2007)
- Moates v. Barkley, 147 F.3d 207, 209 (2d Cir. 1998)
- Gustavia Home, LLC v. Rutty, 720 F. App'x 27, 29 (2d Cir. 2017)