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

HSBC Bank USA, N.A. v. Sene

2023 NY Slip Op 04757 (N.Y. Ct. App. 2023) · No. 2020-09133 · Decided September 27, 2023

SUMMARY

The Appellate Division, Second Department, modified and otherwise affirmed an order in a mortgage foreclosure action. The court held that HSBC failed to establish prima facie standing to foreclose and failed to demonstrate compliance with applicable notice requirements, but established that most of the defendant's affirmative defenses and counterclaims were waived, meritless, or conclusory.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Lara J. Genovesi, J.; William G. Ford, J.; Janice A. Taylor, J.
JURISDICTION	New York
DECIDED	September 27, 2023
DOCKET	2020-09133
DISPOSITION	modified_and_affirmed
PROCEDURAL POSTURE	Plaintiff appealed from an order denying its motion for summary judgment in a mortgage foreclosure action, dismissal of the defendant's affirmative defenses and counterclaims, striking of the answer, and an order of reference.
STANDARD OF REVIEW	On a motion for summary judgment, the movant must establish prima facie entitlement to judgment as a matter of law; where standing is placed in issue in a foreclosure action, the plaintiff must establish standing as part of that prima facie showing. If the movant fails to meet that burden, the motion must be denied regardless of the sufficiency of the opposition.
PRECEDENTIAL VALUE	published
PARTIES	HSBC Bank USA, N.A. v. Marie Sene

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether HSBC established prima facie standing to commence the mortgage foreclosure action.
2. Whether HSBC established prima facie compliance with statutory and contractual notice requirements preceding foreclosure.
3. Whether HSBC was entitled to summary judgment dismissing Sene's affirmative defenses other than lack of standing and failure to comply with conditions precedent.
4. Whether HSBC was entitled to summary judgment dismissing Sene's counterclaims.

HOLDINGS

1. HSBC failed to establish prima facie standing because the affidavit's assertion that the note had been physically delivered was not based on personal knowledge and was unsupported by documentary evidence, the pooling and servicing agreement materials did not include the mortgage loan schedule, and the plaintiff did not establish standing through a written assignment of the mortgage.
2. HSBC failed to establish prima facie compliance with the required 90-day notice and the mortgage's notice-of-default provisions.
3. HSBC was not entitled to summary judgment on the complaint insofar as asserted against Sene or to an order of reference because it failed to meet its prima facie burdens concerning standing and notice compliance.
4. HSBC was entitled to summary judgment dismissing Sene's affirmative defenses other than those alleging lack of standing and failure to comply with conditions precedent, and dismissing her counterclaims.

KEY QUOTATIONS

> *"A plaintiff has standing to commence a mortgage foreclosure action where it is the holder or assignee of the underlying note at the time the action is commenced"* (at 2)

> *"Since the plaintiff failed to meet its prima facie burden, the Supreme Court properly denied those branches of the plaintiff's motion"* (at 3)

FACTUAL BACKGROUND

Marie Sene executed a promissory note secured by a mortgage on real property in Brooklyn. HSBC commenced a foreclosure action and Sene asserted affirmative defenses, including lack of standing and failure to comply with conditions precedent, as well as counterclaims. HSBC supported its summary-judgment motion with an affidavit concerning delivery and assignment of the note, excerpts from a pooling and servicing agreement, and evidence concerning statutory and contractual notices.

PROCEDURAL HISTORY

HSBC commenced a mortgage foreclosure action against Marie Sene. The Supreme Court, Kings County, denied the relevant branches of HSBC's motion. The Appellate Division modified the order to grant summary judgment dismissing most of Sene's affirmative defenses and counterclaims, but otherwise affirmed.

DISPOSITION

modified_and_affirmed

CASES CITED

- Citimortgage, Inc. v. Doomes, 202 AD3d 752, 753
- HSBC Bank USA, N.A. v. Boursiquot, 204 AD3d 980, 981-982
- Aurora Loan Servs., LLC v. Taylor, 25 NY3d 355, 361-362
- U.S. Bank, N.A. v. Collymore, 68 AD3d 752, 754
- Deutsche Bank Natl. Trust Co. v. Schmelzinger, 189 AD3d 1173, 1175
- Deutsche Bank Natl. Trust Co. v. Crosby, 201 AD3d 878, 882
- US Bank N.A. v. Davis, 196 AD3d 530, 532
- U.S. Bank Trust, N.A. v. Rose, 176 AD3d 1012, 1015
- Deutsche Bank Natl. Trust Co. v. Haller, 100 AD3d 680, 683
- Emigrant Bank v. Cohen, 205 AD3d 103, 113
- U.S. Bank N.A. v. Laino, 172 AD3d 947, 948
- U.S. Bank N.A. v. Thomas, 211 AD3d 1078, 1080
- HSBC Bank USA, N.A. v. Martin, 210 AD3d 872, 873-874
- Wilmington Sav. Fund Socy., FSB v. Stern, 187 AD3d 969, 970
- U.S. Bank N.A. v. Hammer, 192 AD3d 846, 849
- Winegrad v. New York Univ. Med. Ctr., 64 NY2d 851, 853
- US Bank N.A. v. Okoye-Oyibo, 213 AD3d 718, 721-722