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

HSBC Bank USA, National Association v. DiBenedetti

2022 NY Slip Op 02983 (N.Y. Ct. App. 2022) · No. 2019-10054 · Decided May 4, 2022

SUMMARY

The Appellate Division, Second Department, reversed a judgment of foreclosure and sale and vacated the portion of an order granting the mortgagee summary judgment upon renewal. The court held that Denis DiBenedetti qualified as a borrower under RPAPL 1304 because the mortgage identified him as a borrower, and that HSBC failed to establish strict compliance with the statute's notice requirements because additional material accompanied the 90-day notice and a single notice was jointly addressed to both defendants.

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.; Sheri S. Roman, J.; Joseph J. Maltese, J.; Linda Christopher, J.
JURISDICTION	New York
DECIDED	May 4, 2022
DOCKET	2019-10054
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendants appealed from a judgment of foreclosure and sale entered after the Supreme Court granted the plaintiff's renewed motion for summary judgment, struck the defendants' answer, and granted an order of reference.
STANDARD OF REVIEW	The Appellate Division reviewed the Supreme Court's exercise of discretion in granting leave to renew and reviewed, upon renewal, whether HSBC established entitlement to summary judgment as a matter of law.
PRECEDENTIAL VALUE	Published intermediate appellate decision
PARTIES	Denis DiBenedetti, Cheryl DiBenedetti v. HSBC Bank USA, National Association

TOPICS

foreclosure · mortgages · summary judgment · appellate procedure · civil procedure

PRACTICE AREAS

real estate · mortgage foreclosure · civil procedure · appellate procedure

QUESTIONS PRESENTED

1. Whether the Supreme Court properly granted HSBC leave to renew its prior motion for summary judgment, to strike the defendants' answer, and for an order of reference.
2. Whether Denis DiBenedetti was a borrower subject to the notice requirements of RPAPL 1304 despite not signing the note.
3. Whether HSBC established strict compliance with RPAPL 1304 where additional material accompanied the 90-day notice and a single notice was jointly addressed to both defendants.

HOLDINGS

1. The Supreme Court providently exercised its discretion in granting HSBC leave to renew its prior motion.
2. A person who did not sign the note is nevertheless a borrower within the meaning of RPAPL 1304 when the mortgage identifies that person as a borrower on its first page and beneath the person's signature.
3. HSBC failed to establish prima facie strict compliance with RPAPL 1304 because additional material was sent in the same envelope as the required 90-day notice and one notice was jointly addressed to both defendants.

KEY QUOTATIONS

> *“"Strict compliance with RPAPL 1304 notice to the borrower or borrowers is a condition precedent to the commencement of a foreclosure action"”* (at 1)

> *“Here, the plaintiff failed to establish, prima facie, that it strictly complied with RPAPL 1304, since additional material was sent in the same envelope as the 90-day notice required by RPAPL 1304”* (at 1)

FACTUAL BACKGROUND

In February 2007, Cheryl DiBenedetti executed a $903,000 note payable to Wells Fargo Bank, N.A., secured by a mortgage on Suffolk County property signed by both Cheryl and Denis DiBenedetti. Although Denis did not sign the note, the mortgage identified him as a borrower on its first page and beneath his signature. HSBC, Wells Fargo's successor in interest, commenced foreclosure in February 2014, and the defendants asserted that HSBC had not complied with RPAPL 1304. HSBC submitted a 90-day notice addressed jointly to both defendants, with additional material sent in the same envelope.

PROCEDURAL HISTORY

HSBC commenced a mortgage foreclosure action in February 2014. The Supreme Court, Suffolk County, initially denied HSBC's motion for summary judgment, to strike the answer, and for an order of reference because HSBC failed to establish compliance with RPAPL 1304. The court later granted leave to renew and, upon renewal, granted the previously denied relief, ultimately entering a judgment of foreclosure and sale. The Appellate Division reversed the judgment and vacated the renewed grant of relief, adhering to the original denial.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The judgment of foreclosure and sale was reversed; the portion of the January 30, 2018 order that vacated the February 7, 2017 determination and granted HSBC's prior motion was vacated, and the February 7, 2017 determination denying HSBC's motion was adhered to.

CASES CITED

- Citimortgage, Inc. v. Espinal, 136 AD3d 857, 858
- Bank of N.Y. Mellon v. Forman, 176 AD3d 663, 665
- Charles Schwab Bank v. Winitch, 179 AD3d 1003, 1006
- Citibank, N.A. v. Conti-Scheurer, 172 AD3d 17, 20
- Bank of Am., N.A. v. Kessler, 202 AD3d 10
- Wells Fargo Bank, N.A. v. Yapkowitz, 199 AD3d 126, 134