SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

HSBC Bank USA, National Association v. Proctor

2021 NY Slip Op 00387 (N.Y. Ct. App. 2021) · No. Appeal No. 12959; Case No. 2020-02634; Index No. 850039/15 · Decided January 26, 2021

SUMMARY

The Appellate Division, First Department affirmed an order denying defendant Ron Hillman's motion to dismiss a mortgage foreclosure complaint in its entirety. The court held that Hillman's argument that he was a necessary and indispensable party was improperly raised for the first time on appeal and, in any event, that the foreclosure action could continue without him because his rights would remain unaffected by the judgment.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Gische, J.P.; Kern, J.; Moulton, J.; Shulman, J.
JURISDICTION	New York
DECIDED	January 26, 2021
DOCKET	Appeal No. 12959; Case No. 2020-02634; Index No. 850039/15
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant Ron Hillman appealed from an order of Supreme Court, New York County, denying his motion to dismiss the foreclosure complaint in its entirety.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Ron Hillman v. HSBC Bank USA, National Association

TOPICS

personal jurisdiction · foreclosure · preservation of error · appellate procedure · real estate

PRACTICE AREAS

Mortgage foreclosure · Civil procedure · Appellate procedure

QUESTIONS PRESENTED

1. Whether Hillman could argue for the first time on appeal that he was a necessary and indispensable party to the mortgage foreclosure action under RPAPL 1311.
2. Whether the foreclosure action could continue despite Hillman's absence after the claims against him were severed and dismissed for lack of personal jurisdiction.

HOLDINGS

1. Hillman's argument that he was a necessary and indispensable party under RPAPL 1311 was improperly raised for the first time on appeal and was therefore not considered on that basis.
2. The absence of Hillman, even if he were a necessary party, did not prevent continuation of the mortgage foreclosure action because the rights of an absent necessary party are simply unaffected by the judgment of foreclosure and sale.

KEY QUOTATIONS

> *"the absence of a necessary party in a mortgage foreclosure action simply leaves that party's rights unaffected by the judgment of foreclosure and sale"* (*1)

FACTUAL BACKGROUND

HSBC Bank USA commenced a mortgage foreclosure action involving Ron Hillman and other defendants. HSBC failed to obtain personal jurisdiction over Hillman, resulting in the claims against him being severed and dismissed. Hillman nevertheless argued on appeal that he was a necessary and indispensable party under RPAPL 1311 and that the foreclosure action could not continue without him.

PROCEDURAL HISTORY

The Supreme Court, New York County, entered an order on December 18, 2019, denying Hillman's motion to dismiss the complaint in its entirety. The Appellate Division affirmed the order to the extent appealed from, without costs. The claims against Hillman had been severed and dismissed because HSBC failed to obtain personal jurisdiction over him.

DISPOSITION

affirmed

CASES CITED

- HSBC Bank USA v. Kirschenbaum, 159 AD3d 506, 507 (1st Dept 2018)
- Central Mtge. Co. v. Davis, 149 AD3d 898, 900 (2d Dept 2017)
- JPMorgan Chase Bank, N.A. v. Salvage, 171 AD3d 438, 439 (1st Dept 2019)