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

Citimortgage, Inc. v. Succes

2019 N.Y. Slip Op. 02058 (N.Y. Ct. App. 2019) · No. 2016-09364; 2017-02054 · Decided March 20, 2019

SUMMARY

The New York Appellate Division, Second Department, reversed an order granting CitiMortgage summary judgment and an order of reference in a mortgage foreclosure action. The court held that CitiMortgage failed to establish prima facie compliance with the ninety-day notice requirements of RPAPL 1304 because its evidence did not establish that the notices were sent by first-class mail.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Leonard B. Austin, J.P.; Sylvia O. Hinds-Radix, J.; Joseph J. Maltese, J.; Linda Christopher, J.
JURISDICTION	New York
DECIDED	March 20, 2019
DOCKET	2016-09364; 2017-02054
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendants appealed from orders granting the mortgage plaintiff summary judgment and an order of reference in a foreclosure action.
STANDARD OF REVIEW	De novo review of the Supreme Court's determination on summary judgment; the plaintiff was required to establish prima facie entitlement to judgment as a matter of law.
PRECEDENTIAL VALUE	Published opinion of the Appellate Division, Second Department
PARTIES	Vladimir Succes, Natacha Succes v. Citimortgage, Inc.

TOPICS

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

PRACTICE AREAS

foreclosure · mortgages · civil procedure · appellate procedure

QUESTIONS PRESENTED

1. Whether Citimortgage established prima facie compliance with RPAPL 1304's pre-foreclosure notice and mailing requirements.
2. Whether summary judgment and an order of reference could be granted when the plaintiff failed to establish satisfaction of a statutory condition precedent to commencing the foreclosure action.

HOLDINGS

1. Citimortgage failed to establish prima facie that it complied with RPAPL 1304 because its documentary evidence did not establish that the required notices were mailed by first-class mail.

KEY QUOTATIONS

> *“"[P]roper service of RPAPL 1304 notice on the borrower or borrowers is a condition precedent to the commencement of a foreclosure action, and the plaintiff has the burden of establishing satisfaction of this condition"”* (at 2)

> *“Since the plaintiff failed to establish, prima facie, that it complied with the requirements of RPAPL 1304, the Supreme Court should have denied those branches of its motion which were for summary judgment on the complaint insofar as asserted against the defendants and for an order of reference, regardless of the sufficiency of the opposing papers”* (at 2)

FACTUAL BACKGROUND

Citimortgage brought an action to foreclose a mortgage against Vladimir and Natacha Succes, among others. The defendants answered and opposed Citimortgage's motion for summary judgment, arguing in part that Citimortgage failed to establish compliance with the ninety-day notice requirement of RPAPL 1304. Citimortgage relied on an employee affidavit and documentary records, but the records redacted tracking numbers and did not establish that the notices had been mailed by first-class mail.

PROCEDURAL HISTORY

Citimortgage commenced a mortgage-foreclosure action against Vladimir Succes, Natacha Succes, and others. After the defendants answered, Citimortgage moved for summary judgment and an order of reference. The Supreme Court, Nassau County, granted the motion and appointed a referee to compute the amount due. The Appellate Division reversed the appealed portion of the May 18 order, vacated the corresponding portion of the May 19 order, and dismissed the appeal from the May 19 order as academic.

DISPOSITION

reversed

CASES CITED

- Aurora Loan Servs., LLC v. Weisblum, 85 AD3d 95, 106
- Deutsche Bank Natl. Trust Co. v. Spanos, 102 AD3d 909, 910

- Citimortgage, Inc. v. Wallach, 163 AD3d 520, 521
- CitiMortgage, Inc. v. Espinal, 134 AD3d 876, 878
- Citimortgage, Inc. v. Banks, 155 AD3d 936, 937
- Winegrad v. New York Univ. Med. Ctr., 64 NY2d 851, 853
- Bank of N.Y. Mellon v. Zavolunov, 157 AD3d 754, 757