District Court Dismisses Action For Conversion And Quiet Title Brought In Response To Lender's Notice Of Intent To Foreclose

In *Lee v. BSI Financial Services, et al.*, No. 15-cv-1797, 2015 WL 4757935 (D.N.J. Aug. 11, 2015), the United States District Court for the District of New Jersey granted defendants' motion to dismiss plaintiff's complaint to quiet title and for conversion. Plaintiff Keon Hee Lee ("Plaintiff") filed an action against defendants BSI Financial Services, Ventures Trust, OHA Newbury and Bank of America (collectively, "Defendants"), alleging that a loan Plaintiff received from Bank of America in 2009, secured by a mortgage on real property located in Old Tappan, New Jersey, was "secretly" transferred to OHA Newbury. Plaintiff alleged that the mortgage was converted into a mortgage-backed security using forged assignments. After Bank of America notified Plaintiff that he defaulted on the loan and Bank of America intended to foreclose on the property, Plaintiff filed an action seeking to quiet title and for conversion.

Plaintiff claimed that Defendants deliberately obscured the lender of the loan in the initial loan documents, thereby invalidating the mortgage, and that the assignment was improper. The Court rejected Plaintiff's arguments. First, it found that the loan documents clearly showed the lender as Bank of America. Second, the Court found Plaintiff's allegations did not support a claim to quiet title because Plaintiff is not an alleged owner of the mortgage.

The Court also rejected Plaintiff's claim of conversion. The District Court found Plaintiff's claim failed to state that Defendants had done anything to interfere with the property -- a necessary element of conversion.

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New Jersey Appellate Division Denies Homeowners' Application To Set Aside Foreclosure Sale Based On Defective Service

In *Wells Fargo Bank, N.A. v. Marcelus*, Docket No. F-62521-09, 2015 WL 6758319 (N.J. App. Div. Nov. 6, 2015), the Appellate Division upheld the denial of a motion to set aside a sheriff's sale based on the defendants' claim that they were not properly served.

In *Marcelus*, the defendant borrowers, an unmarried couple, defaulted on a purchase money mortgage two years after inception of the loan. Thereafter, Wells Fargo filed a complaint in foreclosure. Rather than serve the defendants at the property, Wells Fargo served both defendants at another location. The proofs of service filed with the court in the foreclosure action state that the process server made substituted service on both defendants by leaving the summons and complaint with a "competent member of the household," *i.e.*, one of the defendant's sons. Defendants did not respond to the complaint. Accordingly, Wells Fargo entered default against the defendants and obtained a final judgment of foreclosure in September 2012. The sheriff's sale for the property was scheduled one year later in October 2013. Wells Fargo notified defendants in several ways: (1) providing one of the defendants notice by regular and certified mail at the property address; (2) providing both defendants notice by certified and regular mail at the address Wells Fargo used to serve the summons and complaint; and (3) posting a notice of sale on the property. In response, the defendants took advantage of one of the two available statutory adjournments to adjourn the sale for two weeks. After no further adjournment request was made, the property was sold back to Wells Fargo.

Four months after the sale, the defendants filed a motion to vacate the sale, vacate the default judgment and dismiss the action for lack of proper service. In support of the motions, the defendants each submitted a certification, as well as a certification from the defendant's son who was allegedly served, all claiming that they never received a copy of the summons and complaint. The defendant's son further claimed that he was at work at the time service was allegedly made and submitted a copy of his time card from work to demonstrate that fact. Nevertheless, the trial court denied the motions as untimely under Rules 4:65-5 and 4:50-1.

On appeal, the Appellate Division upheld the trial court's denial of the motions on several grounds. While the Appellate Division noted that significant deviation from proper service "will generally render a default judgment void," the defendants had failed to carry their burden on the motions in demonstrating that service was indeed defective. Among other things, the certifications submitted by the defendants were not properly sworn pursuant to Rule 1:4-4(b). And while the certification by the defendant's son was properly sworn, the appended time-card, the Appellate Division noted, was not properly authenticated and could not be considered. The son's certification also failed to provide any explanation as to how Wells Fargo's process server was able to provide a description of the son if the son was not home at the time service was allegedly made.

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