

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(Filed: February 13, 2013)

EDGAR SEPULVEDA

:

v.

:

C.A. No. PC 2009-5634

:

LONG BEACH MORTGAGE

:

COMPANY; DEUTSCHE BANK

:

NATIONAL TRUST COMPANY,

:

AS TRUSTEE FOR LONG BEACH

:

MORTGAGE LOAN TRUST, 2005-ALI :

:

DECISION

RUBINE, J. Defendant Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust, 2005-ALI (“Defendant”)¹ moves this Court to dismiss Plaintiff’s verified complaint (“Complaint”) pursuant to Super. R. Civ. P. 12(b)(6). Through the Complaint, Plaintiff challenges the validity of the foreclosure sale conducted by Defendant on certain real property located at 7 Half Mile Road, Barrington, Rhode Island (the “Property”). Plaintiff further sets forth allegations in the Complaint that the foreclosure sale was not noticed or published as required by statute and by the terms of the Mortgage.

I

FACTS & TRAVEL

The following facts are derived from the Complaint and the exhibits attached thereto and incorporated therein. On February 17, 2005, Plaintiff executed a note

¹ Defendant alleges that its proper name is “Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2005-WLI.” Also, Long Beach Mortgage Company did not join as a party to this Motion as Long Beach Mortgage Company is no longer in existence.

(“Note”) in favor of lender Long Beach for \$749,999. (Compl. Ex. 2 at 1.) The Note provides that “[Borrower] understand[s] that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the ‘Note Holder.’” Id.

To secure the Note, Plaintiff contemporaneously executed a mortgage (“Mortgage”) on the Property. (Def.’s Mot. Dismiss Ex. 1.)² The Mortgage designates Long Beach as the “Lender” as well as the “mortgagee.” (Compl. Ex. 1 at 1-2.) In addition, the Mortgage provides that “Borrower does hereby mortgage, grant and convey to Lender, with Mortgage Covenants upon the Statutory Condition and with the Statutory Power of Sale.” (Def.’s Mot. Dismiss Ex. 1 at 3.) The Mortgage was recorded in the land evidence records of the Town of Barrington. (Def.’s Mot. Dismiss Ex. 1.)

In 2007, Long Beach ceased operating. (Compl. ¶ 15.) Thereafter, on January 8, 2008, Washington Mutual, as successor in interest to Long Beach, assigned the Mortgage interest to Defendant Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust, 2005-ALI. (Compl. Ex. 3.) The assignment was recorded in the land evidence records of the Town of Barrington. Id. Washington Mutual subsequently executed a second assignment on June 3, 2008, which contained an

² Defendant’s Exhibit 1 is a full copy of the Mortgage instrument whereas Plaintiffs submitted an incomplete copy of the Mortgage as an attachment to the Complaint. Since the Complaint expressly references and attaches the Mortgage instrument, this Court may properly consider the entire document as submitted by Defendant without converting this Motion to a motion for summary judgment under Super. R. Civ. P. 56. See Bowen Court Assoc. v. Ernst & Young, LLP, 818 A.2d 721, 725-26 (R.I. 2003) (citing Super R. Civ. P. 10(c)); see also Miss. Pub. Emp. Ret. Sys. v. Boston Scientific Corp., 523 F.3d 75, 86 (1st Cir. 2008) (noting the general rule that courts will generally only consider documents attached to the complaint on a Rule 12(b)(6) motion to dismiss; however, there is an exception “for documents the authenticity of which are not disputed by the parties; for official public records; for documents central to plaintiffs’ claim; [and] for documents sufficiently referred to in the complaint.” (internal quotation marks omitted)).

effective date of January 2, 2008. (Compl. Ex. 4.) The second assignment was also to Defendant from Washington Mutual as successor in interest to Long Beach. Id. That assignment was recorded in the land evidence records of the Town of Barrington. Id.

Thereafter, Defendant Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust, 2005-ALI commenced foreclosure proceedings against Plaintiff's Property with a foreclosure sale scheduled for September 29, 2009. (Compl. ¶¶ 28, 30-31.) On September 28, 2009, Plaintiff filed the instant Complaint seeking declaratory and injunctive relief as well as alleging that Washington Mutual could not lawfully act as successor in interest to Long Beach, and therefore could not lawfully assign the Mortgage to Defendant. (Compl. ¶¶ 18, 22.) Additionally, Plaintiff alleges that the foreclosure sale was not properly noticed or published according to statute and to the terms of the Mortgage. (Compl. ¶¶ 31-33.) That same day, this Court issued a temporary restraining order precluding Defendant from continuing with the foreclosure sale as scheduled for September 29, 2009. The foreclosure sale of Plaintiff's Property has yet to take place despite the later dissolution of the temporary restraining order. Defendant filed this Motion to Dismiss pursuant to Rule 12(b)(6). Plaintiff objected to Defendant's Motion averring that he has alleged sufficient facts to state a claim with respect to the validity of the attempted foreclosure

II

ANALYSIS

For the purpose of a Rule 12(b)(6) motion to dismiss, the Court assumes the allegations set forth in the Complaint are true and views them in the light most favorable to plaintiff. Tarzia v. State, 44 A.3d 1245, 1251 (R.I. 2012) (quoting Narragansett Elec.

Co. v. Minardi, 21 A.3d 274, 277 (R.I. 2011)). The motion will be granted only if it appears clear beyond a reasonable doubt that there is no set of facts which could entitle plaintiff to relief. Palazzo v. Alves, 944 A.2d 144, 149-50 (R.I. 2008) (quoting Ellis v. Rhode Island Pub. Transit Auth., 586 A.2d 1055, 1057 (R.I. 1991)).

Applying that standard here, Defendant's Motion to Dismiss must be denied. There are at least two allegations, which, if taken as true, could be grounds to invalidate the foreclosure. Plaintiff alleges in the Complaint that Washington Mutual was not the lawful successor in interest to Long Beach, and therefore that Washington Mutual could not assign the Mortgage to Defendant. This allegation sets forth facts that could entitle Plaintiff to relief, i.e. the foreclosing mortgagee did not properly hold the Mortgage at the time it commenced foreclosure proceedings given an ineffective assignment of the Mortgage.

Plaintiff further sets forth an allegation in the Complaint that notice and publication of the sale failed to adhere to statutory requirements. Under prevailing law, failure to follow the notice procedures as provided in the statute may be grounds to render the foreclosure sale a nullity. See 55 Am. Jur. 2d Mortgages § 508, 511 & n.3 (2009) (citing persuasive authority therein) (a foreclosing mortgagee's failure to comply with certain notice requirements contained in the Mortgage and in the pertinent state statute will invalidate a foreclosure sale). Once again, if the Court views that allegation as true, Defendant's Motion to Dismiss must be denied.

For the above reasons, Defendant's Motion to Dismiss is denied. As to the other grounds alleged in the Complaint, based on earlier precedent, those allegations fail to state a claim as a matter of law. See Payette v. Mortg. Elec. Registration Sys., Inc., No.

PC 2009-5875, 2011 WL 3794701 (R.I. Super. Aug. 22, 2011) (Rubine, J.); Porter v. First Fin. Serv., No. PC 2010-2526, 2011 WL 1251246 (R.I. Super. March 31, 2011) (Rubine, J.); Bucci v. Lehman Bros. Bank, FSB, No. PC 2009-3888, 2009 WL 3328373 (R.I. Super. Aug. 25, 2009) (Silverstein, J.).

III

CONCLUSION

In sum, Plaintiff has set forth factual allegations in the Complaint that, if true, could state a claim for relief. Accordingly, Defendant's Motion to Dismiss pursuant to Rule 12(b)(6) is Denied. Counsel for the prevailing party shall submit an Order in accordance with this Decision.