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Federal Home Loan Mtge. Corp. v Raia
2010 NY Slip Op 52003(U)
Decided on November 23, 2010
District Court Of Nassau County, First District
Fairgrieve, J.
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Decided on November 23, 2010

District Court of Nassau County, First District**Federal Home Loan Mortgage Corp., Petitioner(s)****against****Paul Raia, "JOHN DOE" through "JANE DOE," Respondent(s)**

SP 002253/10

Steven J. Baum, P.C., Attorneys for Petitioner, 220 Northpointe Parkway, Suite G, Amherst, New York 14228, 716-204-2400;

Jeffrey A. Seigel, Esq., Volunteer Lawyers Project, Attorneys for Respondent, One Helen Keller Way, Hempstead, New York 11550, 516-292-8299.

Scott Fairgrieve, J.

On January 5, 2010, Wells Fargo Home Mortgage, Inc. ("Wells Fargo") was the successful bidder at the foreclosure sale of the subject premises known as 360 Stewart Avenue, Unit 1E, Garden City, New York. Wells Fargo received 220 shares of Stewart Franklin Owners Corp., as well as the proprietary lease previously owned by the Respondent, Paul Raia.

On March 12, 2010, Wells Fargo purportedly assigned its January 5, 2010 bid to Petitioner Federal Home Loan Mortgage Corp. ("FHLMC"). However, the "Assignment of Bid" contains only the signature of Steven J. Baum, P.C., and there is no indication for which party the signature was made. Mr. Baum's office claimed to have the authority to execute the document on behalf of FHLMC by way of a power of attorney attached to the petition. Baum's office also claimed to have the same authority for Wells Fargo, although Baum's office provides no evidence in support of that allegation.

Subsequent to Steven J. Baum, P.C. signing the "Assignment of Bid," Petitioner FHLMC served a notice to quit on Respondent, on March 22, 2010, directing Mr. Raia to vacate the apartment on or before April 1, 2010. When Respondent failed to do so, this holdover proceeding commenced on April 15, 2010 with the filing of the petition and notice of petition. FHLMC commenced this summary proceeding as owner and landlord of the premises which it sought to recover from Respondent. [*2]

Petitioner alleges the following in its petition dated April 8, 2010:

3.The Petitioner FEDERAL HOME LOAN MORTGAGE CORPORATION was the lender of monies to Respondent, the owner and/or occupant of the premises known as 360 STEWART AVENUE - UNIT 1E, GARDEN CITY, NY 11530.

4.The aforesaid loan, made to the aforesaid Respondent was secured by a security agreement pledging the proprietary lease to the aforesaid premises and the associated stock certificate for 220 shares in said corporation to the Petitioner.

5.The aforesaid premises was and is an Apartment/Unit in a cooperative residence.

6.The Respondents defaulted in their obligations to Petitioner, and as a result thereof, Petitioner caused a sale of the aforesaid stock and proprietary lease to occur pursuant to the provisions of *article 9[NYCLS]* of the Uniform Commercial Code. At said sale, Petitioner was the successful bidder and the aforesaid proprietary lease and associated stock certificate were transferred to Petitioner.

7.As a result thereof, Petitioner is the rightful occupant of the aforesaid cooperative Apartment/Unit and Respondent, and any person or entity occupying same under him has no right to remain in possession thereof.

The above sworn allegations asserted in the petition are false. This was discovered after an examination of the documents attached to the petition, which revealed that Wells Fargo was the actual lender who acquired a security interest from Respondent on October 23, 2002, with respect to the subject premises. Thus, in an order dated July 22, 2010 this court ordered a sanction hearing and granted Respondent's motion dismissing the holdover proceeding with prejudice as Petitioner FHLMC lacked a possessory interest in the subject premises.

This court held a hearing on August 26, 2010 to determine what sanctions, if any, should be imposed upon Steven J. Baum, P.C., for the false representations made in the petition. At the sanction hearing, the court afforded both sides a full and fair opportunity to present discussion on the merits of the imposition of sanctions on Steven J. Baum, P.C. Petitioner and Respondent were also given the opportunity to submit briefs on the issues raised. Both sides did submit briefs and replied. This court thoroughly reviewed same.

DISCUSSION

This court has carefully considered all materials pertinent to a determination on whether sanctions should be imposed. At the hearing, counsel for petitioner representing Steven J. Baum, P.C. ("Baum"), citing 22 NYCRR 130-1.1(c)(3), argued that the assertions have to be material

and false for the conduct to be frivolous and deserving of sanctions. Baum centered its defense on the notion that while the statements in the petition may have been incorrect, they were not [*3]material. According to 22 NYCRR 130-1.1(d), awards of costs and sanctions may be made "upon the court's own initiative, after a reasonable opportunity to be heard. This court finds that, in the interest of justice and fairness, sanctions must now be imposed upon Steven J. Baum, P.C. due to its statements.

The Third Department held that "petitioner cannot be faulted for failing to fully comprehend" technical issues, [Levin v. Axelrod, 168 AD2d 178, 181, 571 NYS2d 345 (3rd Dept. 1991)], and this would be "sufficient to defeat a sanctions claim." [Principe v. Assay Partners, HRO, 154 Misc 2d 702, 709, 586 NYS2d 182 (1992).] The facts here can be distinguished and thus, warrant a different result. Here, petitioner's firm is highly versed in issues of standing as evidenced by the firm's abundance of litigation in this area. Specifically, Baum has recently faced numerous standing issues concerning assignment, for which its cases were dismissed. [See Deutsche Bank Nat. Trust Co. v. McRae, 27 Misc 3d 247, 894 NYS2d 720 (2010); Citigroup Global Markets Realty Corp. v. Randolph, 2009 NY Slip Op. 52567(U) (2009); HSBC Bank USA, Nat. Ass'n v. Miller, 26 Misc 3d 407, 889 NYS2d 430 (2009).] Far from submitting a petition with immaterial false statements, the false statements at issue went directly to the heart of the matter of standing. As eloquently put by Mr. de Winter, appearing for the Volunteer Lawyers Project, "[F]alse allegations cannot be so cavalierly dealt with by claiming they were mere errors,' when, in point of fact, these allegations served, until challenged, as a means to disguise petitioner's lack of standing." [Respondent's Brief in Support of Sanctions.] Bringing legal proceedings when there is no legal right to do so, due to lack of standing, stalls the efficient administration of justice in the system.

At the hearing, the attorney for Baum repeatedly attempted to excuse the firm's past conduct on the basis that it is sometimes acceptable to swear to false statements if the statements are immaterial. Further, counsel exacerbated the situation by trying to evade questions concerning whether false statements had been made, apparently trying to appeal to a substantive difference between the terms "incorrect" and "false." Conversely, every statement in the petition was material to a determination by this court in this case. The misrepresentation of the material statements here was outrageous. If not for the false statements, this case could have been dismissed more easily for lack of standing. Baum has not convinced this court that they have acted professionally responsible either in submitting truthful documents or accepting accountability for their mistakes.

When an attorney swears to the verity of a petition, he swears as to the petition in its entirety. Attorneys are not permitted to make false statements in petitions. The purportedly supporting documents attached to the petition here, actually rebutted the factual allegations in the petition, which only exacerbated the situation. Further, aside from questions of materiality, swearing to false statements in petitions, necessitating a hearing, wastes the precious resources of this court and of opposing counsel. Swearing to false statements reflects poorly on the profession as a whole. This is especially true when officers of the court make misrepresentations to the court, disregarding the fact that they are supposed to uphold truth. When faced with this problem, action must be taken to ensure that reprehensible conduct of this nature does not continue. [*4]

In direct contrast with Baum's belief that errors in petitions are not sanctionable, stand the New York Rules of Professional Conduct. An attorney who knowingly asserts "a false statement of fact or law to a tribunal or fail[s] to correct a false statement of material fact or law previously made" is in violation of Rule 3.3 of the Rules of Professional Conduct. Primarily, according to Judiciary Law section 90, "An attorney is guilty of professional misconduct for making false statements to the court." Rule 8.4(c) of the New York Rules of Professional Conduct states that a lawyer or law firm shall not "engage in conduct involving dishonesty, fraud, deceit or misrepresentation." Dishonesty by the court's officers is inherently adverse to the goal of justice in the legal system. Further, Rule 8.4(d) states that a lawyer or law firm shall not "engage in conduct that is prejudicial to the administration of justice." Baum has been professionally irresponsible which has impeded the proper administration of justice.

This case is analogous to *Illinois Cent. R. Co.* which ruled, "To offer a document as an affidavit and entice the Court to consider it as such is a fraud on the Court." [*Illinois Cent. R. Co. v. R.R. Land, Inc.*, 1992 WL 38109, 6, E.D. La. (1992).] The opinion continues on to state that the "court's inherent power to impose sanctions is particularly appropriate where fraud, deception, and misrepresentation has been practiced upon the Court." [*Id.* at 7.] Further, the court has "inherent power to impose sanctions on those who act in bad faith and abuse the judicial process," as Baum did here. [*See id.*] The fraud perpetrated on the court here occurred when petitioner's attorney swore that the petition had been read and that the contents of the petition were true to the deponent's own knowledge. Sanctions may attach to attempts to deceive the court.

While it may be possible to overlook an error in one paragraph of a petition, despite thorough proofreading, overlooking falsities in five paragraphs is repugnant and will not be tolerated in this court. This is especially the case when falsities were contained in five paragraphs out of only ten paragraphs in the entire petition, one of the truthful paragraphs being that the petitioner's attorney correctly swore to counsel's own name. A brief proofreading of the petition before submission should have led to the production of a petition that was more than half correct. Willful carelessness of this sort will not be accepted. Also, substituting reasoned and considered statements for computer generated ones displaces the verifying attorney's responsibility to make even a cursory investigation into the truthfulness of the statements to which he swears.

These sentiments are echoed by Chief Judge Jonathan Lippman of the New York State Court of Appeals in regard to the verity of foreclosure papers. Chief Judge Lippman said, "We feel we have an obligation to make sure the attorneys do their due diligence and come to us with credible papers because the consequences are so great." [Andrew Keshner, *New Court Rule Says Attorneys Must Verify Foreclosure Papers*, N.Y.L.J., October 21, 2010.] Chief Judge Lippman goes on to state, "I think this makes clear to everybody the court system's absolute commitment that we are not going to allow anything to interfere with the integrity of the court process." [*Id.*] According to *New Court Rule Says Attorneys Must Verify Foreclosure Papers*, "Attorneys must now certify, under penalties of perjury, that they have communicated with . . . [the plaintiff] and that they have personally reviewed all documents and records related to the case." [*Id.*] The [*5] importance of these statements concerning foreclosure papers is analogous to their importance concerning any other documents presented to the court. It is imperative that these words are heeded.

The attention and time of the Volunteer Lawyers Project have been unnecessarily diverted in dealing with the underlying case and Baum's behavior. Mr. de Winter appeared in the sincere interest of and commitment to justice. In this regard, this court finds it appropriate to award attorney's fees and costs of \$14,532.50 to go to the benefit of the Volunteer Lawyers Project. Specifically, this represents attorney's fees at \$250.00 per hour for 57.75 hours and \$95.00 in costs.

This court also imposes monetary sanctions on Steven J. Baum, P.C. in the amount of \$5,000.00. This amount is appropriate for the foregoing reasons. Further, it has come to this court's attention that this is not the first time Baum has been unethical. In *Ameriquest Mortg. Co.*, Baum fought the imposition of sanctions on substantially similar facts only three years ago. [*Ameriquest Mortg. Co. v. Basevich*, 16 Misc 3d 1104(A), 841 NYS2d 825 (2007).] Analogous to the facts here, in *Ameriquest Mortg. Co.* Baum faced sanctions concerning Baum's submission of incorrect documents in an attempt to bypass lack of standing. There the court declined to sanction Baum. The relief granted to Baum therein stood as a reminder to be more cautious in the future, especially concerning standing issues. It is apparent from this case, such a short time later, that Baum has failed to heed this command. "Sanctions are retributive in nature, in that they are intended to punish past conduct. However, they are also future-oriented, with a goal of deterring frivolous conduct, not only by the parties in the case then before the Court, but also by the Bar and litigants at large in future proceedings." [*Application of Mosley and Figueroa v. Rosario*, 9 Misc 3d 1123(A), 862 NYS2d 809 (1st Dept. 2005).]

CONCLUSION

In view of the foregoing, Steven J. Baum, P.C. must compensate Volunteer Lawyers Project in the amount of \$14,532.50 for reasonable attorney's fees and disbursements within 30 days of the date of this order. Further, this court imposes monetary sanctions in the amount of \$5,000.00 on Steven J. Baum, P.C. payable to "Lawyers' Fund for Client Protection," established pursuant to section 97-t of the State Finance Law, within 30 days of the date of this order. The clerk of the court is directed to give notice, pursuant to 130-1.3, to the Lawyers' Fund for Client Protection concerning this award of sanctions.

So Ordered:

/s/ Hon. Scott Fairgrieve

DISTRICT COURT JUDGE

Dated: November 23, 2010 [*6]

CC: Volunteer Lawyers Project

Steven J. Baum, P.C.

[Return to Decision List](#)