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Bank of Am., N.A. v Ramjit
2013 NY Slip Op 51777(U)
Decided on July 8, 2013
Supreme Court, Kings County
Schmidt, J.
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Decided on July 8, 2013

Supreme Court, Kings County

<p style="text-align:center">Bank of America, N.A., Plaintiff,</p> <p style="text-align:center">against</p> <p style="text-align:center">Wayne Ramjit, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR NETBANK, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, NEW YORK CITY TRANSIT ADJUDICATION BUREAU, PEOPLE OF THE STATE OF NEW YORK, MOSHE DAYAN, SHALOM DAYAN, Defendants.</p>

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Plaintiff Attorney: Bruce S. Reznick, P.C., 958 East 81st Street, Brooklyn ,NY 11236

Defendant Attorney: Davidson Fink, LLP, 28 East Main Street, Suite 1700, Rochester,
NY 14614-1990

David I. Schmidt, J.

Upon the foregoing papers, non-party OneWest Bank, F.S.B. (OneWest) moves, pursuant to CPLR 1003 and CPLR 3215(c), for an order (1) vacating the default of Mortgage Electronic Registration Systems, Inc. (MERS), (2) dismissing MERS "as an improperly joined party;" and (3) declaring that its "[m]ortgage is senior in all respects to that certain mortgage dated as of September 12, 2007 in favor of Bank of America, N.A." (BOA).

Significantly, OneWest explicitly noticed this motion in four different capacities: (1) "as purchaser of certain assets and servicing rights" from the Federal Deposit Insurance Corporation (FDIC); (2) "as receiver" for Indymac Bank, F.S.B. and Indymac Federal bank, F.S.B. (Indymac); (3) "as servicer of a certain note and mortgage" for non-party "U.S. Bank, N.A., as Trustee for the LXS 2006-12N, as successor, transferee and assignee of the Note and Mortgage, in the name [*2]of Netbank, Inc. (Netbank) and [MERS];" and (4) "as mortgagee and nominee for Netbank."

OneWest claims that it "has standing to bring this motion as successor in interest to Netbank and MERS, as mortgagee and nominee for Netbank and its successors and assigns in connection with the loan." However, OneWest failed to move, pursuant to CPLR Article 10, for leave to intervene or for substitution in this foreclosure action. Consequently, OneWest is a stranger to this action, even assuming, arguendo, it has an interest concerning the loan at issue (*Grella v Mid-America Realty Invs. Ltd. Partnership*, 199 AD2d 18 [1993] ["The IAS court should not have ever considered Firemen's motion since it is not a party to the underlying action and has never sought leave to intervene"]; *see also 103rd Funding Assoc. v Salinas Realty Corp.*, 276 AD2d 340 [2000], *lv dismissed, in part, denied in part* 96 NY2d 851 [2001] ["Because the tenants did not move for leave to intervene in the action (*see*, CPLR 1013), they lack standing to appeal the court's determinations"]; *Weiss v Monaco*, 245 AD2d 443, [1997] [holding non-party auto insurer lacked standing to appeal from summary dismissal of insured's complaint because insurer did not move for leave to intervene in underlying action]). OneWest thus lacks

standing to move in this action, which moots addressing this motion on the merits.
Accordingly, it is

Ordered that OneWest's motion is denied in its entirety.

This constitutes the decision and order of the court.

E N T E R,

J. S. C.

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