

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Hon. Nancy M. Bannon
Justice

PART 42

AMY RUTH PERAZA as Administrator c.t.a. of
the Estate of John Peraza, Deceased

INDEX NO. 152355/2014

- v -

MOTION DATE 7/16/15

ETHEL J. GRIFFIN, Public Administrator of the
County of New York as Administrator of the
Estate of Betty Jane Hilton, Deceased and
ENVISION TITLE SERVICES LLC

MOTION SEQ. NO. 002

The following papers, numbered 1 to __, were read on the plaintiff's motion for summary judgment.

Notice of Motion/ Order to Show Cause - Affirmation - Affidavit(s) -
Exhibits - Memorandum of Law

No(s). 1

Answering Affirmation(s) - Affidavit(s) - Exhibits

No(s). --

Replying Affirmation - Affidavit(s) - Exhibits

No(s). --

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

The plaintiff commenced this action pursuant to RPAPL 1501(4) for a judgment, inter alia,
declaring a purchase money mortgage executed on November 30, 2001 and recorded on December
31, 2001, in principal sum of \$100,000, between Betty Jane Hilton ("Hilton") and John Peraza
("Peraza") and Lynn H. Lepofsky a/k/a Lynn H. Peraza ("Lepofsky") for the condominium located at 80
Park Avenue, Unit 19K, in Manhattan, designated as Section 3, Block 868, Lot 1414, is no longer valid
and directing the Office of the New York City Register for New York County to cancel and discharge
the mortgage. The plaintiff now moves for summary judgment on the complaint. No opposition is
submitted.

RPAPL 1501(4) provides that "[w]here the period allowed by the applicable statute of limitation
for the commencement of an action to foreclose a mortgage...has expired, any person having an
estate or interest in the real property subject to such encumbrance may maintain an action...to secure
the cancellation and discharge of record of such encumbrance, and to adjudge the state or interest of
the plaintiff in such real property to be free therefrom." RPAPL 1501(4); see JBR Constr. Corp. v
Staples, 71 AD3d 952 (2nd Dept. 2010).

In support of the motion, the plaintiff submitted, inter alia, the assignment of the cause of action
from the present owner of the subject condominium, non-party Marianne Macri ("Macri"), which
establishes that the plaintiff is the proper party in interest and may maintain the instant action.
See Guccione v Estate of Guccione, 84 AD3d 867 (2nd Dept. 2011); Cardtronics, LP v St. Nicholas
Beverage Discount Ctr., Inc., 8 AD3d 419 (2nd Dept. 2001). The plaintiff also submitted the deeds

transferring ownership of the subject condominium from Hilton to Peraza and Lepofsky and from Peraza's estate to Macri, the purchase money mortgage, as well as the death certificates of Hilton, Peraza, and Lepofsky, which establish her entitlement to cancellation and discharge of the subject mortgage. The mortgage provided for 47 payments commencing on December 1, 2001 and concluding on November 1, 2005. Hilton died on September 14, 2007 and the subject mortgage is not listed as one of her assets by defendant Griffin, Public Administrator of the County of New York, as administrator of Hilton's estate. Any action to foreclose the mortgage lien is, thus, now barred by the six-year statute of limitations. See CPLR 213(4); Corrado v Petrone, 139 AD2d 483 (2nd Dept. 1988). Accordingly, the plaintiff established her prima facie entitlement to summary judgment. See Winegrad v New York Univ. Med. Ctr., 64 NY2d 851 (1985); JBR Constr. Corp. v Staples, *supra*; Corrado v Petrone, *supra*. By failing to oppose the motion, the defendants have failed to raise any triable issue of fact. See CPLR 3212; Alvarez v Prospect Hospital, 68 NY2d 320 (1986); Zuckerman v City of New York, 49 NY2d 557 (1980).

Accordingly, it is

ORDERED that the plaintiff's motion for summary judgment is granted, and it is further,

ORDERED and ADJUDGED that the mortgage recorded in the Office of the City Register of the City of New York at Reel 3418, Page 0211, on December 31, 2001 against the real property known as 80 Park Avenue, Unit 19K,, New York, NY and designated as Section 3, Block 868, Lot 1414 on the Tax Map of the County of New York, State of New York is invalid and shall be cancelled, discharged, and released of record, and it is further

ORDERED that the Office of the New York City Register for New York County is directed to cancel, discharge, and release of record the mortgage recorded at Reel 3418, Page 0211, on December 31, 2001 against the real property known as 80 Park Avenue, Unit 19K, New York, NY and designated as Section 3, Block 868, Lot 1414 on the Tax Map of the County of New York, State of New York, and it is further

ORDERED that the Clerk shall enter judgment accordingly.

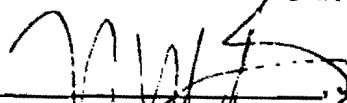
FILED

This constitutes the Decision and Order of the court.

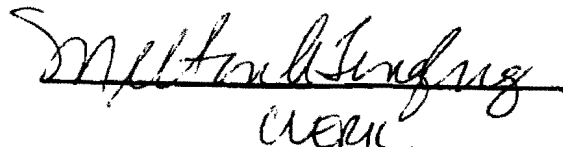
SEP 14 2015

COUNTY CLERK'S OFFICE
NEW YORK

Dated: September 9, 2014


JSC
HON. NANCY M. BANNON

1. Check one: CASE DISPOSED NON-FINAL DISPOSITION
2. Check as appropriate: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER


WEEK