

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

HOUSING COURT DEPARTMENT
CITY OF BOSTON DIVISION
SUMMARY PROCESS
NO. 10H84SP002589

DEUTSCHE BANK NATIONAL TRUST COMPANY,
as Trustee under **POOLING AND SERVICING AGREEMENT**
Dated as of **May 1, 2007, SECURITIZED ASSET BACK RECEIVABLES LLC TRUST**
2007-BR3 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-BR3,
Plaintiff

VS

ANTHONY NEWSAM¹
Defendant

FINDINGS OF FACT, RULINGS OF LAW AND ORDER FOR JUDGMENT

This matter was before the Court for trial on January 13, 2011. The Plaintiff is seeking to recover possession of Unit 2 at 12 Moultrie Street in the Dorchester neighborhood of Boston (the "Premises") after foreclosure. The Plaintiff also seeks reasonable use and occupancy. The Defendant filed an answer and counterclaims.

Based upon the testimony and other evidence presented at trial and the reasonable inferences drawn therefrom, in light of the governing law, the Court finds as follows.

The Plaintiff's evidence at trial was limited to two documents, the foreclosure deed, appended to which is an affidavit of "Joyce Nelson, the Assistant Secretary of Barclays Capital Real Estate, Inc. d/b/a HomeEq Servicing, its Attorney in Fact" (Exhibit "1") and the notice to

¹So much of this case as is brought in the name "all other occupants" is hereby dismissed. Summary Process actions are personal in nature and cannot lie against persons identified as "all other occupants." The caption on all future pleadings should identify only the named defendant.

quit. (Exhibit "2"). No witnesses testified on behalf of the Plaintiff.

The Defendant, the former owner of the property, objected to the introduction of the foreclosure deed and affidavit (Exhibit "1") but acknowledged receipt of the notice to quit. (Exhibit "2").

As a matter of law the Plaintiff failed to establish a *prima facie* case. The Plaintiff failed to introduce into evidence the original deed or any evidence that the original deed was unavailable. See *Federal National Mortgage Association v. Saric*, 2010 Mass.App.Div. 177, 178-179. (citations omitted). Moreover, the affidavit relied upon by the Plaintiff does not show, or even clearly state, that the requirements of the power of sale included in the mortgage at issue here had been complied with during the foreclosure. See *Federal National Mortgage Association v. Saric*, 2010 Mass.App.Div. at 179. For these reasons, the Plaintiff has failed to establish a *prima facie* case. Judgment shall enter for the Defendant for possession.

In his answer, the Defendant, the former owner of the Premises, alleged counterclaims and defenses, specifically, discrimination on the basis of a disability, breach of warranty of habitability and interference with quiet enjoyment. To the extent any or all of these defenses or counterclaims arise pursuant to G.L. c. 239, sec. 8A, they must fail. Section 8A of c. 239 permits a defendant to assert counterclaims and defenses against a plaintiff in "any action under this chapter to recover possession of any premises rented or leased for dwelling purposes, brought pursuant to a notice to quit for nonpayment of rent, or where the tenancy has been terminated without fault of the tenant or occupant." While there is no doubt that the Defendant is an occupant of the Premises, section 8A applies only where a landlord seeks "to recover possession of any premises rented or leased for dwelling purposes." The Premises were never rented or

leased to the Defendant and the Defendant is not now and never was a tenant. As the former owner, the Defendant is not entitled to the protection of G.L. c. 239, sec. 8A.

To the extent any of the Defendant's defenses are pursuant to G.L. c. 186, sec. 14, they must also fail. G.L. c. 186, sec. 14 provides in relevant part:

Any lessor or landlord of any building or part thereof occupied for dwelling purposes . . . who directly or indirectly interferes with the quiet enjoyment of any residential premises by the occupant . . . shall . . . be liable for actual and consequential damages, or three month's rent, whichever is greater, and the costs of the action, including a reasonable attorney's fee, all of which may be applied in setoff to or in recoupment against any claim for rent owed or owing

There was no evidence at trial that a landlord-tenant relationship ever existed between the parties. While the Defendant may be an occupant of the Premises, that status does not give him the right to a claim under the statute.

The language of G.L. c. 186, sec. 14 is clear and unambiguous, and must be given its ordinary meaning. See *Casey v. Massachusetts Electric Company*, 392 Mass. 876, 880 (1984) and cases cited therein. The Court must look to the common and approved usage of the term if it is not defined by case law. G.L. c. 4, sec. 6, cl. 3. Black's Law Dictionary at 878 (6th ed. 1990) defines the term "landlord" as "[he of whom lands or tenements are holden. The owner of an estate in land, or a rental property, who has leased it to another person, called the 'tenant.'" In this case there has never been a tenancy or a leasehold . . . the Defendant merely had naked possession and no possessory rights . . . [s]ince there is no tenancy agreement between the parties, the [defendant does] not have standing to assert any claim pursuant to G.L. c. 186, sec. 14. *Shepard-Powell v. Knight et al.*, Boston Housing Court No. 91-SP-02064 and No. 91-SP-02065 (Smith, J., October 15, 1991).

Finally, accepting without finding that the Defendant's wife is a qualified handicapped person, the Defendant has failed to establish his claim for discrimination based on the failure of the Plaintiff to reasonably accommodate his wife's disability. He has failed to establish a nexus between the disability at issue, Lupus, and the accommodation requested, forbearance.

For these reasons, judgment shall enter for the Plaintiff for the Defendant's counter-claims.

ORDER FOR JUDGMENT

Based upon all the credible testimony and evidence presented at trial in light of the governing law, it is **ORDERED** that

1. Judgment shall enter for the Defendant for possession.
2. Judgment shall enter for the Plaintiff on the Defendant's counterclaims.

SO ORDERED.



MARYLOU MUIRHEAD
ASSOCIATE JUSTICE

January 25, 2011

cc: Anthony J. Coletti, Esquire
David Grossman, Esquire