

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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Y/kmb

_____AD3d_____

Argued - October 3, 2011

PETER B. SKELOS, J.P.
CHERYL E. CHAMBERS
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2010-10183

DECISION & ORDER

U.S. Bank, N.A., etc., plaintiff-respondent,
v Deborah Bernhardt, appellant, et al.,
defendants; GFRE, Inc., intervenor-respondent.

(Index No. 101474/07)

Cara Buonincontri (Sciretta & Venterina, LLP, Staten Island, N.Y. [Marilyn Venterina, Samantha Brooks, and Antonia Sciretta] of counsel), for appellant.

Knuckles, Komosinski & Elliott, LLP, Elmsford, N.Y. (Jordan J. Manfro of counsel), for plaintiff-respondent.

In an action to foreclose a mortgage, the defendant Deborah Bernhardt appeals, as limited by her brief, from so much of an order of the Supreme Court, Richmond County (Giacobbe, J.), dated August 18, 2010, as denied that branch of her motion which was to set aside a foreclosure sale of the subject property.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and that branch of the motion of the defendant Deborah Bernhardt which was to set aside a foreclosure sale of the subject property is granted.

After a hearing on the issue of the propriety of the service of process, the Supreme Court determined that, due to improper service, personal jurisdiction over the defendant Deborah Bernhardt, the owner of the foreclosed-upon property, had not been acquired. Thus, the Supreme Court granted that branch of Bernhardt's motion which was to vacate the judgment of foreclosure and sale that had been entered upon her default in answering or appearing. However, relying upon its purported equitable powers, the Supreme Court denied that branch of Bernhardt's motion which was to set aside the foreclosure sale. This was error.

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A court is without power to render a judgment against a party over whom the court lacks jurisdiction. A judgment rendered without jurisdiction is void. Further, when a deed is issued in execution upon such a void judgment, that deed is similarly void (*see Hirsch v Syrota's Auto Wreckers*, 211 AD2d 621, 622; *Berlin v Sordillo*, 179 AD2d 717, 719; *McMullen v Arnone*, 79 AD2d 496, 499; 3-30 Bergman on New York Mortgage Foreclosures § 30.06 [2011]). Consequently, once the Supreme Court concluded that personal jurisdiction over Bernhardt was lacking, it should have granted that branch of Bernhardt's motion which was to set aside the foreclosure sale (*see Bank One Natl. Assn. v Osorio*, 26 AD3d 452, 453; *Federal Home Loan Mtge. Corp. v MacPherson*, 277 AD2d 418, 419; *Ralph C. Sutro Co. v Valenzuela*, 113 AD2d 793; *Horvath v Grid Realty Corp.*, 64 AD2d 691).

In light of our determination, Bernhardt's remaining contention has been rendered academic.

SKELOS, J.P., CHAMBERS, SGROI and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court