

MEMORANDUM

SUPREME COURT : QUEENS COUNTY  
IA PART 13

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WELLS FARGO BANK, N.A., etc. x

INDEX NO. 17556/06

MOTION SEQ. NO. 1

-against-

BY: O'DONOGHUE, J

SEAN REID, et al.

DATED: JANUARY 14, 2008

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Mortgage Electronic Registration Systems, Inc. (MERS), as nominee for Credit Suisse First Boston Financial Corporation, commenced this action on August 9, 2006, seeking to foreclose a senior mortgage, dated December 12, 2005 and recorded on March 9, 2006, on the property known as 133-30 135<sup>th</sup> Place, South Ozone Park, New York. The mortgage was given to secure repayment under a note, which evidenced a loan in the principal amount of \$292,000.00, plus interest. MERS alleged that defendant Reid defaulted under the terms of the mortgage and note by failing to pay the monthly mortgage payment due on April 1, 2006. The mortgage and note were subsequently assigned to Wells Fargo Bank, N.A. (Wells Fargo) and by order dated August 16, 2006, Wells Fargo was substituted for MERS as plaintiff herein. Plaintiff Wells Fargo obtained a default judgment of foreclosure and sale dated January 26, 2007, which was entered on February 8, 2007.

Ida Mae Moore moves for leave to intervene, and upon intervention, to set aside the judgment of foreclosure and sale,

for leave to serve an answer, and to enjoin plaintiff from taking any action to sell, lease or transfer any interest in the subject premises pending the resolution of the action entitled Moore v Lost & Found Recovery, Inc. (Sup Ct, Queens County, Index No. 10510/2007).

Ida Mae Moore, the former record owner of the subject property, is a 69-year-old African-American woman, who allegedly has lived at the premises since the 1970's. Ms. Moore purportedly suffers from dementia and Alzheimer's disease, and allegedly is the victim of a fraudulent scheme, whereby she lost title to her property in 2004 as a result of a "foreclosure rescue" scam<sup>1</sup> perpetrated by Lost & Found Recovery, Inc., and its principal, Maurice McDowall, who targeted distressed homeowners with the intent of defrauding them out of their title and equity in their homes. It is alleged that McDowall and his associates exploited Ms. Moore's diminished mental capacity and tricked her into signing a deed, whereby she transferred out her ownership interest to Emel Holder, a straw buyer recruited by, or associated with McDowall. It is also alleged Ms. Moore lacked the requisite mental capacity to understand that the document she executed was a deed, or to form the intent to transfer her title. It is further alleged

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The New York State Legislature recently enacted the "Home Equity Theft Prevention Act" (Real Property Law § 265-a), to protect homeowners from deed theft and foreclosure rescue scams. The Act, however, is inapplicable herein, insofar as it took effect on February 1, 2007 (L 2006, c 308, § 3).

that Holder, in turn, transferred the title to the property to defendant Sean Reid, a second straw buyer recruited by McDowall.

Counsel for Ms. Moore asserts that Ms. Moore was never properly joined as a party defendant herein, notwithstanding Ms. Moore occupies the property. Counsel also asserts that if Ms. Moore was served with a copy of the summons and complaint, Ms. Moore did not understand the significance of the documents. Maurice Jacobs, Ms. Moore's nephew, apparently tried to get help for his aunt, but could not afford a private attorney, and only recently obtained help from The Legal Aid Society, which has agreed to represent Ms. Moore herein and in an action to return title to Ms. Moore (Index No. 10510/2007). Ms. Moore allegedly previously had executed a durable general power of attorney in Mr. Jacobs's favor on February 26, 2003.

Counsel for plaintiff Wells Fargo concedes that Ms. Moore "at all times, remain[ed] a resident on the premises."

Plaintiff Wells Fargo has failed to present an affidavit of service, indicating that Ms. Moore has been joined as a party defendant herein, and a search of the records on file with the County Clerk does not reveal an affidavit of service indicating service of process upon Ms. Moore. As an occupant at the property, Ms. Moore has a real and present interest in the subject property or the outcome of the action (see Empire Sav. Bank v Towers Co., 54 AD2d 574 [1976]; see also Nationwide Associates, Inc. v Brunne, 216 AD2d 547 [1995]; Gibbs v Kinsey, 170 AD2d 1049 [1991]; Scharaga

v Schwartzberg, 149 AD2d 578, 579 [1989]; Polish Nat. Alliance of Brooklyn v White Eagle Hall Co., 98 AD2d 400 [1983]; Green Point Sav. Bank v Defour, 162 Misc 2d 476 [1994]). In addition, having alleged a fraudulent transfer of her ownership interest, without her knowing consent, Ms. Moore has an arguable meritorious defense to the foreclosure action. Furthermore, "[a]ctual possession of real estate is sufficient notice to a person proposing to take a mortgage on the property, and to all the world, of the existence of any right which the person in possession is able to establish" (Phelan v Brady, 119 NY 587, 591-592 [1890]).

Under such circumstances, those branches of the motion by Ms. Moore seeking leave to intervene, and upon intervention, to vacate the judgment of foreclosure and sale and for leave to serve and file an answer are granted. The court finds it appropriate under the circumstances presented herein that a guardian ad litem be appointed for defendant Moore (CPLR 1202). Defendant Moore shall serve and file an answer within 20 days of service of a copy of this order with notice of entry.

Settle order including a provision for the appointment of a guardian ad litem.

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J.S.C.