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| Newrez LLC v Bartholomew |
| 2026 NY Slip Op 31152(U) |
| March 4, 2026 |
| Supreme Court, Suffolk County |
| Docket Number: Index No. 608769/2023 |
| Judge: Peter R. McGreevy |
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Short Form Order

**SUPREME COURT - STATE OF NEW YORK
I.A.S. PART LXXVI - SUFFOLK COUNTY**

PRESENT:

HON. PETER R. McGREEVY, A.J.S.C.

-----X
NEWREZ LLC d/b/a SHELLPOINT MORTGAGE
SERVICING,

Plaintiff,

-against-

DAVID BARTHOLOMEW; KELLY ST. LEWIS-
MORRIS a/k/a KELLY M ST. LEWIS-MORRIS;
LINDENHURST JUSTICE COURT; CLERK OF THE
SUFFOLK COUNTY DISTRICT COURT; AMERICAN
EXPRESS NATIONAL BANK; BRETT CHARLES;

Defendants.
-----X

NON-PARTY:

Jeffrey B. Rosenberg, Esq.
Jeffrey Rosenberg PC
o/b/o C & M Development NY LLC
600 Old Country Road Room 500
Garden City, New York 11530

INDEX NO.: 608769/2023

**MOTION SEQ. NO.: 005
MD**

CASE DISPOSED: Yes X No

PLAINTIFF'S ATTORNEYS:

Michael William Nardolillo, Esq.
Friedman Vartolo LLP
85 Broad Street Suite 501
New York, New York 10004

DEFENDANTS' ATTORNEYS:

Steven Alexander Biolsi, Esq.
Biolsi Law Group
o/b/o David Bartholomew and Kelly St. Lewis-
Morris
111 Broadway Room 606
New York, New York 10006

Upon the e-filed documents numbered 142 through 153 for an Order pursuant to CPLR 1012(a) directing John Juliano, Esq., the Referee appointed herein to return to C&M Development NY LLC its bid deposit of \$80,000.00 tendered on September 3, 2024, and upon due deliberation and consideration of the foregoing papers, it is hereby

ORDERED that non-party bidder C&M Development NY LLC's Motion (Sequence No. 005) is denied.

C&M Development NY LLC ("Bidder") entered into an agreement with plaintiff to purchase property that is the subject of this foreclosure action. The bidder now asserts that the terms of the Agreement are inconsistent with the Judgment of Foreclosure and Sale. Due to an appeal that was filed by defendants, David Bartholomew and Kelly St. Lewis, the bidder claims that, "[b]ased upon [their] conversations with the title company and their counsel, just the possibility of vacating the Final Judgment renders this property unmarketable and uninsurable." Bidder now moves for an Order pursuant to CPLR 1012(a) directing John Juliano, Esq., the Referee appointed herein to return to C&M Development NY LLC its bid deposit of \$80,000.00

tendered on September 3, 2024.

In opposition, plaintiff asserts that the Title Report provided by the bidder contains an “Effective Date” of July 30, 2024. Accordingly, plaintiff contends that the bidder ordered title prior to the original sale date, to wit: August 13, 2024, but then failed to seek a continuation prior to the sale date of September 3, 2024. Plaintiff also submits that the bidder offers no explanation as to why they waited until after the sale in order to seek an update to the July 2024 Title Report. Plaintiff further asserts that pursuant to the Terms of Sale, that plaintiff, at its sole discretion, is given leave to cure said defect regardless of whether or not the time to cure the defect “exceeds the Time of Essence closing date.” Here, the pending appeal appears to be the sole reason why bidder’s title vendor refused to insure title. Plaintiff submits that the bidder’s motion is premature unless or until plaintiff has been given the opportunity to cure the alleged defect.

The disposition of C&M’s motion turns on the foreclosed property’s marketability of title. “As a general rule, a purchaser at a foreclosure sale is entitled to a good, marketable title.” *Saxon Mortg. Services, Inc. v Coakley*, 145 A.D.3d 699 (2d Dept. 2016).

A marketable title has been defined as one that may be freely made the subject of resale. *Regan v Lanze*, 40 N.Y.2d 475 (1976). It is one which can be readily sold or mortgaged to a person of reasonable prudence, the test of the marketability of a title being whether there is an objection thereto such as would interfere with a sale or with the market value of the property *Id.* at 482.

The law assures to a buyer a title free from reasonable doubt, but not from every doubt *Norwegian Evangelical Free Church v. Milhauser*, 252 N.Y. 186 (1929), and the mere possibility or suspicion of a defect, which according to ordinary experience has no probable basis, does not demonstrate an unmarketable title (*Cambrelleng v. Purton*, 125 N.Y. 610 (1891)).

Here, C&M contends, without citation to statute or case law that a “buyer at a foreclosure sale should not be compelled to buy a property that is unmarketable or uninsurable.” [NYSCEF Doc. No. 150 ¶ 5]. C&M goes further to state that “because of the pending appeal, the property is uninsurable.” As set forth herein, a buyer at a foreclosure action is entitled only to “marketable title” – not “insurable title.”

Pursuant to the terms of the final Judgment of Foreclosure and Sale, C&M agreed to take the premises subject to “any appeal of the underlying action or additional litigation brought by any defendant or its successor or assignee contesting the validity of this foreclosure.” [NYSCEF Doc. No. 77 page 8]¹, Indeed, C&M admits that “the Final Judgment, signed by Justice Robert F.

¹ The Judgment of Foreclosure and sale specifically provides: “ORDERED, ADJUDGED AND DECREED, that said premises is to be sold in one parcel in ‘as is’ physical order and condition, subject toany right pursuant to CPLR 317, 2003 and 5015 or any appeal of the underlying action or additional litigation brought by any defendant or its successor or assignee contesting the validity of this foreclosure...”

Quinlan, Part 27, on 04/05/2024, is the judgment that controls in this matter.” (NYSCEF Doc. No. 150 ¶ 6).

Finally, C&M had notice when it bid at the auction sale on September 3, 2024 that defendants filed a notice of appeal on August 29, 2024 [See NYSCEF Doc. No. 126]. As such, it bid for the property with knowledge (and subject to) the pending appeal.

In light of the foregoing, non-party bidder, C&M Development NY LLC’s motion is denied.

Dated: March 4, 2026


HON. PETER R. McGREEVY, A.J.S.C.

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