

Cavalry Invs., LLC v Ruestow

2007 NY Slip Op 30359(U)

March 20, 2007

Supreme Court, Suffolk County

Docket Number: 0001467

Judge: Martin J. Kerins

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property the petitioner seeks the sale of, is identified in the petition as having an address of 38 Dorothy St., Port Jefferson Station, NY and is shown on the Suffolk county Tax Map as Section 180.00, Block 01.00, Lot 056.000. Petitioner concedes that the property is the homestead of respondents, Denise A. Ruestow and John Ruestow, and that they own it as tenants by the entirety. An appraisal annexed to the petition estimates the value of the homestead at approximately \$485,000.00. In a related action under Index No. 1471-2007, petitioner seeks similar relief for a debt owed by respondent, Denise A. Ruestow. In that instance, a judgment was entered in the Clerk of Suffolk County on October 25, 2005, in the amount totaling \$17,308.41.

Washington Mutual Bank, as successor in interest to the Dime Savings Bank, notes that it has a senior position to that of petitioner, i.e., by having a mortgage lien against the property. Respondent Ruestows executed a mortgage encumbering the property on or about April 19, 1988. As of April 1, 2007, the payoff amount is \$95,079.62. Petitioner notes that respondent, EAB Mortgage Company, Inc., n/k/a Citimortgage Asset Management, Inc., also holds a mortgage on the property which was recorded on January 13, 1997.

As to this latter mortgage of EAB n/k/a Citimortgage, petitioner claims that the recording in 1997 was subsequent to the recording of petitioner's judgment. Clearly, that statement is inaccurate. Petitioner's judgment was not entered until December 18, 2002. In regard to this mortgage, petitioner has not provided any information as to the amount of the mortgage or any payoff information. Further, petitioner has provided information as to several judgments against the respondents, John and Denise Ruestow. These judgments are in excess of \$59,000.00. As here, the petitioner under that Index No. (1471-07) has failed, except in conclusory fashion, to demonstrate its effort to recover and satisfy its judgment against other property that may be owned by the respondent or that it was impossible to do so. Further, the petitioner does not adequately describe the circumstances surrounding petitioner's resort to the sale of the respondent's homestead.

In light of the foregoing, petitioner has not demonstrated that the real property exceeds any liens or encumbrances by more than \$50,000.00, inclusive of petitioner's judgment. The facts in the petition do not present a clear picture to support the exercise of the Court's judicial discretion in favor of petitioner. It is well settled that the Court has broad discretionary power to control and regulate enforcement procedures (*Yeshina Tifferes Torah v Keshet Intern. Trading Corp.*, 236 AD2d 533). Consideration of these factors is warranted in light of the Courts responsibility to minimize the adverse collateral effects that may arise from the use of enforcement procedures (CPLR 5240). CPLR 5206(e) authorizes a judgment creditor to commence a special proceeding to procure a sale. However, whether a sale is actually ordered, is a matter of judicial discretion. This discretion must be exercised in light of the importance to the judgment creditor of securing a satisfaction of his judgment, whether there is any possibility that the judgment can be satisfied by other means, the

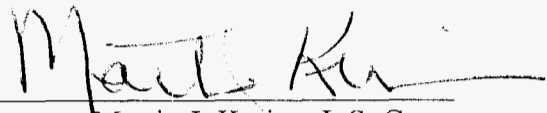
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relative monetary value of the property to be sold, the amount of the judgment and the rights of other persons in the property (*Alegemente Bank Nederland N.V. v Toepler*, 175 AD2d 4).

Dated: March 28, 2007
RIVERHEAD, NY



Martin J. Kerins, J. S. C.

FINAL DISPOSITION _____

NON-FINAL DISPOSITION ✓

TO:

EAB Mortgage Company, Inc. n/k/a Citimortgage Asset Management, Inc.
Respondent
CT Corporation System
111 Eighth Avenue
New York, New York 10011

The Dime Savings Bank
Respondent
Walt Whitman Road
Huntington, New York 11743