

**Eastern Sav. Bank, FSB v Morano**

2007 NY Slip Op 33107(U)

September 27, 2007

Supreme Court, Nassau County

Docket Number: 0684-05/

Judge: Roy S. Mahon

Republished from New York State Unified Court System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

MOD

SUPREME COURT - STATE OF NEW YORK

Present:

HON. ROY S. MAHON

Justice

EASTERN SAVINGS BANK, FSB,

TRIAL/IAS PART 11

Plaintiff(s),

INDEX NO. 10684/05

- against -

MOTION SEQUENCE  
NO. 3 & 4

RICHARD MORANO, PEOPLE OF THE UNITED STATES  
AMERICA AND BRENDA MORANO,

MOTION SUBMISSION  
DATE: July 31, 2007

Defendant(s).

The following papers read on this motion:

Order to Show Cause	X
Notice of Cross Motion	X
Affirmation in Opposition	XX
Reply in Support	X

Upon the foregoing papers the motion by the non-party Sanjaya Mallick brought by Order to Show Cause for an Order declaring that the title to the subject real property is vested in the Referee James J. Keefe, Esq., pursuant to this Court's Order dated May 1, 2007 and §1501 of the Real Property Actions and Proceedings Law; declaring that the purported deed from the defendant, Richard Morano, to Erik Keslen, is void on the grounds that the defendant has not right, title and interest to convey on the date he executed said deed; directing the Clerk of the County of Nassau to cancel said deed; extending the time of the successful bidder at the foreclosure sale herein to close for a period of thirty days after the entry of an Order of this Court determining this application and the cross-motion by the plaintiff for an Order holding that Sanjaya Mallick and Manmohan Singh, the successful bidders at the foreclosure sale held on December 19, 2006 are in default of the Terms of Sales for pooling their bids and not closing by the Time of the Essence deadline; pursuant to paragraph 6 of the Terms of Sale, directing the Referee, James J. Keefe to remit to the successful bidders' contract deposit to the plaintiff as liquidated damages; vacating the foreclosure sale of property located at 135 Woodhill Lane which took place on December 19, 2006 due to the successful bidders' default; declaring, in the interest of equity, whether defendant, Richard Morano, has a right of redemption nunc pro tunc, if the sale is vacated, from December 19, 2006 through and including the date of a second foreclosure sale and awarding plaintiff costs and attorney's fees in connection with this motion, are both determined as hereinafter provided:

The respective applications involve a December 19, 2006 foreclosure sale of the property located at 135 Woodhill Lane, Manhasset, New York.

The Court initially observes that a Judgment of Foreclosure and Sale dated August 28, 2006 was signed by the Hon. Edward G. McCabe as to the property in issue and was filed and entered on September 1, 2006 (see *plaintiff's Exhibit D to the cross-motion*). Pursuant to Real Property Actions and Proceedings Law §1531, said Judgment was conclusive as to establishing title in the plaintiff. Subsequent to the filing of the Judgment, Justice Ira Warshawsky pursuant to Order to Show Cause dated December 19, 2006 declined to stay the foreclosure sale scheduled for that day December 19, 2006 but did stay the transfer of title to the property till the hearing of the application. At the sale, the non-party movant Sanjaya Mallick and a "co-bidder/purchaser" Manmohan Singh collectively purchased the property. The Terms of Sale (*non-party Mallick's application Exhibit A*) stated:

1. The Property will be sold to the highest bidder at public auction (the "Purchaser").
2. The Purchaser will be required to deposit with the Referee ten percent (10%) of the amount bid, in certified funds immediately upon the Referee's acceptance of the Purchaser's bid for which a Referee's receipt will be given.
3. The balance of the purchase money will be required to be paid in certified funds to the Referee at the office of Kriss & Feuerstein LLP, 260 Lexington Avenue, Suite 1300, New York, New York 10017 on January 18, 2007 at 12:00 p.m. eastern standard time, time being of the essence, at which time the Referee's deed will be ready for delivery.
4. The Referee is not required to send any notice to the Purchaser. If the Purchaser neglects to call at the time and place specified to pay for and receive the Referee's deed, he will be charged with interest thereafter on the whole amount of the purchase, unless the Referee shall deem it proper to extend the time for completion of the purchase.
5. Upon the Referee's acceptance of the Purchaser's bid. Purchaser will be required to sign a memorandum of the purchase and an agreement to comply with these Terms of Sale.
6. The biddings will be kept open after the Property is struck down and if the Purchaser fails to comply with any of these Terms of Sale, the Property so struck down will again be put up for sale under the direction of the Referee, without application to the Court, unless plaintiff's attorney's shall elect to make such application; and the Purchaser shall be held liable for any deficiency resulting from a resale, and also for all costs and expenses occurring on the resale. A Purchaser who defaults shall not be entitled to a refund of any amount deposited with the Referee or to any excess resulting from any resale of the Property. Upon default of the Purchaser under these Terms of Sale, the Referee shall deliver to the plaintiff, without notice to Purchaser, the amount deposited by Purchaser as liquidated damages for failing to complete the purchase of the Property as provided herein.
7. In case the Plaintiff, or the Plaintiff nominee, shall be the purchaser, or in

the event that the rights of the purchaser shall be assigned to and acquired by the plaintiff, or the plaintiff's nominee, and the valid assignment thereof filed with the Referee, the provisions of the Judgment of Foreclosure and Sale entered herein insofar as the same relate to such purchase by or assignment to the plaintiff, or the plaintiff's nominee, shall be deemed included in these terms of sale with the same force and effect as if fully set forth at length.

8. The Property is being sold in one parcel in "as is" physical order and condition subject to any:
  - (a) state of facts an accurate survey may show;
  - (b) charges for maintenance of street vaults;
  - (c) building restrictions and regulations;
  - (d) prior liens of record, if any;
  - (e) violations of record now or hereafter on the premises;
  - (f) easements, covenants, agreements, reservations and restrictions of record insofar as the same may be in force and effect;
  - (g) rights of tenants and/or occupants in possession;
  - (h) security agreements, conditional bills of sale and chattel mortgages;
  - (i) zoning regulations or amendments thereto; and
  - (j) rights of the United States of America to redeem within 120 days from the date of sale by reason of any Federal lien filed by or acquired prior to the date of sale.
9. No abstract of title, title search or survey will be furnished/
10. All expenses of recording the Referee's deed, including but not limited to New York State transfer taxes, shall be borne by the Purchaser.
11. At or before the time of making a bid, the bidder, if other than the plaintiff, shall exhibit to the Referee a certified check(s) for at least ten percent (10%) of the amount of the bid.
12. The bidding shall be open to single bidders and there shall be no pooling of bids between multiple parties."

The non-party contends that there was no closing that occurred pursuant to the Terms of the Sale. The Court observes that the stay imposed by Justice Warshawsky did not stay the closing but rather the transfer of title to the property pending the hearing of the motion. The non-party argues and the plaintiff contends that prior to the Foreclosure Sale of December 19th, the defendant Richard Morano entered into a contract with another non-party Erik Keston in relation to which a deed dated January 31, 2007 was executed.

On May 1, 2007, the Court determined the Order to Show Cause after adjournment, oral argument and ultimate submission. In pertinent part, said Order stated:

"The respective applications arise out of a foreclosure sale of property located at 135 Woodhill Lane, Manhasset, New York.

The Court notes that by Order of the Court, Justice Warshawsky based upon an application by the defendant Richard Morano declined to issue a temporary restraining order staying the foreclosure sale of the property in issue to be held on December 19, 2006 but did issue such an Order staying the transfer of the title to the property in issue. The property was purchased by the non-parties Manmahon Singh and Sanjaya Mallick who have appeared in relation to the second Order to Show Cause based upon a direction by this Court in the defendant's Second Order to Show Cause to serve the non-parties' counsel.

The Court initially observes that the defendant Richard Morano has not established a basis to vacate the defendant's default in the underlying foreclosure action upon which the foreclosure sale in issue occurred (see, *DiLorenzo v A.C. Dutton Lumber*, 67 NY2d 138, 501 NYS2d 8).

Notwithstanding the foregoing, the foreclosure sale in issue was not stayed by the defendant Richard Morano and occurred on December 19, 2006. The purchase by the non-parties at that time was valid in the absence of a stay.

The defendant Richard Morano's contention that he still has a right of redemption based upon Justice Warshawsky's stay of the transfer of title is misplaced in light of the purchase by the non-parties at the sale (see, *Real Property Actions and Proceedings Law §1408 and §1411*). The Court further observes that the defendant Richard Morano's right to redemption was extinguished based upon said defendant's failure to comply with the requirements of *Real Property Actions and Proceedings Law §1341*.

Based upon the foregoing, the defendant Richard Morano's application for an Order staying the foreclosure sale of the premises located at 135 Woodhill Lane, Manhasset, New York (hereinafter referred to as the subject premises), which is scheduled for today, December 19, 2006 at 11:30 am; in the alternative, an order staying the deed transfer of the subject premises pending the hearing and determination of this application and the defendant being awarded the costs and attorney's fees associated with bringing the instant order to show cause and said defendant's motion for an Order declaring that the defendant's right of redemption did not terminate upon the foreclosure sale; an order declaring the December 19, 2006 foreclosure sale of 135 Woodhill Lane, Manhasset, New York (hereinafter referred to as the "subject premises" null and void; an order declaring that the subject premises was not sold at the foreclosure sale; a declaratory judgment in favor of Defendant that third-party bidder has no interest in the subject premises; a judgment in favor of defendant enjoining third-party bidder from pursuing and/or initiating a law suit in this matter; an order declaring third-party bidder lacks standing to challenge this motion' an order compelling plaintiff to accept previously

tendered payoff amount; an order compelling plaintiff to issue a satisfaction of mortgage, cancellation of lis pendens; in addition, an order compelling plaintiff to immediately discontinue the judgment of foreclosure and sale underlining this matter, and the defendant being awarded the costs and attorney's fees associated with bringing the instant order to show cause, are respectively **denied** in their entirety."

In light of the vacature of the stay, the Keston deed (supra) was filed on or about May 9, 2007. The non-party through counsel contend that the plaintiff's counsel set a closing for June 6, 2007 (see *non-party Mallick's Exhibit B*). The non-party argues through counsel that in light of the filing of the Keston deed that the "title insurance company has advised me that it cannot insure a title given by the Referee". The non-party as a result, amongst other things, seeks the instant relief.

In light of the August 28, 2007 Judgment of Foreclosure (supra), that branch of the non-party's application which seeks an Order declaring that the purported deed from the defendant, Richard Morano, to Erik Keslen, is void on the grounds that the defendant has not right, title and interest to convey on the date he executed said deed, is **granted**. To the extent that the non-party seeks an Order directing the Clerk of the County of Nassau to cancel said deed, said relief is best addressed in a separate proceeding.

Based upon the time of the essence dates set forth in the Terms of Sale and the plaintiff's counsel's May 7, 2007, the non-party has not proceeded to closing on the law day as set forth in the foregoing (see, *Zev v Merman*, 73 NY2d 781, 536 NYS2d 739). As such, those branches of the plaintiff's motion which seeks an Order holding that Sanjaya Mallick and Manmohan Singh, the successful bidders at the foreclosure sale held on December 19, 2006 are in default of the Terms of Sales by not closing by the Time of the Essence deadline and directing the Referee, James J. Keefe to remit to the successful bidders' contract deposit to the plaintiff as liquidated damages are both respectively **granted**. The non-party's application for an Order extending the time of the successful bidder at the foreclosure sale herein to close for a period of thirty days after the entry of an Order of this Court determining this application, is **denied**. To the extent that the plaintiff seeks an Order holding that Sanjaya Mallick and Manmohan Singh, the successful bidders at the foreclosure sale held on December 19, 2006 are in default of the Terms of Sales for pooling their bids, is **denied** as moot.

The Court notes that the respective submissions do not establish that the Foreclosure Sale was improper but rather that the sale was never consummated. As such, that portion of the plaintiff's application which seeks an Order vacating the foreclosure sale of property located at 135 Woodhill Lane which took place on December 19, 2006 due to the successful bidders' default, is **denied**.

Based upon all of the foregoing and in light of the Judgment of Foreclosure that portion of the non-party's application which seeks an Order declaring that the title to the subject real property is vested in the Referee James J. Keefe, Esq., pursuant to this Court's Order dated May 1, 2007 and §1501 of the Real Property Actions and Proceedings Law, is **granted**. The Referee shall schedule a new date for sale of the property in issue with 60 days of the date of this Order. In light of this sale, that branch of the plaintiff's motion which seeks an Order declaring that Richard Morans has a right of redemption in relation to this sale, is **granted**.

That portion of the plaintiff's motion which seeks an Order awarding plaintiff costs and attorney's fees in connection with this motion, is denied.

SO ORDERED.

DATED: 9/27/2007

*Ray S. Walker*

J.S.C.

**ENTERED**

OCT 01 2007  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE