

L&L Assoc. Holding Corp. v Glassman

2008 NY Slip Op 30885(U)

March 20, 2008

Supreme Court, Nassau County

Docket Number: 0095-05/a

Judge: Daniel Martin

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SHORT FORM ORDER
SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DANIEL MARTIN
Acting Supreme Court Justice

L&L ASSOCIATES HOLDING CORP.

TRIAL/IAS, PART 31
NASSAU COUNTY

Plaintiff.

- against -

Sequence No.: 008, 009 & 010
Index No.: 010095/05

ANDREA GLASSMAN, ET AL.

Defendants.

The following named papers have been read on this motion:

	Papers Numbered
Notice of Motion and Affidavits Annexed	X
Notice of Cross-Motions and Affidavits Annexed	X
Answering Affidavits	X
Replying Affidavits	X

Defendants Andrea Glassman and Ruth Selby move for an order 1) disaffirming the report of sale of the referee herein; 2) setting aside the sale and conveyance of the premises which is the subject of the instant tax lien foreclosure action to non-parties Alan and Hildagardis Smith; 3) setting the matter down for a hearing on the amount of interest due on two judgments held by defendant Selby, "as attorney" from the date of closing until payment; 4) directing purchasers Smith to pay an additional \$1,245.20 representing five days interest as provided in the judgment of foreclosure herein; and 5) directing plaintiff to return the sum of \$2,035.12 in unauthorized advertising expenses incurred in the sale herein.

Defendants Hal Zoref as nominee, A&D Leasing, Inc. (hereinafter "A&D") and plaintiff's assignee, Arc Real Estate Corp. (hereinafter "Arc") cross-move for an order disaffirming the referee's report of sale and instructing the referee to file an amended report of sale which 1) removes payments relating to tax certificates 2884/1995 in the sum of \$11,973.26 and 3416/1996 in the sum of \$39,111.66; 2) reduces the amount of advertising expenses from \$2,420.12 to \$385.00 and 3) includes the balance of funds previously set aside by the referee at closing for additional fees.

Defendants Glassman and Selby cross-move for an order directing defendants Zoref and A&D and Arc to provide proof of their attorney's authority to appear on behalf of twelve

individual investors and not simply for Zoreff as nominee of those investors pursuant to CPLR 322(a) and (b) in the filing of certain actions to foreclose on the above referenced tax liens and the assignments of said liens to defendant Selby "as attorney".

The instant matter is a tax lien foreclosure action in which the property which is the subject of the tax lien which was held by plaintiff L&L Associates Holding Corp. and assigned to Arec was sold pursuant to Judgment of Foreclosure at a February 20, 2007 auction to non-parties Alan and Hildagardis Smith. A referee's deed dated March 27, 2007 conveyed title to said property to the Smiths.

Prior to the foreclosure on the lien which was held by L&L and which is the subject of this action, defendants Selby and Glassman were the title owners of said property with 45% and 55% respective ownership interests therein since 1996 when title in the property was conveyed to these defendants as co-owners from defendant Glassman as the 100% owner of the property. Defendants Zoref and A&D held a mortgage against said property in the sum of \$510,000 dated October 4, 1993. It is undisputed that in 1995 a tax lien bearing number 2884 was assessed against the property against defendant Glassman which lien was eventually obtained by non-party RTL Trust and Republic National Bank of New York (hereinafter "RTL") who obtained a judgment of foreclosure thereon dated September 7, 2000. It is also undisputed that a second tax lien was assessed against defendants Glassman in 1996 under number 3614 which lien was eventually acquired by First Union National Bank, as Custodian for Breen Capital Services Corporation (hereinafter "FUNB") in 1997 and that FUNB obtained a judgment of foreclosure thereon dated November 19, 2002.

On November 14, 2000 the RTL judgment was assigned to Ruth Selby "as attorney" for Glassman and Selby. On November 23, 2003 the FUNB judgment was assigned to Ruth Selby "as attorney" for Glassman and Selby. The third tax lien that which is the subject of the instant action was acquired by plaintiff L&L on April 21, 2003 and L&L obtained a judgment of foreclosure thereon on September 20, 2006. On November 16, 2006 L&L assigned its interest in its lien to Arec.

Defendant Glassman and Selby's motion and Defendant's Zoref, A&D and Arec's cross-motion relating to the judgments held by Selby "as attorney"

The court shall first deal with those motions which deal with the disaffirmance of the referee's report, specifically that portion of the referee's report which found that payments should be authorized on the two tax sales certificates that were reduced to the judgments and held by defendant Selby "as attorney."

Defendants Glassman and Selby assert that to not disaffirm the referee's report without directing payment of the RTL and FUNB judgments to Ms. Selby who now holds same "as attorney" would serve to permit the referee to dispute the judgments of other justices of this court. To permit the referee to deposit the amounts of the liens into the treasurer's office and not pay the actual amounts of the judgments to the holder of same would conflict with the terms of said judgments. Therefore, claim these defendants, the report should be disaffirmed and the

conveyance set aside.

Defendants Zoref and A&D who both have submitted notices of claims to surplus funds herein and Arc, who claims under its tax lien which is the subject of the instant action, move to disaffirm the report to the extent the referee determined that the other two tax liens held by Selby "as attorney" should be satisfied by the sales proceeds on the grounds that those judgments became merged and extinguished. These parties also oppose Glassman and Selby's motion on the same grounds.

"A mortgage may become merged and extinguished where title to the land and ownership of the mortgage becomes vested in the same person." Cambridge v. Thompson, 215 A.D.2d 427 (2nd Dep't 1995). "Although equity will intervene to bar a merger where such was the intent of the mortgagee or if justice so requires, the court may nonetheless declare that a merger occurred if such a declaration is required to protect the rights of a third person such as the holder of a junior mortgage (citations omitted)." *Id.*, p. 427. See, also, Baran v. People of the State of New York, 259 A.D.2d 313 (1st Dep't 1999). The court will find that equity requires merger of the prior lien where it would serve to defeat the interests of a subsequent lien holder and where such indicia is present as the new holder has the same address as the subject property and held the mortgage under an alias or alter ego. Cambridge v. Thompson, *supra.*; Baran v. People of the State of New York, *supra.* The court finds the nature of a tax lien to be so similar to that of a mortgage that equity requires this standard apply to tax liens. Further, the Nassau County Administrative Code provides that "[a]ll the provisions of the civil practice act and all other provisions of law and the rules of practice relating to actions for the foreclosure of mortgages shall apply to the action hereby authorized [tax lien foreclosures]." Nassau County Administrative Code, §5-60.0.

The fact that the assignments reflect that they were made to Ms. Selby "as attorney" and that her address is listed as being in Brooklyn is of no moment to the Court. She remains an individual owner of the property in foreclosure. Such would also have an adverse impact upon A&D and Zoref. Further, defendants' position that A&D's and Zoref's motion should be denied because they do not consider their lien to be valid is conclusory and unavailing. The court therefore finds that said liens were merged in fee and extinguished.

Thus, based upon the foregoing, defendants A&D, Zoref and plaintiff's assignee Arc's motion is granted to the extent that the referee's report is disaffirmed and the referee is hereby directed to file an amended report which does not include payments on tax liens 2884/95 and 3614/96. The court also denies those branches of defendants Glassman and Selby's motion which seek an order disaffirming the referee's report and vacating the sale and setting the matter down for a hearing on the amount of interest payable to these defendants on their tax liens.

Glassman and Selby's Motion For Five Days' Interest

Glassman and Selby move for an order directing that they be paid \$1,245.20 pursuant to the terms of the judgment of foreclosure herein representing five days interest due to a five day delay in closing. Same is granted as unopposed.

Motions Relating to Advertising Expenses

Defendants Selby and Glassman move for an order directing Arc to return the sum of \$2,035.12 representing advertising expenses which these defendants allege Arc "double billed." In its cross-motion Arc admits to incorrectly being overpaid for the advertising expenses in the sum of \$2,420.12 and indicates that it is making arrangements to pay back the referee the sum of \$2,035.12 to be deposited with the Treasurer leaving Arc with \$385 in advertising expenses. Thus, the court directs that the referee, when he files the amended report, provide therein for \$385.00 for advertising expenses to Arc to be billed as an expense. Arc is directed to pay back to the referee the sum of \$2,035.12 to be deposited in the Treasurer's office.

Glassman and Selby's Cross-Motion For an Order Directing Zoref and A&D's Attorneys to Demonstrate Authority to Appear on behalf of Zoref and A&D

For whatever reason defendants Glassman and Selby move for this relief upon the grounds that they are entitled to proof of such authority pursuant to CPLR 322(a) and (b). Said sections are inapplicable. CPLR 322(a) provides that where an action has been commenced which affects real property and plaintiff's attorney has not provided defendant with proof of authorization to represent the plaintiff, defendant may demand proof of said authorization. Zoref and A&D are both defendants and not plaintiffs in this action. Further, CPLR 322(b) provides that a non-resident defendant in an action which affects real property must file authority for his attorney to represent him in that matter. Both defendants Zoref and A&D are New York residents. Thus, defendants Glassman and Selby's cross-motion is denied.

Based upon the foregoing it is hereby directed that:

- 1) the referee's report is hereby disaffirmed and the referee is directed to issue an amended report which is not to provide for any payment on the tax lien judgments 2884/95 and 3614/96 which liens have become merged into the subject property and extinguished;
- 2) said amended report is to provide for \$385.00 in advertising expenses;
- 3) Arc is directed to return to the referee the sum of \$2,035.12, said sum to be deposited in the Treasurer's office; and
- 4) purchasers are directed to pay to the referee for deposit into the treasurer's office the sum of \$1,245.20.

So Ordered.

Dated: March 20, 2008


A.J.S.C.

ENTERED

MAR 26 2008

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**