

**L.I. Equity Network, LLC v Village in the Woods
Owners Corp.**

2008 NY Slip Op 33613(U)

December 3, 2008

Supreme Court, Suffolk County

Docket Number: 16086-07

Judge: Peter Fox Cohalan

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INDEX # 16086-07
 RETURN DATE: 6-19-07 (001)
 1-10-08 (002)
 MOT. SEQ. # 001 & 002

SUPREME COURT - STATE OF NEW YORK
I.A.S. TERM, PART XXIV - SUFFOLK COUNTY

PRESENT:

Hon. PETER FOX COHALAN

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LI EQUITY NETWORK, LLC.,

Plaintiff,

-against-

VILLAGE IN THE WOODS OWNERS CORP.
 and WASHINGTON MUTUAL BANK,

Defendants.

CALENDAR DATE: August 15, 2007
 MNEMONIC: MG; MD

PLTF'S/PET'S ATTORNEY:

ERNEST E. RANALLI, ESQ.
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 Farmingdale, NY 11735

DEFT'S/RESP ATTORNEY:

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 STEVEN J. BAUM, ESQ.
 Atty for Washington Mutual
 2220 Northpointe Parkway
 Amherst, NY 14228

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 Upon the following papers numbered 1 to 45 read on these motions for injunctive relief
 Notice of Motion/Order to Show Cause and supporting papers 1-8; 23-36; Notice of Cross-Motion and
 supporting papers _____; Answering Affidavits and supporting papers 9-22; 37-45; Replying
 Affidavits and supporting papers _____; Other _____; and after hearing counsel in support of and
 opposed to the motion it is,

ORDERED that this motion by the plaintiff directing the closing of title to the
 plaintiff, L.I. Equity Network, LLC. (hereinafter Equity), the successful bidder at a court
 ordered foreclosure sale and staying the auctioneer, Jessica L. Prince-Clateman, Esq., from
 proceeding with another foreclosure sale is hereby granted in its entirety and the motion by
 defendant, Village in the Woods Owners Corp. (hereinafter Village Corp.), a cooperative
 community, seeking to restrain the plaintiff from entering the premises at 2 Eucalyptus Court,
 Unit 2A in Village Corp. located in Selden, Suffolk County on Long Island, New York which
 was bought at foreclosure by the plaintiff is hereby denied in its entirety.

This action was instituted by the plaintiff, Equity, after it was the successful
 bidder at a foreclosure sale on February 5, 2007 which was instituted by the mortgagee,
 Washington Mutual Bank (hereinafter WAMU), after the owners of the premises, Alfred and
 Gregory Walters, defaulted in their payments under the mortgage. The defendant Village
 Corp. is a cooperative whose principal business is located at 310 Northern Boulevard in Great

Neck, Nassau County on Long Island, New York. Village Corp has denied access to the plaintiff Equity claiming that the foreclosed unit may only be bought by an individual defined as a natural person, who will reside within the unit for a minimum of one (1) year and the plaintiff is not a qualified person. Equity claims that as a purchaser of this foreclosed property it intended to abide by the Village Corp. Cooperative Board's (hereinafter Co-op Board) rules and intended to market the unit to a purchaser with Co-op Board approval. However, the Co-op Board argues the purchaser Equity is an invalid entity to purchase the unit and the purchaser is foreclosed from bidding on the unit or taking possession.

Equity now moves (seq. #001) seeking to close title on the property and allow the third party qualified bidders to purchase the premises and the defendant Village Corp. cross-moves (seq. #002) for injunctive relief preventing the plaintiff Equity from entering the premises or doing any contracting work to the premises in preparation for sale.

For the following reasons, Equity's motion to finalize the sale and conduct a closing is granted and the defendant Village Corp.'s motion for injunctive relief to prevent the foreclosure sale to the plaintiff is denied.

An action to foreclose is an action in equity and a foreclosure proceeding of a lien for common charges or maintenance charges allegedly due and owing is such an action in equity and triggers the equitable powers of the Court. Carmody-Waite 2nd, Foreclosure of Mortgages on Real Estate, §92:31. The Court may exercise its equitable powers to set aside a judicial sale only where fraud, collusion, mistake, or overreaching casts suspicion on the fairness of the sale. See, Bank of New York v. Sheik, 279 AD2d 440, 719 NYS2d 259 (2nd Dept. 2001). Equity is the successful bidder at the foreclosure sale and a bona fide purchaser who bid a fair and valid consideration. The Co-op Board may not prevent a Court ordered foreclosure sale by claiming some inherent right to impose private conditions such as approval of the purchaser on a Court ordered sale which requires the sale to the highest bidder for a fair and valid consideration. The power of the state supercedes the power of the Co-op Board to approve the purchaser of the unit.

If the Co-op Board wished to insure or approve a purchaser of the unit, it merely needed to bid and buy the unit itself for a later private sale to an owner of its choosing. However, once foreclosure was commenced by WAMU, the power of the Court requires a sale to the highest bidder at a public auction, not the acceptance of a lower bid or no Court ordered sale because the Co-op Board attempted to restrict the purchaser. Village Corp.'s further argument that Equity is an institution or company who intends to "flip" the property is no different than if WAMU had successfully bid on the property to preserve the asset and protect its mortgage. Finally, the terms of the sale in a mortgagee foreclosure action must conform to the terms of the Court ordered judgment of foreclosure and an interested party cannot impose on the referee additional conditions or conditions precedent to a sale which do not conform to the judgment of foreclosure. New York Jurisprudence, §725. Village Corp.'s attempt to impose Article V of its bylaw provisions to change the terms of the foreclosure sale is without legal merit.

Here, Equity has indicated its intention to market and sell the unit to a person acceptable to the Co-op Board who will conform to the bylaws of the defendant Village Corp. . Equity having submitted the successful bid on this unit need only conform to the conditions of sale outlined in the terms of sale which state, inter alia, at 8 (d) "The benefits and terms of paragraph 8 (a) and (b) shall not have any application to a corporate bidder." Thus Equity is a qualified successful bidder and is entitled to ownership of the unit as having the successful bid at a court ordered foreclosure sale.

Equity's motion to compel the closing of title pursuant to the successful bid of the plaintiff is granted and the defendant Village Corp.'s motion for injunctive relief preventing the sale to plaintiff is denied in its entirety.

The foregoing constitutes the decision of the Court.

Dated: December 3, 2008

A handwritten signature in black ink, appearing to read "Peter H. ...", written over a horizontal line.

J.S.C.