

Titan Capital ID, LLC v 101 W. 131 St. Hous. Dev. Fund Corp.
2009 NY Slip Op 33462(U)
December 1, 2009
Supreme Court, New York County
Docket Number: 103375-2009
Judge: Alice Schlesinger
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At IAS Part 16 of the Supreme Court
of the State of New York, held in
and for the County of New York, at
the Courthouse located at 60 Centre
Street, New York, New York, on the
15th day of ~~SEPTEMBER~~, 2009.

December

PRESENT: HON. ALICE SCHLESINGER,

Justice.

-----X
TITAN CAPITAL ID, LLC,

Index No. 103375-2009

Plaintiff,

JUDGMENT OF
FORECLOSURE

- against -

✓ 101 WEST 131 STREET HOUSING DEVELOPMENT
FUND CORPORATION, A/K/A 101 WEST 131st
STREET HOUSING DEVELOPMENT FUND
CORPORATION, NEW YORK STATE DEPARTMENT
OF TAXATION AND FINANCE, and NEW YORK CITY
DEPARTMENT OF FINANCE,

Defendants.
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Upon the Notice of Pendency of this action filed in the Office of the Clerk of the
County of New York on March 11, 2009, containing all of the particulars required by law
to be stated in such notices; upon the Summons and Verified Complaint heretofore served
herein with proof of due service thereof; on the Order of this Court dated August 12,
2009 and duly entered on August 19, 2009, whereby William F. Mackey, Jr., Esq., (the
"Referee") was appointed referee to ascertain and compute the amount due to TITAN
CAPITAL ID, LLC (the "Plaintiff") on the note and mortgage upon which this action is
brought and to ascertain and report whether the mortgaged premises can be sold in one or
more parcels; and upon all proceedings heretofore had herein, from all of which it
appears that this action was brought to foreclose a mortgage held by the Plaintiff on real

property located at 101 West 131st Street, a/k/a 421 Lenox Avenue, New York, New York (Block 1916, Lot 29 on the Tax Map of New York County) (the "Premises" or the "Mortgaged Premises"); that the entire balance of the principal sum secured thereby and all other sums due thereon are now due and payable; that all Defendants herein have been duly served with the Summons and Verified Complaint and have duly appeared herein; and

On reading and filing the Report of said Referee, William F. Maskey, Jr., Esq., dated September 10, 2009 and duly filed in the Office of the New York County Clerk on September 14, 2009, from which Report it appears that the Mortgaged Premises should be sold in one parcel, and from which Report and Affidavit it appears that the sum of \$143,663.19 was due to Plaintiff as of September 8, 2009, for principal, interest and otherwise under the note and mortgage set forth and described in the Verified Complaint, plus interest at the contract rate of 24% per annum from September 9, 2009 on the outstanding mortgage principal balance of \$125,000.00 through the date of payment of the principal balance, notwithstanding the entry of judgment, as provided for in paragraph 3(C)(i) of the applicable mortgage note, and pursuant to section "1.15(d)" of the Mortgage being foreclosed;

And it appearing that none of the Defendants are subject to the protective provisions of the Soldiers' and Sailors' Civil Relief Acts of 1940, as amended, and are not subject to the protective provisions of the New York Soldiers' and Sailors' Civil Relief Act; and

Upon the Notice of Motion dated September 16, 2009, the Supplemental Affirmation of Regularity of Roy C. Justice, Esq. dated September 16, 2009, the

Affirmation of Legal Services Rendered dated September 16, 2009, with the exhibits annexed and proof of due service thereof, and no papers having been received in opposition to the Motion;

And the Motion having regularly come on to be heard on October 5, 2009, and having heard Konner, Teitelbaum & Gallagher, Michael Gould, Esq., of counsel, in support of the Motion, and no party having appeared in opposition, and due deliberation having been had, and the Court having rendered the Memorandum Decision dated October 28, 2009;

NOW, on motion of KONNER TEITELBAUM & GALLAGHER, attorneys for the Plaintiff, it is

ORDERED, ADJUDGED AND DECREED that the Report of William F. Mackey, Jr., Esq., dated September 10, 2009, be, and the same hereby is in all respects ratified and confirmed; and it is further

ORDERED, ADJUDGED AND DECREED that the Mortgaged Premises described in the Verified Complaint in this action and as hereafter described, or such part thereof as may be sufficient to discharge the mortgage debt, the expenses of the sale and the costs of this action as provided by the Real Property Actions and Proceedings Law be sold on any Wednesday except holidays at 1:00 P.M. in Room 130 of the New York County Courthouse located at 60 Centre Street, New York, New York, by and under the direction of William F. Mackey, Jr., Esq., who is hereby appointed Referee for that purpose. That said Referee give public Notice of the time and place of said sale, in accordance with RPAPL §231 in the NY Law Journal and that the Plaintiff or any other party or parties to this action may become the purchaser at such

sale, and that in case the Plaintiff shall become the purchaser at such sale, it shall not be required to make any deposit thereon. That said Referee execute to the purchaser or purchasers on such sale a deed or deeds of the Premises sold; that in the event a party other than the Plaintiff becomes the purchaser or purchasers at such sale, the closing of title shall be had thirty (30) days after such sale unless otherwise stipulated by all parties to the sale; and it is further,

ORDERED, ADJUDGED AND DECREED, that said Referee on receiving the proceeds of such sale forthwith pay therefrom, in accordance with their priority according to law, the taxes, assessments, sewer, rents or water rates which are or may become liens on the Premises at the time of sale with such interest or penalties which may have lawfully accrued thereon to the date of payment, provided that said payment is required by the jurisdiction of the county wherein this foreclosure is pending; and it is further

ORDERED, ADJUDGED AND DECREED, that said Referee then deposit the balance of said proceeds of the sale in his/her own name, as Referee, in Citi bank, 199 2nd St, Mineola, NY 11561 Bank or Trust Co. and shall thereafter make the following payments therefrom and his/her checks drawn for such purpose shall be paid by such depository, to wit:

- FIRST:** The statutory fees of said Referee in the sum of \$500.00.
- SECOND:** The expenses of the sale and the advertising expenses as shown on the bills presented and certified by said Referee to be correct, duplicate copies of which shall be annexed to the Report of Sale.
- THIRD:** Said Referee shall pay to the Plaintiff or its attorney the sum of \$ 1,265.00 adjudged to the Plaintiff for costs and

disbursements in this action to be taxed by the Clerk of this Court and inserted herein, with interest thereon from the date hereof, together with an extra allowance of \$ 300 hereby awarded to the Plaintiff in addition to costs and disbursements, with interest thereon from the date hereof, plus the sum of \$7,500.00 due to the Plaintiff for legal fees incurred to date, plus the disbursements incurred herein or to be incurred to enforce the mortgage, and also the sum of \$143,663.19 being the amount reported due as aforesaid, together with interest upon the outstanding mortgage principal balance of \$125,00.000 at the contract rate of 24% per annum from September 9, 2009, to the date of payment of the principal balance, notwithstanding the entry of judgment, as provided for in paragraph 3(C)(i) of the applicable mortgage note and as provided for in Section "1.15(d)" of the Mortgage being foreclosed, or so much thereof as the purchase money of the Mortgaged Premises will pay of the same, together with any advances as provided for in the note and mortgage which Plaintiff has made for taxes, insurance, principal and interest and any other charges due to prior mortgages, or to maintain the Premises pending consummation of this foreclosure sale, not previously included in the computation and upon presentation of receipts for said expenditures to the Referee, all together with interest thereon pursuant to the note and mortgage.

FOURTH: If such Referee intends to apply for a further allowance for his/her fee, application shall be made to the Court therefore upon due Notice to those parties entitled thereto.

FIFTH: That the said Referee take receipts for the money so paid out by him/her and file the same with his/her Report of Sale and that he/she deposit the surplus money, if any, with the New York County Clerk within five days after the same shall be received and ascertainable, to the credit of this action, to be withdrawn only on Order of this Court, signed by a Justice thereof; and it is further

ORDERED, ADJUDGED AND DECREED that, in case the Plaintiff shall become the purchaser of said Mortgaged Premises at said sale or in the event that the rights of the purchaser at said sale and the terms of sale under this Judgment shall be assigned to and be acquired by the Plaintiff, and a valid assignment thereof filed with said Referee, said Referee shall not require the Plaintiff to pay in cash the entire amount bid at said sale, but shall execute and deliver to the Plaintiff a Deed or Deeds of the Premises sold, upon payment to the Referee of the amounts specified above in the paragraphs marked "FIRST" and "SECOND" and the amounts of the aforesaid taxes, assessments, sewer rents and water rates, with interest and penalties thereon, or, in lieu of the payment of said last mentioned amounts, upon filing with said Referee receipts of the proper municipal authorities showing the payment thereof; that the balance of the amount bid after deducting therefrom the aforesaid amounts paid by the Plaintiff for Referee's fees, advertising expenses, taxes, assessments, sewer rents and water rates shall be allowed to the Plaintiff, and applied by the Referee upon the amounts due to Plaintiff as specified in

item "THIRD" above. That if, after so applying the balance of the amount bid, there shall be a surplus over and above the amounts due to the Plaintiff, the Plaintiff shall pay to the said Referee, upon delivery to Plaintiff of said Referee's deed, the amount of such surplus, and said Referee on receiving said several amounts from the Plaintiff shall forthwith pay therefrom said taxes, assessments, sewer rents, water rates, with interest and penalties thereon, unless the same have already been paid, and shall then deposit the balance with the depository as hereinabove directed; and it is further

ORDERED, ADJUDGED AND DECREED, that said Referee take the receipt of the Plaintiff or Plaintiff's attorney for the amounts paid as hereinbefore directed in item marked "THIRD", and file it with his Report of Sale; that he/she deposit the surplus monies, if any, with the New York County Clerk within five (5) days after the same shall be received and be ascertainable, to the credit to this action, to be withdrawn only on the Order of the Court, signed by a Justice of the Court; that said Referee make his/her Report of such sale under oath showing the disposition of the proceeds of the sale and accompanied by the vouchers of the person(s) to whom the payment(s) were made and file it with the New York County Clerk within thirty (30) days after completing the sale and executing the proper conveyance to the purchaser and that if the proceeds of such sale be insufficient to pay the amount reported due to the Plaintiff with interest and costs as aforesaid, the Plaintiff shall recover from Defendant 101 WEST 131 STREET HOUSING DEVELOPMENT FUND CORPORATION, A/K/A 101 WEST 131st STREET HOUSING DEVELOPMENT FUND CORPORATION the whole deficiency or so much thereof as the Court may determine to be just and equitable of the residue of the mortgage debt remaining unsatisfied after a sale of the Mortgaged Premises and the

application of the proceeds thereof; provided a motion for a deficiency judgment shall be made as prescribed by §1371 of the Real Property Actions and Proceedings Law within the time limited therein, and the amount thereof is determined and awarded by an Order of this Court as provided for in said section; and it is further,

ORDERED, ADJUDGED AND DECREED, that the purchaser or purchasers at said sale be let into possession on production or delivery of the Referee's Deed or Deeds; and it is further

ORDERED, ADJUDGED AND DECREED that each and all of the Defendants in this action, and all persons claiming under them or any or either of them, and all persons having acquired any interest in the Mortgaged Premises and all persons claiming under them after the filing of the Notice of the Pendency of this action be, and they are hereafter forever barred and foreclosed of all right, claim, lien, title, interest and equity of redemption in the said Mortgaged Premises and in each and every part and parcel thereof; and it is further

ORDERED, ADJUDGED AND DECREED that the Premises be sold in "as is" physical order and condition subject to:

- A. Any state of facts an accurate survey may show,
- B. Covenants, restrictions, reservations, easements and agreements of record, if any and to any violation thereof;
- C. Building restrictions and zoning ordinances of the town or municipality in which said Premises are situate and to any violation thereof;

- D. Conditional bills of sale, security agreements and financing statements filed in connection with said Premises, if any, but only to the extent that any of the foregoing are not barred or foreclosed by this action;
- E. The lien of the unpaid balance due on prior mortgages of record, if any, and all liens of record prior to the date the Mortgage herein became a lien of record, if any;
- F. Existing tenancies, except such tenants as are parties defendant to this action and whose interests are extinguished thereby;
- ~~The lien of any unpaid taxes, assessments, sewer or water rents to the extent permissible;~~
- ~~All unpaid taxes, assessments, sewer or water rents and other taxes due upon transfer of real property, and the responsibility of the purchaser at the foreclosure sale;~~
- G. Any right of the United States of America to redeem pursuant to 28 U.S.C. 2410; and it is further

ORDERED, that a copy of this Judgment, with Notice of Entry thereof, shall be served upon the owner of the equity of redemption, any tenants named in this action and any other party entitled to notice.

The Premises are commonly known as 101 West 131st Street, a/k/a 421 Lenox Avenue, New York, New York (Block 1916, Lot 29 on the Tax Map of New York County).

A description of said Mortgaged Premises is annexed hereto and made a part hereof as Exhibit "A".

ENTER

DEC 01 2009

Alice Schlesinger
J.S.C.

ALICE SCHLESINGER

[Signature]
CLERK

FILED

DEC 22 2009

NEW YORK
COUNTY CLERK'S OFFICE