

Washington Mut. Bank v Chapman

2010 NY Slip Op 30757(U)

March 5, 2010

Supreme Court, New York County

Docket Number: 108800/08

Judge: Paul G. Feinman

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SUPREME COURT OF THE STATE OF NEW YORK -- NEW YORK COUNTY

PAUL G. FEINMAN, J.S.C.

PART 12

Index Number : 108800/2008
WASHINGTON MUTUAL BANK
 vs.
CHAPMAN, CHIFFON
 SEQUENCE NUMBER : 002
 JUDGEMENT OF FORECLOSURE/SALE

INDEX NO. 108800/08
 MOTION DATE 9/11/09
 MOTION SEQ. NO. 002
 MOTION CAL. NO. 19

in this motion to/for JFS

PAPERS NUMBERED

12

Notice of Motion/ Order to Show Cause -- Affidavits -- Exhibits ...

Answering Affidavits -- Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH THE ANNEXED DECISION AND ORDER.

FILED
 APR 06 2010
 NEW YORK COUNTY CLERK'S OFFICE

9/5/10

Dated: 12/10/09

Sounded,
JAF

HON. PAUL G. FEINMAN
J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 12

-----X
WASHINGTON MUTUAL BANK F/K/A
WASHINGTON MUTUAL BANK, FA
Plaintiff,

-against-

CHIFFON CHAPMAN; JPMORGAN CHASE BANK,
NA; LIBERTYPOINTE BANK; NEW YORK CITY
DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT,
Defendants.

Index Number 108800/08
Submission Date 9/11/2009
Mot. Seq. No. 002
Cal. No. 19

DECISION AND ORDER

FILED
APR 06 2010
NEW YORK
COUNTY CLERK'S OFFICE

For the Plaintiff:
Tommy J. Shapiro, Esq.
Rosicki, Rosicki & Associates, P.C.
Main Office 51 E. Bethpage Road
Plainview, NY 11803

Defendants did not appear

Papers considered in review of this motion for judgment of foreclosure and sale:

| Papers | Document Number |
|---|-----------------|
| Notice of Motion & Exhibits | 1 |
| Letter to Court from Rosicki, Rosicki & Assoc., July 20, 2009 | 2 |

PAUL G. FEINMAN, J.:

Plaintiff moves for an order to confirm the February 18, 2009 report of the special referee assigned to compute the amount due in this proceeding regarding the foreclosure and sale of a home. None of the defendants have opposed. For the reasons set forth below, the motion is granted without opposition.

Plaintiff commenced a foreclosure action against defendant Chiffon Chapman on June 25, 2008. (Mot. Ex. D). The action pertains to a note and mortgage signed on November 15, 2007, in which Chapman agreed to but did not pay plaintiff the principal sum of \$1,207,500.00 plus a fixed rate of interest until December 2014, as to the premises known as 47 W. 126th Street, New York, NY 10027, and bearing tax map designation of Block 1724, Lot 16. (Mot. Ex.

D). Chapman did not answer the summons and complaint. Pursuant to RPAPL § 1321, where the defendant fails to answer within the time allowed, the court may direct a referee to compute the amount due to the plaintiff and to such of the defendants as are prior encumbrancers of the mortgaged premises, and to examine and report whether the mortgaged premises can be sold in parcels and to report the amount due and becoming due.

On January 9, 2009, the court granted plaintiff's subsequent motion filed on November 13, 2008, for an order appointing a referee to compute. (Mot. Ex. B, Order Appointing Referee to Compute). Stephen Richard Markman, Esq., was appointed to compute the amount due to plaintiff for principal, interest, water and sewer rentals, insurance premiums, taxes, if any, and any other charges, except attorney's fees, and to examine and report whether the mortgaged premises should be sold in one parcel (Mot. Ex. B, Order Appointing Referee to Compute; p. 2).

Referee Markman's February 18, 2009 referee report includes three documents he considered in evidence: the Note, containing all the provisions, recitals and other matters alleged in the verified complaint; the Mortgage containing all the provisions, recitals and other matters alleged in the verified complaint; and the Assignment of mortgage from Washington Mutual to JPMorgan Chase Bank, pursuant to the Federal Deposit Insurance Act, 12 U.S.C. § 1821 (d) (2) (G) (i) (II) (Mot. Ex. A, Schedule "A"). In addition, his report contains the notarized deposition of Janine Timmons, a manager for plaintiff Washington Mutual Bank, who avers that "the mortgagors, their successors, assigns and/or transferees have defaulted in the payment of the installment which became due and payable on March 1, 2008 and each and every installment due thereafter, and by reason thereof this action to foreclose the mortgage was commenced," that as of August 15, 2008, there was due and owing to plaintiff the sum of \$1,204,838.36, together with interest from February 1, 2008, and that the allegations set forth in the complaint are true to her

knowledge (Mot. Ex. A, Schedule B; ¶¶ 3, 6). Referee Markman also includes his computation schedule which itemizes the amount owing from Chiffon Chapman to plaintiff, as follows: a principal balance due of \$1,204,838.36; interest due for the period of February 1, 2008 through June 19, 2008 totaling \$ 31,695.77, calculated at a rate of 6.875 % per annum; \$ 138.05 in late charges; and \$ 260.85 in suspense; for a grand total due of \$1,236,411.33. (Mot. Ex. A, Schedule C). He further advises that the mortgaged premises be sold as one parcel.

CPLR 4311 allows the court to issue an order of reference to direct a special referee to determine issues specified by the court. *See* CPLR 4311; *see also Shultis v Woodstock Lund Dev. Assocs*, 195 AD2d 677, 678 (3rd Dept 1993). CPLR 4403 states that “the judge required to decide the issue may confirm or reject, in whole or in part...the report of a referee.”

The record supports confirming Referee Markman’s February 18, 2009 report. The Court finds no grounds on which to disturb the findings of the referee. It is therefore

ORDERED that plaintiff’s motion to confirm the special referee’s report dated February 18, 2009 is granted; and it is further

ORDERED that the caption is amended to read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK; CIVIL TERM: PART 12

-----X
JPMORGAN CASE BANK, NATIONAL ASSOCIATION,
AS PURCHASER OF THE LOANS AND OTHER
ASSETS OF WASHINGTON MUTUAL BANK F/K/A
WASHINGTON MUTUAL BANK, FA
Plaintiff,

Index Number: 108800/08

-against-

CHIFFON CHAPMAN; JPMORGAN CHASE BANK,
NA; LIBERTYPOINTE BANK; NEW YORK CITY
DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT,

Defendants.

-----X,

and it is further

The proposed judgment of foreclosure and sale will be referred to the Order and Judgment Clerk for review.

This constitutes the decision and order of this court.

Dated: December 10, 2009
New York, New York

Paul G. Fenner
J.S.C.

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So ordered,

*3/5/10
New York, NY*

Paul G. Fenner
J.S.C.

FILED
APR 06 2010
NEW YORK
COUNTY CLERK'S OFFICE