

Renke v Kwiecinski

2010 NY Slip Op 31617(U)

June 22, 2010

Supreme Court, Nassau County

Docket Number: 19550/09

Judge: Denise L. Sher

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

JOHN K. RENKE II,

Petitioner,

- against -

JOYCE A. KWIECINSKI a/k/a JOYCE KWIECINSKI,
ANCHOR SAVINGS BANK, FSB, BOARD OF
MANAGERS OF SEA BREEZE II CONDOMINIUM, and
WORKERS' COMPENSATION BOARD OF THE STATE
OF NEW YORK,

Respondents.

TRIAL/IAS PART 32
NASSAU COUNTY

Index No.: 19550/09
Motion Seq. Nos: 02, 03, 04
Motion Dates: 03/30/10
04/15/10
04/29/10

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The following papers have been read on these motions:

	Papers Numbered
<u>Notice of Motion and Affidavit</u>	<u>1</u>
<u>Affirmation of Respondent/Mortgagee and Exhibits</u>	<u>2</u>
<u>Affidavit in Reply to Respondent/Mortgagee</u>	<u>3</u>
<u>Order to Show Cause and Affidavits</u>	<u>4</u>
<u>Affidavit in Opposition and Exhibits</u>	<u>5</u>
<u>Affidavit in Support of Stay</u>	<u>6</u>
<u>Notice of Cross-Motion, Affidavit and Exhibits</u>	<u>7</u>
<u>Affidavit in Opposition to Cross-Motion</u>	<u>8</u>

Upon the foregoing papers, it is ordered that the motions are decided as follows:

Respondent Joyce A. Kwiecinski ("Kwiecinski") moves (Motion Sequence No. 02) for an order vacating the Order of Judgment and Foreclosure issued by this Court on March 4, 2010. Petitioner opposes the motion and cross-moves (Motion Sequence No. 04), pursuant to 22 NYCRR Section 130.1.1(a), for an order awarding costs in favor of petitioner and against

respondent Kwiecinski in the sum of \$1,000.00 and for reasonable attorneys' fees incurred by petitioner as a result of the frivolous conduct of respondent Kwiecinski in making her motion (Motion Sequence No. 02). Petitioner also cross-moves, pursuant to 22 NYCRR Section 130.1.1(a) for an order imposing monetary sanctions against respondent Kwiecinski in an amount to be determined by the Court, in the exercise of its discretion, resulting from respondent Kwiecinski's frivolous conduct in making the motion (Motion Sequence No. 02). Respondent/Mortgagee Anchor Savings Bank, FSB ("ASB") submit a conditional and limited opposition to the respondent Kwiecinski's Notice of Motion (Motion Sequence No. 02). Respondent Kwiecinski opposes petitioner's cross-motion (Motion Sequence No. 04). Respondent Kwiecinski also moves (Motion Sequence No. 03) for an order staying execution of the foreclosure due to other motions and appeals. Petitioner opposes said motion.

Respondent Kwiecinski's Motion Sequence No. 02 seeks to vacate the March 4, 2010 Decision and Order of this Court which granted "petitioner's application for a judgment, pursuant to CPLR § 5206(e), directing that the interest of respondent Joyce A. Kwiecinski ("Kwiecinski") in and to that certain condominium property, together with improvements, commonly known as 75 East Broadway, Unit 10, a/k/a Unit 5B, Section 59, Block 101, Lot 227, Village of Long Beach, Town of Hempstead, County of Nassau, State of New York, ("Premises") together with Kwiecinski's undivided 7.5833% interest in the common elements of the Sea Breeze II Condominium which were included in the conveyance of the Premises to Kwiecinski, and more fully described in the Petition, said Premises being a residential condominium unit being part of the Sea Breeze II Condominium, be sold by the Sheriff of Nassau County and that the Sheriff shall disburse the proceeds as provided by law....ordered that the proceeds of said sale, in an amount not exceeding fifty thousand dollars (\$50,000.00), as and for Kwiecinski's homestead exemption, be paid to Kwiecinski.... ordered the State of Florida

judgments recovered by petitioner, plus interest, and the costs, disbursements of this proceeding, be adjudged to be a lien upon the surplus of the said sale, and that lien be enforced.... ordered that the surplus of the said sale to be applied to the State of Florida judgments obtained by petitioner, as judgment creditor against Kwiecinski as judgment debtor....ordered that Kwiecinski execute and deliver any and all documents and papers and take any action that may be reasonably requested by the Sheriff of Nassau County to effectuate the transfer and sale of the interest of Kwiecinski in the Premises upon public auction sale, and matters related thereto, including, but not limited to, taking any action and/or executing and delivering of any or all documents as may be required by the Sea Breeze II Condominium, and in the event that Kwiecinski fails, refuses or neglects to take such action(s) or to execute and deliver such documents or papers, the Sheriff is hereby authorized to execute such documents or papers or to perform such action(s) on behalf of Kwiecinski, as her attorney in fact.”

Respondent Kwiecinski states that the reason the judgment of foreclosure should be vacated is that “[r]espondent Anchor, JP Morgan Chase has a mortgage lien against my premises in my name as Joyce A. Kwiecinski. Petitioner’s three (3) money judgments from the State of Florida repeatedly submitted to the Court are against me as named Joyce Kwiecinski. Since the name on all three (3) Florida Judgments is not the same as named on title to my property (see Petitioner’s Exhibit), the Order to Foreclose on my property must be immediately vacated.”

The Court finds that there is no legal merit to respondent Kwiecinski’s motion. She has failed to set forth any legitimate legal basis as to why the Court should reverse its original ruling and vacate the judgment of foreclosure. Consequently, respondent Kwiecinski’s Motion Sequence No. 02 is hereby denied.

Respondent Kwiecinski’s Motion Sequence No. 03 seeks a stay of the execution of the

foreclosure ordered in this Court's March 4, 2010 Order. Respondent Kwiecinski's reasons as to why she is entitled to a stay of said foreclosure are that she has a motion pending to reargue the Court's March 8, 2010 Order, she has perfected her appeal from Justice Palmieri's denial of her motion to vacate the \$56,794.25 Judgment and she has filed a Notice of Appeal from the Court's March 8, 2010 Order. In his opposition papers, petitioner submits that "[t]o avoid any confusion, Petitioner has read Kwiecinski's application as one to stay enforcement of the Court's Order entered March 8, 2010 which granted Petitioner's application for an Order pursuant to CPLR § 5206(e) providing for the sale of Respondent's condominium apartment unit and related relief." Petitioner argues that "the heart of this motion practice is Petitioner's continuing efforts to delay enforcement of the three money judgments recovered against Kwiecinski, as duly docketed in the Nassau County Clerk's Office under CPLR Article 52-Full Faith and Credit." Petitioner claims that none of respondent Kwiecinski's proffered reasons as to why she is entitled to the relief requested in Motion Sequence No. 03 provide the basis for the Court to exercise its power to grant a discretionary stay.

With respect to the first reason respondent Kwiecinski gives for her request to "stay the execution of the foreclosure," specifically "that she has a motion pending to reargue the Court's March 8, 2010 Order," the Court finds that given its decision on respondent Kwiecinski's Motion Sequence No. 2 contained herein, said reason is no longer a valid basis for the request of a stay.

With respect to the second reason respondent Kwiecinski gives for her request to "stay the execution of the foreclosure," specifically that "she has perfected her appeal from Justice Palmieri's denial of her motion to vacate the \$56,794.25 Judgment," the Court finds that said reason provides no basis for the relief requested.

With respect to the third reason respondent Kwiecinski gives for her request to "stay the execution of the foreclosure," specifically that "she has filed a Notice of Appeal from the Court's March 8, 2010 Order," the Court again finds that said reason finds no basis for the relief

requested.

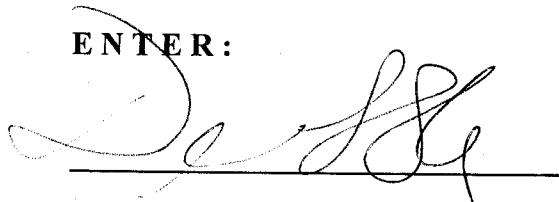
Respondent Kwiecinski also has the remedy in this case to move for a stay before the Appellate Division, Second Department as was also the Court's ruling in the December 24, 2009 Decision and Order of the Honorable Daniel Palmieri, Acting Justice of the Supreme Court, Nassau County.

Therefore, respondent Kwiecinski's Motion Sequence No. 03 is hereby denied.

Petitioner's cross-motion (Motion Sequence No. 04), pursuant to 22 NYCRR Section 130.1.1(a), for an order awarding costs in favor of petitioner and against respondent Kwiecinski in the sum of \$1,000.00 and for reasonable attorneys' fees incurred by petitioner as a result of the frivolous conduct of respondent Kwiecinski in making her motion (Motion Sequence No. 02), and, pursuant to 22 NYCRR Section 130.1.1(a) for an order imposing monetary sanctions against respondent Kwiecinski in an amount to be determined by the Court, in the exercise of its discretion, resulting from respondent Kwiecinski's frivolous conduct in making the motion is hereby denied.

This constitutes the Decision and Order of this Court.

ENTER:



DENISE L. SHER, A.J.S.C.
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Dated: Mineola, New York
June 22, 2010

ENTERED
JUN 29 2010
NASSAU COUNTY
COUNTY CLERK'S OFFICE