

Emigrant Mtge. Co., Inc. v Corcione

2010 NY Slip Op 33906(U)

October 14, 2010

Sup Ct, Suffolk County

Docket Number: 2009-28917

Judge: Jeffrey Arlen Spinner

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SUPREME COURT-STATE OF NEW YORK
I.A.S. PART XXI-SUFFOLK COUNTY

HON. JEFFREY ARLEN SPINNER
Justice of the Supreme Court

<p>EMIGRANT MORTGAGE CO. INC.,</p> <p style="text-align: right;">Plaintiff</p> <p style="text-align: center;">- against -</p> <p>ANTHONY J. CORCIONE and JANE CORCIONE,</p> <p style="text-align: right;">Defendants</p>
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Index No.: 2009-28917

ORDER ON MOTION

Mot. Seq. 002-MG
Original Return Date: 06/30/2010
Final Submit Date : 10/06/2010

Premises
66 Circle Drive
East Northport, New York 11731
District 0400
Section 059.00
Block 02.00
Lot 090.000

Presently before the Court is Plaintiff's application, pursuant to CPLR § § 2221(d) and 2221(e), requesting reargument and renewal of the motion which culminated in this Court's decision dated April 16, 2010. By way of procedural history, Plaintiff commenced this action claiming foreclosure of a high cost or "sub-prime" mortgage. Following service of process and joinder of issue, Plaintiff moved for an Order Granting Summary Judgment pursuant to CPLR § 3212 and for an Order of Reference pursuant to RPAPL § 1321. Thereafter, six Mandatory Settlement Conferences were held in accordance with the provisions of CPLR § 3408 in an effort to resolve the matter. Upon the failure of the parties to reach an accord, the Court, after careful consideration of both the record and the written submissions, rendered its decision.

On October 6, 2010, a conference was convened in this matter. At that time, Bryan Goldberg Esq. and Abraham Krieger Esq. appeared as counsel of record for Plaintiff while Sean Serpe Esq. appeared as counsel of record for Defendants. Also present was James Raborn Esq., Plaintiff's Vice-President, who assumed a very positive and active role at the conference. Following a rather lengthy discussion, it was agreed that the matter be adjourned for all purposes to October 14, 2010. On the adjourned date, the same individuals again appeared before the Court, having reported that a full resolution of all issues was reached between the parties and their respective counsel and further, that all agreed that the Court's prior Order at issue should be vacated.

The Court, after a careful review of the matter and following extensive discussions with counsel, finds that since at least April 16, 2010, Plaintiff, Defendants and their respective counsel (and especially through the intervention of Mr. Raborn) have assiduously engaged in continuing good faith negotiations as required both by CPLR § 3408 as well as the tenets of equity, Jamaica Savings Bank v. M.S. Investing Co. 274 NY 215 (1937), Susquehannah Steamship Co. Inc. v. A.O. Andersen & Co. Inc. 239 NY 289 (1925). Their substantial efforts have resulted in a settlement of the matter on terms that appear to be fair, just and equitable and upon which all parties are in agreement. Therefore, under the totality of the circumstances of this particular proceeding, the Court finds that the interests of justice as well as those of the respective parties would be best served by granting Plaintiff's application to the extent hereinafter set forth. It is, therefore, the determination of this Court that its prior Order be vacated, annulled, set aside and be of no further force and effect.

For all of the foregoing reasons and upon the consent of the parties, it is

ORDERED, ADJUDGED and DECREED that Plaintiff's application for reargument and renewal is hereby granted to the extent hereinafter decreed; and it is further

ORDERED, ADJUDGED and DECREED that this Court's Order dated April 16, 2010 (Emigrant Mortgage Co. Inc. v. Anthony J. Corcione, et. al., 2010 NY Slip Op 20133, 28 Misc 3d 161, 900 NYS 2d 608) be and the same is hereby vacated, annulled, set aside and shall be of no further force and effect.

This shall constitute the Decision, Judgment and Order of the Court.

Dated: October 14, 2010
Riverhead, New York

ENTER:



JEFFREY ARLEN SPINNER, J.S.C.

TO:

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