

**U.S. Bank Natl. Assoc. v Logan**

2010 NY Slip Op 33924(U)

September 27, 2010

Supreme Court, New York County

Docket Number: 108504/08

Judge: Marilyn G. Diamond

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

At an IAS Part 48 of the Supreme Court of the State of New York held in and for the County of New York at the Courthouse located thereof at 60 Centre Street, New York, New York 10007 on this 27<sup>th</sup> day of September, 2010.

P R E S E N T:

HON. MARILYN G. DIAMOND  
Justice

-----X  
U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE FOR BEAR STERNS ALT-A TRUST 2006-3, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-3,

Plaintiff,

Index No. 108504/08

-against-

**JUDGMENT OF FORECLOSURE AND SALE**

VICKI LOGAN, GREGORY ILICH, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., ACTING SOLELY AS A NOMINEE FOR AMERICA'S WHOLESALE LENDER, THE ANSONIA CONDOMINIUM, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, FIRST REPUBLIC BANK, BARBARA COHEN, SOVEREIGN BANK, ; NEW YORK CITY ENVIRONMENTAL CONTROL BOARD; FIRST REPUBLIC BANK; BARBARA COHEN; SOVEREIGN BANK; AMY GLUCK

Foreclosure of:  
(2109 Broadway #850, New York , NY 10023)  
Block 1165 Lot 1565

Defendants.

-----X

Upon the reading and filing of the Notice of Motion dated June 10, 2010; and upon the Summons and Verified Complaint filed June 18, 2008 and Notice of Pendency of Action filed June 18, 2008; the mortgage recorded in the Office of the Clerk of the County of New York on April 24, 2006 in CRFN: 2006000228430; and on all of the papers and proceedings heretofore filed or had herein, and on reading and filing the Affirmation of Regularity of Kiyam J. Poulson,

Esq., dated August 24, 2009 and showing that each and all of the defendants herein have been personally served within this State with the summons in this action, or have voluntarily appeared herein by their respective attorneys as appears from the affidavits of service and notices of appearance now on file in the office of the Clerk of this Court; and

Upon the Affirmation of Kiyam J. Poulson, Esq., dated June 10, 2010 and the annexed Exhibits; and

Upon proving that more than the statutory required days have elapsed since said defendants were so served as aforesaid; and

That none of the other defendants have appeared, served any answer to the complaint, nor had their time to do so been extended; and

That none of the defendants is an infant, incompetent, absentee or in military service; and

That the complaint herein and due notice of the pendency of this action, containing all the particulars required to be stated therein, were duly filed in the office of the Clerk of the County of New York on June 18, 2008, respectively; and have not been amended to add new parties or to embrace real property not described in the original Complaint; and

An Order of Reference granted on December 17, 2009 and entered January 18, 2010 in the New York County Clerk's Office; having been duly made to compute the amount due to the Plaintiff upon the bond or note and mortgage set forth in the complaint and to examine and report whether the mortgaged premises can be sold in one parcel; and

Upon reading and filing the report of SHERYL ROSE MENKES, Esq., the Referee appointed herein, dated June 3, 2010 from which it appears that the sum of \$698,819.18 was due thereon as of April 30, 2010; and that the mortgaged premises should be sold in one parcel; and

This motion having regularly come on to be heard before me on July 14, 2010 and no

one appearing in opposition to the motion and due deliberation having been had thereon;

**NOW**, on Motion of **DRUCKMAN LAW GROUP PLLC**, attorneys for Plaintiff, it is **ORDERED**, that the motion is granted; and it is further

**ORDERED, ADJUDGED AND DECREED** that the said report of the said Referee dated June 3, 2010 be, and the same is hereby in all respects ratified and confirmed; and it is further

**ORDERED, ADJUDGED AND DECREED** that by accepting this appointment, the Referee certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR, Part 36), including, but no limited to, Sections 36.2(c) ("Disqualifications from appointment"), and 36.2(d) ("Limitations on appointments based upon compensation"); and it is further

**ORDERED, ADJUDGED AND DECREED**, that **SHERYL ROSE MENKES**, as the Referee appointed herein shall be paid \$500.00 pursuant to CPLR § 8003(b); and it is further

**ORDERED, ADJUDGED AND DECREED** that the Plaintiff is hereby awarded judgment herein for the sum of \$698,819.18 together with interest at the rate set forth in the note and mortgage from the date specified in the Referee's report, together with legal interest from the date of entry hereof, together with advances from the date specified in said report, plus the sum of \$ 1,200<sup>00</sup>/<sub>xx</sub> as taxed by the Clerk of the Court and hereby adjudged to the Plaintiff for costs and disbursements of this action, with interest thereon from the date of entry hereof, together with and additional allowance of \$300.00 hereby awarded to Plaintiff in addition to costs and disbursements, with interest thereon from the date of entry hereof; and it is further

**ORDERED, ADJUDGED AND DECREED** that Plaintiff is hereby awarded attorney's fees in the amount of \$ 2,080<sup>00</sup>/<sub>xy</sub>; and it is further

**ORDERED, ADJUDGED AND DECREED** that the mortgaged premises described in the complaint in this action and as hereinafter described, or such part thereof as may be sufficient to discharge the mortgage debt, the expense of the sale and the costs of this action as provided by the Real Property Actions and Proceedings Law be sold in one parcel at public auction at

the Portage 2 Ho Condo at 60 Center St,  
New York, NY;

in the County of New York, State of New York by and under the direction of SHERYL ROSE MENKES, who is hereby appointed Referee for that purpose; that the said Referee gives public notice of the time and place of such sale according to law and the practice of this Court in the NY Law Journal

That the Plaintiff or any other parties to this action may become the purchaser or purchasers at such sale; that in case the Plaintiff shall become the purchaser at the said sale Plaintiff shall not be required to make any deposit thereon; that said Referee executes to the purchaser or purchasers on such sale a deed of the premises sold; and that the purchaser shall be required to pay the real estate transfer tax; and that in the event a party other than the Plaintiff becomes the purchaser or purchasers at such sale they shall be required to tender a deposit of ten percent (10%) of the purchase price in certified funds and the closing of title shall be had thirty (30) days after such sale unless otherwise stipulated by all parties to the sale; and that in the event the premises are located in a city having a population of 300,000 or more any liens or encumbrances placed by a city agency which have priority over the foreclosed mortgage shall be paid out of the proceeds of the sale in accordance with their priority according to law with such interest or penalties which may have lawfully accrued thereon to the date of payment; and it is

further

**ORDERED, ADJUDGED AND DECREED**, that said Referee then deposits the balance of said proceeds of sale in his own name as Referee in an account of an HSBC Bank in Manhattan; and shall thereafter make the following payments and his/her checks drawn for that purpose shall be paid by the said depository:

That in the absence of the designated Referee, the court will designate a substitute Referee forthwith

1. The statutory fees of said Referee in the sum of \$500.
2. 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 left with said depository.
3. The amounts hereinabove adjudged due to the Plaintiff, \$698,819.18, plus costs and disbursements as taxed by the Clerk of the Court and additional allowance together with the interest thereon 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 paid 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.
4. \$ 2,080<sup>00</sup>/<sub>100</sub> the attorneys' fees hereinabove awarded to Plaintiff.
5. If such Referee intends to apply for a further allowance for his fees, he may leave upon

deposit such amount as will cover such additional allowance to await the further order of the Court thereon after application duly made.

That in case the Plaintiff be 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 the payment to said Referee of the amounts specified above in items marked "1" and "2" and the amounts of the aforesaid taxes, assessments, water charges or sewer rents, and interest or 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, and taxes, assessments, water charges or sewer rents, shall be allowed to the Plaintiff and applied by said Referee upon the amounts due to the Plaintiff as specified above in item marked "3" and that if after so applying ~~the~~ the balance of the amount bid, there shall be a surplus over and above the said amounts due to the Plaintiff, and that if after so applying the balance of the Amount bid, there shall still be a surplus over and above said amounts due to the Plaintiff and the subordinate mortgagee, the Plaintiff shall pay to said Referee, upon delivery to Plaintiff of said Referee's deed, the amount of such surplus; that said Referee on receiving said several amounts from Plaintiff shall forthwith pay therefrom said taxes, assessments, water charges and sewer rents with interest and penalties thereon, unless the same have already been paid, and shall then deposit the balance.

That said Referee takes the receipt of the Plaintiff or Plaintiff's attorney for the amounts

paid as hereinbefore directed in item marked "2" and file it with his report of sale; that he deposits the surplus moneys, if any, with the New York County Treasurer within five days after the same shall be received and be ascertainable to the credit of this action, to be withdrawn only on the order of the Court, signed by a Justice of the Court; that the said Referee makes his report of such sale under oath showing the disposition of the proceeds of the sale and accompanied by the vouchers of the persons to whom payments were made and file it with the Clerk of the County of New York within thirty 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 recover of the defendant **VICKI LOGAN and GREGORY ILICH** 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 Section 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 said premises is to be sold in one parcel in "as is" physical order and condition, subject to any state of facts that an inspection of the premises would disclose, any state of facts that an accurate survey of the premises would show, any covenants, restrictions, declaration, reservations, easement, right of way, and public utility agreements of record, any building and zoning ordinances of the municipality in which the mortgaged premises is located and possible violations of same, any rights of tenants or persons in possession of the subject premises, prior liens of record, if any, except those liens addressed in

Section 1354 of the Real Property Actions and Proceedings law; and it is further

**ORDERED** that the purchaser or purchasers at said sale be let into possession on production 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, after the filing of such notice of pendency of this action, be and they are hereby forever barred and foreclosed of all right, claim, lien, title, interest and equity of redemption in the said mortgaged premises and each and every part thereof.

THE FOLLOWING is a description of the said mortgaged premises hereinbefore mentioned: known as 2109 Broadway #850, New York , NY 10023.

SEE SCHEDULE "A" ANNEXED.

SUBJECT TO any state of facts an accurate survey may show; covenants, easements, agreements, and restrictions of record and to any violations thereof; to the physical condition of any building or structure on the premises as of the date of sale hereunder; to zoning ordinances, restrictions and regulations; to regulations of and to orders and violations filed in any governmental departments or agencies; to possible rights of holders of security agreements and financing statements, if any, of record; to all filed and unfiled liens and claims of any governmental agency having jurisdiction over the premises; to the right of redemption of the United States of America for 120 days from the date of sale.

E N T E R



HON. MARILYN G. DIAMOND, J.S.C.

**FILED**  
DEC. 13 2010  
COUNTY CLERKS OFFICE  
NEW YORK

Norman Goodman  
CLERK