

Grehan v National Asset Loan Mgt. Ltd.

2013 NY Slip Op 32954(U)

November 7, 2013

Supreme Court, New York County

Docket Number: 157380/2013

Judge: Lucy Billings

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.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: LUCY BILLINGS
J.S.C.
Justice

PART 46

GERALDINE GREHAN

INDEX NO. 157380/2013

NATIONAL ASSET LOAN MANAGEMENT LIMITED

MOTION DATE _____

MOTION SEQ. NO. 001

The following papers, numbered 1 to 7, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). 1-3

Answering Affidavits — Exhibits _____ No(s). 4-6

Replying Affidavits _____ No(s). 7

Upon the foregoing papers, it is ordered that ~~this motion is~~:

Respondent's attorney, the escrow agent, shall return \$381,730.53 in its escrow account, as set forth in the accompanying decision.

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

Dated: 11/7/13

Lucy Billings, J.S.C.
LUCY BILLINGS
J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

-----x
GERALDINE GREHAN,

Index No. 157380/2013

Petitioner

- against -

DECISION and ORDER

NATIONAL ASSET LOAN MANAGEMENT LIMITED,

Respondent
-----x

LUCY BILLINGS, J.:

Respondent National Asset Loan Management Limited (NALM) seeks to enforce a judgment against petitioner's husband, Raymond Grehan, the undisputed owner of at least a 50% interest in unit 19E at 18 West 48th Street, New York County. In this proceeding pursuant to C.P.L.R. § 5239, petitioner Geraldine Grehan claims a 50% ownership interest in those premises. The parties' stipulation dated August 14, 2013, agreed to a sheriff's sale of the premises, which proceeded on the date of the stipulation. A nonparty successfully bid \$925,000.00 for the premises and closed the sale for that amount with the sheriff.

Paragraph 11 of the parties' stipulation provides that, upon such a closing:

any and all enforcement and transfer costs will be subtracted from the gross proceeds - before arriving at a "net dollar amount." This includes, but isn't limited to, the approximate \$300,000 AIB mortgage loan, all NALM's . . . legal fees and disbursements incurred in recognizing and domesticating judgment, negotiating a previous sale of the Premises, and this legal action, and any dispossess proceeding . . . all agent fees and all taxes, the auction costs, carrying costs of the premises (both NYC taxes and common charges) and any and all transfer taxes, capital

gains taxes These sums will be "taken off the top," the remaining "net" divided in two with the "Raymond Grehan" half not disputed by Petitioner of the net being immediately paid, released and delivered to NALM, and the remaining half to be deposited into an escrow account at Windel Marx Lane & Mittendorf, LLP, as security for Petitioner's claims in this proceeding

Aff. of Robert G. Wilk Ex. G (Sept. 12, 2013). The parties agree that several of the "enforcement and transfer costs" specified in this paragraph were not incurred because a nonparty, rather than respondent NALM, purchased the premises at the sheriff's sale. Had NALM been the successful bidder, it in turn would have sold the premises to a nonparty and in that transfer would have incurred more of the costs specified above.

As a result of the nonparty's purchase from the sheriff, the parties agree that NALM did not incur any "agent fees," referring to broker fees had NALM sold the premises, "taxes," referring to real estate taxes, "transfer taxes," "capital gains taxes," or "carrying costs of the premises (both NYC taxes and common charges)" as enforcement or transfer costs contemplated by the stipulation. Although NALM disagrees, the "AIB mortgage loan" falls in the same category. Had NALM sold the premises, it would have sold the unit without any encumbrances, significantly the Allied Irish Bank (AIB) mortgage, and thus would have incurred the cost of repaying the mortgage loan.

C.P.L.R. §§ 5203(a) and 5236(g) required that the purchaser at the sheriff's judgment execution sale, which was not the judgment creditor, purchase the premises subject to any encumbrance, here the AIB mortgage, that was senior to the

judgment creditor's lien and prohibited the mortgagee from receiving sale proceeds to repay the mortgage. Bank Leumi Trust Co. of New York v. Liggett, 115 A.D.2d 378, 379-80 (1st Dep't 1985). See Roberson v. Roberson 45 A.D.3d 1494, 1495 (4th Dep't 2007); Gateway State Bank v. Laura Estates, 237 A.D.2d 563 (2d Dep't 1997). NALM, as the judgment creditor, has not shown that it paid the mortgage loan before the sale or that it retains any obligation to use the proceeds it receives from the sheriff's sale to satisfy the AIB mortgage or any mortgage on the premises. The document that the parties agree is the sheriff's deed delivered to the purchaser at the sheriff's sale does not reflect the satisfaction of the AIB mortgage as part of the sale's terms. Aff. of Michelle R. Mufich Ex. B (Oct 17, 2013). Therefore the mortgage loan, like the other specific "enforcement and transfer costs," such as agent or broker fees, real estate taxes, transfer taxes, capital gains taxes, and carrying costs of the premises, that were not incurred when NALM did not purchase the premises at the sheriff's sale, are not "subtracted from the gross proceeds - before arriving at a 'net dollar amount.'" Nor is the AIB mortgage loan one of the costs "taken off the top" before dividing "the remaining 'net'" in halves.

Since the purchaser's bid likely reflected a recognition that the purchase would be subject to the mortgage, the sale price likely was that much less than it would have been had NALM sold the premises after paying off the mortgage. Those increased proceeds would have increased the "net dollar amount" to be

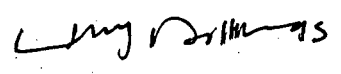
divided between NALM and the escrow account. In the instance of a nonparty's purchase, the amount of the mortgage loan increases the "net dollar amount" comparably.

Regarding the costs that were incurred even when NALM did not purchase the premises and that therefore are "taken off the top," the parties agree that NALM's legal fees and disbursements of \$110,117.31 through October 25, 2013, in domesticating its foreign judgment, in negotiating a previous attempted sale of the premises, and in this action, will be "subtracted from the gross proceeds." The parties also agree that, again because NALM did not purchase and resell the premises, it also did not incur any legal fees or disbursements in any "dispossess" or eviction proceeding to remove tenants from the premises. The parties agree that the sheriff's auction costs, including a 5% poundage of \$46,250.00, \$45.00 for posting and \$4,700.00 for publishing notice of the sale, \$30.00 for a levy and inventory, \$70.00 in other costs associated with the sale, and \$326.63 for a title report, all already deducted as from the gross proceeds that the sheriff paid to NALM, total \$51,421.63. See C.P.L.R. § 5236(c) and (g).

Subtracting \$110,117.31 and \$51,421.63 from the gross proceeds of \$925,000.00 leaves a "net" amount of \$763,461.06. The escrow agent Windel Marx Lane & Mittendorf, LLP, NALM's attorney, shall retain half of that amount, \$381,730.53, in the escrow account, where the payment from the sheriff already has been deposited. The other half, plus the \$110,117.31 for legal

fees and disbursements, may be "immediately paid, released and delivered to NALM." This decision constitutes the court's order regarding the amount to be retained in escrow. A decision on the underlying petition will follow.

DATED: November 7, 2013



LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.