

Bank of N.Y. Mellon v Brunetti
2013 NY Slip Op 34241(U)
December 17, 2013
Supreme Court, New York County
Docket Number: 09/112013
Judge: Eileen A. Rakower
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At an IAS Term of the Supreme
court of the County of New York
thereof at New York County
Supreme Court, 60 Centre Street,
New York, NY 10007-1474, on the __
17 day of December, 2013.

PRESENT:

HON: Eileen A. Rakower

-----X
The Bank of New York Mellon fka The Bank of New York,
as trustee for the benefit of CWALT, Inc., Alternative Loan
Trust 2007-19 Mortgage Pass-Through Certificates, Series
2007-19,

Plaintiff,

-against-

John Brunetti, Mortgage Electronic Registration Systems,
Inc., acting solely as a nominee for Countrywide Bank,
FSB, its successors and assigns, The Board of Managers of
The 155 Condominium, New York City Environmental
Control Board, New York City Parking Violations Bureau,
New York City Transit Adjudication Bureau,

Defendants.

Index No.: 09/112013

**JUDGMENT OF
FORECLOSURE
AND SALE**
MS#003

-----X
Plaintiff, The Bank of New York Mellon fka The Bank of New York, as trustee for the
benefit of CWALT, Inc., Alternative Loan Trust 2007-19 Mortgage Pass-Through Certificates,
Series 2007-19, having moved this Court for an Order confirming the report of the Referee and
for a Judgment of Foreclosure and Sale and the said Motion having regularly come on to be
heard on _____ and no appearance having been required or made by the attorneys
for the parties herein and upon submission and due deliberation having been had thereon.

NOW, upon reading and filing the Summons, Complaint and Notice of Pendency duly
filed in the New York County Clerk's Office on August 21, 2009, the second Notice of Pendency
duly filed in the New York County Clerk's Office on July 15, 2012, the affirmation of Jennifer

Brennan, dated October 23, 2013, the Order of Reference dated November 9, 2012 and upon all of the prior papers and proceedings had herein, from which it appears that this is an action to foreclose a mortgage on real property situated at 155 East 38th Street, Apt. 3G, New York, NY 10016, County of New York and that all of the defendants herein were duly served with the Summons and Complaint in this action or voluntarily appeared herein and that the time of all defendants to answer, appear or move with respect to the Complaint has expired and that none of the defendants answered, appeared or moved with respect to the Complaint, except the defendant, The Board of Managers of The 155 Condominium, who appeared in this action and requested notice of this application and that all the remaining defendants are in default but have been given notice of this application; that none of the defendants are infants, incompetents or absentees.

AND upon reading and filing the report of Jacques Erdos, Esq., dated September 4, 2013, from which report it appears that the sum of \$901,927.25 was due to the plaintiff as of April 30, 2013, plus interest and other expenses incurred thereafter and that the mortgaged premises should be sold in one parcel.

NOW, on Motion of Frenkel, Lambert, Weiss, Weisman & Gordon, LLP, attorneys for the plaintiff, it is

ORDERED, ADJUDGED AND DECREED, that the report of Jacques Erdos, Esq. be, and the same hereby is, in all respects, ratified and confirmed; and it is further

ORDERED, ADJUDGED AND DECREED, that the plaintiff is hereby awarded Judgment herein for the sum of \$901,927.25 together with advances from the date specified in said report, together with interest ~~at the rate set forth in the note and mortgage~~ from the date specified in the referee's report to entry of Judgment, together with legal interest from the date of entry hereof, plus the sum of \$ 1,370.⁰⁰ 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 an additional allowance of \$ 300 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 the mortgaged premises described in the Complaint and as hereinafter set forth, and if not sold sooner, any and all personal property in which the plaintiff has a security interest, be sold in one parcel at public auction on any Wednesday excepting holidays at 2:00 P.M. in Room 130 at the Supreme Court, New York County, 60 Centre Street, New York, New York by and under the direction of Jacques Erdos, Esq., who is hereby appointed referee for that purpose; and that said Referee, on the date of such sale shall report with a copy of this judgment to the Motion Support Office, Room 119, at 12:30 P.M. so the sale may proceed promptly at 2:00 P.M.; that the said referee give public notice of the time and place of such sale according to law and the practices of this Court, by publishing same in the New York Law Journal; and it is further

ORDERED, ADJUDGED AND DECREED, that the Referee at the time of sale may accept a written bid from the plaintiff's attorneys, just as though the Plaintiff were physically present to submit said bid; and it is further

ORDERED, ADJUDGED, AND DECREED, that the plaintiff or any other party that may become the purchaser or purchasers at such sale shall pay all transfer taxes and recording expenses, and that in the event a party, other than the plaintiff, becomes the purchaser or purchasers at such sale, the closing of title shall be had thirty days after such sale unless otherwise stipulated by all parties to the sale, including plaintiff and that failure of the purchaser(s) to close within thirty days may result in the forfeiture of any deposit tendered by purchaser(s), in lieu of a closing, and that plaintiff reserves the right to sell to the next highest

bidder at said sale; that any purchaser, other than plaintiff, shall pay interest on the purchase price from the date of sale to the date of delivery of the deed and all payments for taxes, assessments, water and sewer charges, which are, or may become liens on the premises at the time of sale, shall be adjusted for at closing accordingly based on the fiscal period for which they are assessed; that in case the plaintiff shall become the purchaser at the said sale, it shall not be required to make any deposit thereon; that plaintiff reserves the right to postpone the sale and re-advertise the sale in accordance with RPAPL §231; that said referee execute to the purchaser or purchasers on such sale a deed to the premises sold at which time the referee shall forthwith pay the taxes, assessments, water and sewer rents which are or may become liens on the premises at the time of sale with such interest or penalties which may have lawfully accrued thereon to the date of payment, with the exception of any work that may have been performed on the premises by the City of New York or any demand made by the City for any work that may result in charges by the New York City Department of Rent and Housing Maintenance, Emergency Services, The New York City Department of Environmental Protection for Water Tap Closing or any related work and the New York City Department of Health, which liens are not of record at the time of sale; or said referee may allow the same to the purchaser at the time of delivery of deed upon production to said referee of proper vouchers showing the payment thereof and redeem the property sold from any sales for unpaid taxes, assessments or water rents, which have not apparently become absolute, and that the referee then deposit the balance of said proceeds of sale in this own name as referee in any ^{Citi bank} ~~local banking institution insured by the FDIC~~ and shall thereafter make the following payments and his checks drawn for that purpose shall be paid by the said depository:

JSC.

FIRST: The statutory fee of the referee in the amount of \$500.00;

SECOND: The expenses of the sale including posting and advertising as shown on bills presented to and certified by the Referee to be correct, duplicate copies of which shall be filed with this Court with the report of sale;

THIRD: the sum of \$901,927.25, the amount reported due to the plaintiff as of April 30, 2013 plus all other expenses necessarily paid by the plaintiff, to preserve the premises, not previously included in any computations together with interest thereon at the rate specified in the note and mortgage from the date specified in the referee's report up to and including the date of entry of this judgment and interest at the legal rate thereafter; together with the sum of \$ 1,370.00 adjudged to the plaintiff for its costs and disbursements in this action as taxed by the Clerk of the Court with interest thereon from the date hereof; together with an additional allowance of \$300.00 hereby awarded to the plaintiff in addition to the costs with interest thereon from the date hereof;

FOURTH: surplus monies, if any, shall be deposited by the Referee with the New York County Clerk within five (5) days after receipt of said proceeds to be withdrawn only on the Order of this Court; and it is further

~~ORDERED, ADJUDGED AND DECREED, that in the event an auction is canceled due to the issuance of a temporary restraining order by a Court or the imposition of a federal bankruptcy stay, no fee shall be paid to the Referee, without further Order of the Court; and it is further~~

~~ORDERED, ADJUDGED AND DECREED, that in the event an auction is canceled for any reason other than a temporary restraining order by a Court or the imposition of a federal bankruptcy stay, the Referee shall be awarded a cancellation fee of \$ _____; and it is further~~

ORDERED, ADJUDGED AND DECREED, 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, the plaintiff shall not be required to pay in cash the entire Amount bid at said sale, but shall execute and deliver to the plaintiff a deed of the premises sold at which time the referee shall forthwith pay thereon, in accordance with their priority according to law, the taxes, assessments or water rents which are or may become liens on the premises at the time of sale, with such interest or penalties which may have lawfully accrued thereon, to the date of payment deposit or in lieu of the payment of said last mentioned amounts, upon the filing with said referee receipts of the proper municipal authorities showing the payment thereof; that the balance of the Amount bid, after deducting the aforesaid amounts, shall be allowed to the plaintiff; that if after so applying the balance of the Amount bid, there shall be a surplus over and above said amounts due to the plaintiff, the plaintiff shall pay to said referee, upon delivery of said referee's deed, the amount of such surplus which shall be deposited by said referee with New York County Clerk within five days after the same shall be received; and it is further

ORDERED, ADJUDGED AND DECREED, that the referee make a report of such sale under oath showing the disposition of the proceeds of the sale 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 the plaintiff with interest and costs as aforesaid, the referee shall specify the amount of such deficiency in the report of sale and that the defendant, John Brunetti, shall pay the same to the plaintiff provided a motion for a deficiency judgment shall be made in accordance with Section 1371 of the Real Property Actions and Proceeding Law; and it is further

ORDERED, ADJUDGED AND DECREED, that the purchaser or purchasers at such sale be let into possession on production of the referee's Deed; 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 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; and it is further

ORDERED, ADJUDGED AND DECREED, that the liens of the plaintiff other than the Mortgage or mortgages that are the subject matter of this action also be foreclosed herein as though the plaintiff was named as a party defendant, specifically reserving to the plaintiff its right to share in any surplus monies as a result of such position as a lien creditor; and it is further

ORDERED, ADJUDGED AND DECREED, that said premises be sold in one parcel in "as is" physical condition, subject to any covenants, easements, encroachments, reservations and restrictions, violations and agreements of record, zoning regulations and ordinances of the city, town, or village wherein the premises are located, any state of facts an accurate survey would show, any state of facts a physical inspection will disclose, rights of tenants and other persons in possession of the mortgaged premises, prior judgments, liens and mortgages of record, any and all rights of the United States of America to redeem the subject premises, the Terms of Sale and purchaser assumes all risk of loss or damage to the premises from the date of the foreclosure sale until the date of closing and thereafter.

That a description of the said mortgaged premises hereinbefore mentioned, and commonly known as 155 East 38th Street, Apt. 3G, New York, NY 10016, is annexed hereto as Schedule A-Legal Description.

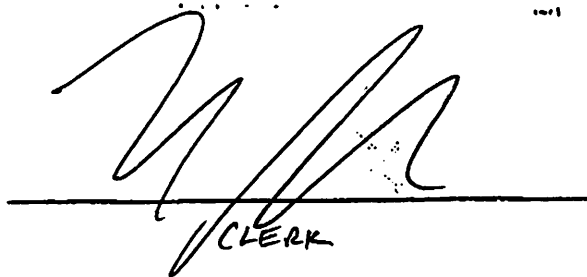
ORDERED, that a copy of this Order with Notice of Entry shall be served upon the
County Clerk and Clerk of the Trial Support Office and any other party entitled to notice.

ENTER:



J.S.C. **HON. EILEEN A. RAKOWER**

01-032137-F00


CLERK

FILED
MAY 28 2014
COUNTY CLERK'S OFFICE
NEW YORK