

**Flushing Savs. Bank, FSB v 247 Strivers Row LLC**

2014 NY Slip Op 31124(U)

April 29, 2014

Supreme Court, New York County

Docket Number: 850018/2012

Judge: Ellen M. Coin

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  
COUNTY OF NEW YORK: CIVIL TERM: PART 63

-----X

FLUSHING SAVINGS BANK, FSB,

Plaintiff,

Index Number 850018/2012  
Submission Date February 19, 2013  
Mot. Seq. No. 005  
**DECISION and ORDER**

-v-

247 STRIVERS ROW LLC, ET AL.

Defendants.

-----X

**INTERIM ORDER OF CONTEMPT**

Joel E. Abramson, the receiver of the property located at 247 West 139th Street, New York, NY 10030, moves for an order pursuant to Judiciary Law §753 finding defendant Wanda Hames in civil contempt.

The movant was appointed receiver of the property in this mortgage foreclosure proceeding by Order of the Court, dated April 4, 2012. The Court directed the receiver to take possession of the property and to “demand, collect, and receive... all the rents and license fees thereof now due and unpaid or hereafter to become fixed or due.” The receiver was also authorized to “institute and carry on all legal proceedings necessary for the protection of said [p]remises or to recover possession of the whole, or any part thereof.”

Defendant Hames, in turn, was ordered to turn over to the receiver all “deposits or advances of rental as security” and “all rent lists, orders, unexpired and expired leases,

agreements, correspondence, notices and registration statements relating to rental space or facilities in the premises.”

Subsequent to the issuance of the Order, defendant Hames filed a petition for bankruptcy pursuant to Chapter 13, which automatically stayed the Order until defendant’s petition was dismissed on January 23, 2013.

On February 11, 2013, the receiver served a Notice to Attorn on all residents of the property and repeatedly sought to gain possession of the property, security deposits, and related documents, but defendant Hames failed to turn them over in their entirety. In addition, Hames continued to collect rent from the tenants until May 20, 2013 – the date that the receiver finally gained control of the property.

In order to find defendant in contempt, the court must determine that (1) there was a lawful and clear order in effect, (2) defendant knowingly disobeyed that order, and (3) a party to the litigation was prejudiced as a result. (*McCormick v. Axelrod*, 59 NY2d 514, 583 [1983] [citations omitted]).

This Court clearly mandated that Hames turn over possession of the property to the receiver. Defendant was aware of her requirement to turn over possession and failed to comply. Instead, she continued to collect rents and expend money for a number of months. Upon review of the evidence submitted, it is clear that the defendant deposited and subsequently withdrew from the bank nearly all of the rent paid during the months that she failed to attorn to the receiver. Defendant’s assertions that the rental income was expended in cash on property maintenance have been made difficult for the court to verify, given the nature of the payment method she elected.

By failing to comply with this order, defendant has prejudiced the rights of the receiver. The Court concludes that, in violation of this Court's order dated April 4, 2012, defendant failed to turn over control of the property to the receiver for a number of months, and unlawfully collected and expended the rental income from the property, thereby prejudicing the receiver's ability to properly maintain the property.

Upon the foregoing papers and for the aforementioned reasons, it is hereby

ORDERED that the motion of the receiver brought by order to show cause to hold defendant Wanda Hames in civil contempt of court pursuant to Judiciary Law §753 for willful violation of this Court's Order Appointing a Receiver issued on April 4, 2012 is granted; and it is further

ORDERED that defendant Wanda Hames may purge her contempt within sixty days of the service upon her of a copy of this order with notice of its entry by turning over to the receiver (1) all rents and license fees received from tenants, occupants, and licensees in the amount of \$30,000; (2) all rent lists, orders, expired and unexpired leases, agreements, correspondence, notices, and registration statements relating to the rental space or facilities within the premises; and (3) all deposits being held as security, including rental prepayments; and it is further

ORDERED that in the event defendant does not purge her contempt, she shall appear before the court on July 31, 2014 at 9:30 a.m. to commence a term of imprisonment and hear determination as to the amount of fine to be set, and it is further

ORDERED that the parties may advise the Court in writing on the appropriate amount of the fine and term of imprisonment to be imposed by e-filing their supplemental briefs and providing courtesy copies to the Court no later than 12:00 p.m. on July 23, 2014; and it is further

ORDERED that the receiver shall server a copy of this order with notice of entry on all parties within seven (7) days of the date of the docketing of this Order.

**This constitutes the decision and order of the Court.**

Dated: 4/29/14

  
Ellen M. Coin, A.J.S.C.