

Tromba v Eastern Fed. Sav. Bank, FSB

2014 NY Slip Op 33869(U)

November 21, 2014

Supreme Court, Suffolk County

Docket Number: 15727/2014

Judge: Jerry Garguilo

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**SUPREME COURT - STATE OF NEW YORK
I.A.S. TERM, PART 47 - SUFFOLK COUNTY**

PRESENT:

**HON. JERRY GARGUILO
SUPREME COURT JUSTICE**

ELLEN M TROMBA,

Plaintiff,

-against-

EASTERN FEDERAL SAVINGS BANK, FSB,

Defendant.

**ORIG. RETURN DATE: 9/3/14
FINAL SUBMISSION DATE: 10/29/14
MOTION SEQ#001
MOTION: MD CASEDISP**

**PLAINTIFF'S ATTORNEY:
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**DEFENDANT'S ATTORNEY:
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Before the Court is the Plaintiff's Order To Show Cause seeking the following relief:

- (1) An order staying the Defendant, their attorneys, or their agents from commencing or continuing with any action to evict the Plaintiff from the property located at 3 Sycamore Street, Miller Place, New York until the hearing and determination of this Order to Show Cause.

The Defendant, Eastern Federal Savings Bank, FSB ("Eastern"), opposes the petition in all respects. Before the Court is the Plaintiff's Order to Show Cause, Attorney's Affirmation In Support, an Affidavit of the Plaintiff In Support, with Exhibits 1 through 5. The Defendant submits and Affirmation In Opposition with Exhibits A through E. The Plaintiff submits a Reply Affirmation with Exhibits 1 through 41.

Litigation involving the subject premises, 3 Sycamore Street, Miller Place, New York (the "Property") is remarkable. Currently, Eastern seeks to take possession of the Property

in accordance with its claim of contractual and statutory rights. The matter has traveled through Supreme Court (foreclosure action) the Second Department (Appellate Division), Bankruptcy Court and the Landlord Tenant parts. Eastern claims that the Trombas have had more than their day in court and their claims have already been adjudicated.

The historical path of this case commences on June 12, 2008 when Eastern commenced its foreclosure action pursuant to a payment default by Mrs. Tromba's husband, Giuseppe L. Tromba. The underlying Note and Mortgage dated August 4, 2006 indicates a principal sum of Seven Hundred Two Thousand Dollars (\$702,000.00) which was secured by the Property.

The Verified Complaint in the foreclosure action alleged that Mrs. Tromba was a necessary party by virtue of being a fee owner of the mortgaged premises by deed dated November 20, 2006 and recorded December 20, 2006. Eastern's mortgage was executed on August 4, 2006, some three (3) months prior to the Deed purporting to convey a fifty percent (50%) interest in the Property to Mrs. Tromba. Parenthetically, the payment default occurred in October of 2007. As a result, Mr. and Mrs. Tromba have retained possession and use of the Property for approximately seven (7) years without any payments of principal, interest, taxes and/or insurance.

The Plaintiff, Mrs Tromba, was served in the foreclosure action on July 10, 2008. Subsequent thereto she denied proper service by petitioning the Court for an order staying the execution of the Judgment of Foreclosure and Sale, vacating any default, dismissing the foreclosure action for lack of jurisdiction, or alternatively scheduling a foreclosure conference. It was in that action that the Trombas denied receiving service of process.

A Traverse Hearing was held. At the Traverse Hearing, Mr. Justice Tannenbaum sustained service upon the Trombas, denied the Trombas motion to vacate their default and granted the Judgment of Foreclosure and Sale. Mr. Justice Tannenbaum's order specifically states "Ordered, that Defendant's motion for an order Vacating the Order of Reference and Staying the issuance of a Judgment of Foreclosure is Denied."

Thereafter, on or about October 20, 2010, the Trombas filed a Notice of Appeal with respect to Justice Tannenbaum's decision. Prior to the Appeal being perfected, the Trombas sought an order Staying the Foreclosure Sale pending a decision on their Appeal pursuant to CPLR § 5518. The request for a temporary restraining order was denied and the Appellate motion was made returnable on or about April 20, 2011. It is noteworthy that the Trombas never perfected their Appeal.

Thereafter, on or about April 27, 2011, two days before the scheduled foreclosure sale of the Property, Mr. Tromba filed a Chapter 7 Bankruptcy petition in the United States Bankruptcy Court for the Eastern District of New York. In connection therewith the Trustee commenced an adversary proceeding against Eastern, Mr. Tromba, Mrs. Tromba and JJ Tromba Corp., alleging a fraudulent transfer and revocation of discharge due to Mr. Tromba's transfer of a portion of his interest in the Property to Mrs. Tromba after he signed Eastern's mortgage but before the Mortgage was recorded. The deed to Mrs. Tromba recites Ten Dollars (\$10) consideration.

Shortly thereafter, on the eve of the hearing on Motion for Summary Judgment filed by the Chapter 7 Trustee in the adversary proceeding, Mrs. Tromba filed a voluntary petition for release under Chapter 13 of the Bankruptcy Code. The filing resulted in Mrs. Tromba getting the protection of the automatic stay, delaying the determination of the rights to the Property. The Bankruptcy Court dismissed Mrs. Tromba's first foray into the Bankruptcy Court by order dated July 10, 2013. Thereafter, Mrs. Tromba filed a second voluntary petition for relief under Chapter 13 of the Bankruptcy Code, the day before the Bankruptcy Court was scheduled to issue a decision in connection with a Motion for Summary Judgment filed in the adversary proceeding in Mr. Tromba's bankruptcy case. Mrs. Tromba once again obtained a benefit of an automatic stay.

In October of 2013, the Bankruptcy Court granted Eastern's motion for relief from the stay in Mrs. Tromba's second case to permit Eastern to proceed in connection with the foreclosure action, including the sale or other disposition of the Property. It is noteworthy that the second foray into the Bankruptcy Court resulted in a dismissal.

In July of 2013 and November 6, 2013, Eastern affected its settlement with the Chapter 7 Trustee in the adversary proceeding pending in Mr. Tromba's bankruptcy case, resulting in relief from the automatic stay so as to enable prosecution of the foreclosure action.

Thereafter, the foreclosure sale was scheduled for January 28, 2014. Eastern, was the successful bidder at the foreclosure sale, and took title to the Property on February 17, 2014. A Referee's Deed reflects the same. During February of 2014, Mr. Tromba was served with a ten (10) day Notice to Quit and Vacate the Premises. Thereafter, on March 26, 2014, Eastern, filed an eviction proceeding in the District Court of Brookhaven, County of Suffolk, captioned Eastern Savings Bank, FSB v. Giuseppe L. Tromba a/k/a Guiseppe Tromba, et al. The matter was calendared for April 23, 2014. As is common in Landlord-Tenant

proceedings, the Petition, also named "all John and Jane Does and any other occupants of the premises." The Court rejects the Plaintiff's allegations that she was not named in the Landlord Tenant proceeding and cannot be bound by its judgment. As an occupant of the Property Mrs. Tromba was served as a Jane Doe and included in the Landlord Tenant proceeding. Thereafter, on March 27, 2014 and April 22, 2014, Mr. Tromba made two (2) applications seeking to Vacate the Judgment of Foreclosure and Sale, and invalidate the foreclosure action, and to stay the eviction proceedings alleging improper service. That Order To Show Cause procured another temporary stay of the eviction proceedings. Thereafter, this Court denied both of Mr. Tromba's motions in their entirety by order dated July 10, 2014.

This matter, in terms of litigation, began with Mr. Justice Tannenbaum. The Defendant-Bank named the Plaintiff, Ellen Tromba in the caption and, at ¶12 of the Complaint, noted:

Ellen Tromba is made a necessary party defendant to this action by virtue of being a fee owner of the mortgaged premises by Deed dated November 20, 2006 and recorded on December 20, 2006 in Liber 12483 Page 954.

The wherefore clause of the complaint prays the following relevant relief:

WHEREFORE CLAUSE: plaintiff demands judgment that the defendant(s), and each of them and all persons claiming under them or any of them... be barred and foreclosed of and from all estate, right, title, interest, claim, lien... in and to the said mortgaged premises...

Two separate orders of Mr. Justice Tannenbaum recite the following:

Defendants Giuseppe Tromba and Ellen Tromba were served with the summons and complaint in this action and are in default in appearance and pleading.

ORDERED, ADJUDGED AND DECREED, that each and all of the defendants in this action... are hereby forever barred and foreclosed of all right, claim, lien, title, interest...in the said mortgaged premises...

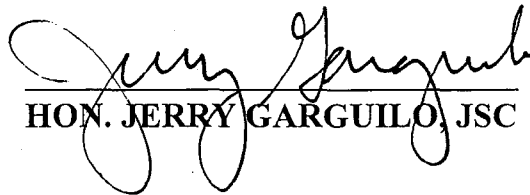
It is clear that the Plaintiff, as well as her husband defaulted in the foreclosure action, failed to prevail at a Traverse Hearing, failed to secure a stay of the foreclosure action pending Appeal in the Second Department, failed to perfect any Appeals, and despite three Bankruptcy filings, failed to avoid foreclosure. Although the Court is impressed by Plaintiff's counsel's meticulous presentation, it is nonetheless duty bound to abide the orders of Mr. Justice Tannenbaum.

The Court must deny Mrs. Tromba's petition in its entirety.

ORDERED ADJUDGED AND DECREED that the Landlord Tenant proceeding shall proceed forthwith. The Complaint is herein **DISMISSED**.

The foregoing constitutes the decision and **ORDER** of this Court.

Dated: November 21, 2014


HON. JERRY GARGUILO, JSC