

Bank of Am., N.A. v Taiwo
2015 NY Slip Op 30834(U)
May 7, 2015
Supreme Court, Queens County
Docket Number: 19533/04
Judge: Howard G. Lane
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MEMORANDUM

SUPREME COURT - QUEENS COUNTY
IA PART 6

BANK OF AMERICA, N.A., AS SUCCESSOR
BY MERGERS TO NATIONSBANC MORTGAGE
CORPORATION, f/k/a KEYCORP MORTGAGE,
INC., f/k/a GOLDOME REALTY CREDIT
CORP.,

Plaintiff,

-against-

ADESOJI TAIWO, et al.
Defendants.

INDEX NO. 19533/04

BY: **Lane, J.**

DATED: May 7, 2015

MOTION DATE:
November 25, 2014

MOTION CAL. NO. 16

MOTION SEQ. NO. 4

This is an action to foreclose property known as 2107 Birdsall Avenue, Far Rockaway, New York. By deed dated December 22, 1986, Adesoji and Mujidat Taiwo became owners of the subject property. By deed dated July 25, 1989, Adesoji Taiwo became the sole owner of the property. On or about March 20, 1991, Adesoji Taiwo secured a mortgage in the principal amount of \$131,250.00. On or about December 29, 1991, Adesoji Taiwo died. On or about February 28, 2004, Mujidat Taiwo executed a deed for the subject property to Creekhill Realty, LLC (Creekhill). On or about August 26, 2004, Bank of America N.A. commenced this foreclosure action.

On or about May 27, 2005, the subject property of this foreclosure action was sold at public auction pursuant to a Judgment of Foreclosure and Sale issued by the court on March 7,

2005. The court appointed referee filed the referee's report of sale dated November 4, 2005, with the Queens County Clerk on November 15, 2005. As set forth in the referee's report, the foreclosure sale resulted in a surplus of \$366,333.40. There are two (2) claimants to the surplus funds. The surplus money was transferred by the New York City Department of Finance to the Office of the State Comptroller (OSC). At the time of the transfer, there was \$417,335.56 in the account that was transferred to the OSC. On December 19, 2005, Creekhill filed a notice of claim to the surplus. On January 12, 2006, Mujidat Taiwo filed a notice of claim, to the surplus on behalf of herself and her three (3) children.

On November 18, 2011, an involuntary petition was filed against Creekhill in the United States Bankruptcy Court for the Southern District of New York. On February 7, 2012, the Court entered an Order of Relief. A Trustee was appointed for the debtor on June 1, 2012. The only outstanding matter in the bankruptcy case is the administration of the surplus funds from this action.

On August 27, 2014, the County Clerk certified that no defendants had appeared in this action and that the only notices of claim to the surplus were filed by Creekhill and Taiwo. Creekhill and Taiwo have reached an agreement on how to divide the surplus funds, with Creekhill to receive \$120,000 and Taiwo

to receive the remainder. The claimant Creekhill has now moved for an order pursuant to NY ABP Law § 1406 and CPLR 2606 directing payment of the surplus to the claimants.

The OSC submitted partial opposition to the motion. The claimant has established that all required parties who appeared have been served. The OSC argues that there might be an issue as to whether the U.S. Attorney and "Bukky" Taiwo required notice. Inasmuch as the United States is not a party to this action nor has it filed a claim for the surplus, it did not require notice. The verbal agreement between Creekhill and the Office of the United States Attorney is that any funds remaining in the Creekhill bankruptcy estate after the estate has been fully administered and the case closed are to be turned over to the Department of Justice. If the surplus funds are distributed then the surplus funds will be part of the bankruptcy estate. This does not require notice to the Department of Justice. "Bukky" Taiwo is not a party to this action nor has she filed a claim to the surplus. While a court order identified Bukky Taiwo as the wife or widow of Adesoji Taiwo, this is insufficient to rebut the affidavit of Mujidat Taiwo that she is the widow of Adesoji Taiwo. Additionally, the order states that Bukky Taiwo had no standing to appear in the foreclosure action, was not a party to the action and thus does not require notice to be sent. The claimant has, therefore, established its compliance with

RPAPL 1361.

The OSC objects to the settlement reached between Creekhill and Taiwo. The OSC argues that parties cannot stipulate to the disposal of the surplus funds and that such a stipulation is not binding on the Court. However, while the court is not obligated to accept the settlement between the parties, in light of the fact that there are only two (2) claimants and thus there are no claimants whose rights are affected by the stipulation, and the public policy encouraging the expeditious settlement of claims, the settlement between the claimants should be approved.

Additionally, the claimant attached a title report with the motion. The lien report indicated that the only encumbrance on the property at the time of the foreclosure of the property was a mortgage from Adesoji and Mujidat Taiwo to Delta Funding Corp, which was subsequently assigned to Associates Consumer Discount Company (Associates) and consolidated with a new mortgage. Associates was acquired by Citigroup in or about 2000. CitiMortgage as Attorney-in-Fact for Associates First Capital Corporation, successor by merger to Associates reviewed its file and confirmed that the mortgage had been satisfied. CitiMortgage sent a satisfaction of mortgage and filing fee to the Queens County Clerk's office, City Register for filing. Thus, the movant has demonstrated that there were no liens of records

against the subject premises as of the date of sale by the Referee which remained unsatisfied. Any subsequent owner of the subject premises or subsequent mortgagees with liens against the subject premises would have no claim to the equity of redemption in the surplus monies and are not proper parties to this proceeding.

Accordingly, the motion is granted.

Settle order and submit to the Motion Support Office,
Room 140.

Howard G. Lane, J.S.C.