

NYCTL 1998-2 v Cooper Third Assoc.

2015 NY Slip Op 32115(U)

October 15, 2015

Supreme Court, Richmond County

Docket Number: 11752/02

Judge: Thomas P. Aliotta

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF RICHMOND _____ X
 TP 12

NYCTL 1998-2 and 2005-A TRUSTS AND THE
 BANK OF NEW YORK AS COLLATERAL
 AGENT and CUSTODIAN,

Plaintiff(s),

HON. THOMAS P. ALIOTTA

-against-

DECISION AND ORDER

COOPER THIRD ASSOCIATES, et al.,

Index No. 11752/02

Defendant(s).

Motion No. 1771 - 007

SHORE HOLDINGS UK, LLC,

Proposed Intervenor.

_____ X

The following papers numbered 1 to 6 were fully submitted on the 12th day of August, 2015.

Papers

Numbered

Notice of Motion to Intervene by SHORE HOLDINGS UK, LLC, with Supporting
 Papers, and Exhibits
 (dated April 2, 2015) _____ 1

Affirmation in Opposition by Plaintiffs NYCTL 1998-2 and 2005-A TRUSTS and
 THE BANK OF NEW YORK AS COLLATERAL AGENT AND CUSTODIAN,
 with Memorandum of Law, and Exhibits
 (dated May 27, 2015) _____ 2,3

Reply Memorandum Law of SHORE HOLDINGS UK, LLC,
 Exhibits
 (dated July 3, 2015) _____ 4

Sur-Reply Affirmation of Plaintiffs NYCTL 1998-2 and 2005-A TRUSTS and
 THE BANK OF NEW YORK AS COLLATERAL AGENT AND CUSTODIAN
 with Memorandum of Law,
 (dated July 31, 2015) _____ 5,6

Upon the foregoing papers, the motion by SHORE HOLDINGS UK, LLC, to stay the within tax lien foreclosure action, and for leave to intervene therein, is denied.

This action, originally commenced in 2002, sought to foreclose upon 294 tax lien certificates encumbering the property known as Castleton Castle Condominiums, a vacant piece of real property located on Castleton Avenue on Staten Island (hereinafter referred to as “the property”). Initially, Castleton Castle Condominiums was intended to be the site of the development of 303 condominium units, each of which had been assigned a separate block and lot number. It is undisputed that defendant FORKASH REALTY CORP. (hereinafter FORKASH) was the purchaser of 176 of the 303 lots. However, construction and development of the project was never completed.

To the extent relevant, some of the unit owners subsequently defaulted on their property tax payments, which resulted in several independent tax lien foreclosure actions, including the one at bar. These actions were subsequently consolidated into a single action, and in March of 2010, plaintiffs were awarded summary judgment against defendant RPK REALTY GROUP LLC (the owner/developer of the property) and default judgments were entered against several of the non-appearing defendants, including FORKASH REALTY. Thereafter, in December of 2014, plaintiff moved to confirm the Referee’s Report of the Amount Due and for the entry of a Judgment of Foreclosure and Sale. This motion was granted, and a proposed Judgment of Foreclosure and Sale was noticed for settlement on April 2, 2015.

Insofar as it appears, on February 5, 2015, SHORE HOLDINGS US, LLC (hereinafter SHORE HOLDINGS) purchased the 176 units owned by defendant FORKASH REALTY, which was already in default for failing to appear or answer. SHORE HOLDINGS, as the present owner, now seeks to intervene in the action pursuant to CPLR 1012(a), and for leave to file a belated

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answer. According to SHORE HOLDINGS, it has no representation in the subject action, and its interest in the property will be affected by the within foreclosure proceedings. In addition, SHORE HOLDINGS argues that it has a statutory right to participate in the proceedings as the current owner of these 176 units, whose rights will be prejudiced by any foreclosure sale. SHORE HOLDINGS also seeks a stay of the proceedings pursuant to CPLR 2201, including the entry of any Judgment of Foreclosure and Sale, pending the outcome of this motion. It has also submitted a proposed answer, which raises various affirmative defenses including laches, unclean hands, unreasonable attorneys fees, the tolling of interest and the failure to satisfy the procedural requirements applicable to foreclosure actions.

In opposition to the motion, plaintiff contends that SHORE HOLDINGS is not a necessary party to the action, since it did not take title to the FORKASH lots until after the filing of the Notice of Pendency and commencement of the action. According to plaintiff, any judgments, liens or other encumbrances obtained after the filing of a Notice of Pendency are subject to foreclosure, notwithstanding the failure to name or serve the owners of same as one of the parties.

Plaintiffs further argue that SHORE HOLDINGS does not deny that it had notice of the pendency of these foreclosure proceedings prior to its purchase of the lots from FORKASH. Accordingly, plaintiff contends that SHORE HOLDINGS can only succeed to the interests of FORKASH. Therefore, while entitled to substitution in its place and stead as a defaulting defendant, SHORE HOLDINGS cannot intervene as an additional defendant for the purpose of serving an answer. According to plaintiff, the fact that SHORE HOLDINGS purchased the interests of FORKASH, does not afford it any more rights than those held by its vendor, and that

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any rights to which SHORE HOLDINGS may be entitled, including the right of redemption, will be preserved by its substitution in the place of FORKASH as a party-defendant. Any other result, it is claimed, would allow SHORE HOLDINGS to circumvent the Court's prior Order holding FORKASH in default.

Plaintiff further argues that were this Court to allow SHORE HOLDINGS to intervene in the action, then every defendant in a foreclosure action after defaulting in the action and suffering the entry of summary judgment against it, could sell its interest. As a result, the new purchaser, in effect, would be granted a second chance to contest the action. In addition, plaintiff claims that the proposed answer which SHORE HOLDINGS seeks to interpose contains meritless affirmative defenses.

In addition to seeking leave to intervene, SHORE HOLDINGS seeks to challenge the initial tax assessments underlying the tax liens which underlie the action. In opposition, plaintiff argues that FORKASH had the opportunity to challenge the tax assessments during the applicable time period following the initial assessment, but that it failed to do. In any event, the time period within which to raise any such challenge has long since expired. Accordingly, SHORE HOLDINGS is time-barred from asserting any claim relative to the assessed value to which its predecessor was subject. Plaintiff also notes that the proper method for challenging a real property tax assessment is to bring a proceeding pursuant to Real Property Tax Law, article 7 (see NYCTL 1996-1 Trust v. Westmoreland Assoc., 2 AD3d 811, 812), a right which its predecessor has already waived.

In response to SHORE HOLDINGS' claim that the accrual of interest should be tolled based on the length of time that this case has been pending, plaintiff argues that it has diligently

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prosecuted the foreclosure, and that there were numerous factors, including the filing of multiple motions and their respective appeals, all of which added to the complexity of the case. Taken together, these factors are alleged to have contributed to the delay. Thus, there was a dearth of intentional conduct on plaintiff's part which would warrant the tolling of interest or the imposition of sanctions. Furthermore, the movant has failed to submit any authority which would allow the reduction of interest accruing on tax liens.

Finally, plaintiff argues that SHORE HOLDINGS' request for a stay should be denied. In support, plaintiff notes that a stay in this case would only further delay the proceedings in an action that already has been pending for an extended period of time, and in which the proposed Judgment of Foreclosure and Sale has already been submitted for settlement.

This Court agrees that the motion should be denied.

Regardless of the fact that its rights will be affected by a foreclosure sale, the notice of pendency (lis pendens) filed in this action was sufficient to place the proposed intervenor on notice of the pending tax lien foreclosure in advance to its purchase from FORKASH. Accordingly, its intervention in this action is unwarranted.

It is well settled that the primary purpose for filing the lis pendens is to put a subsequent purchaser or encumbrancer on notice of the pendency of an action which will be binding on him or her to the same affect as if he or she was made a party thereto (*see* CPLR 6501; 2386 Creston Ave. Realty, LLC v. M-P-M Mgt. Corp., 58 AD3d 158, 161). Thus, as a subsequent purchaser, SHORE HOLDINGS is chargeable with notice of the lis pendens on the former FORKASH property, and is bound by the proceedings in this action.

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In addition, even though SHORE HOLDINGS argues that it has met the statutory requirements of CPLR 1012(a), which would normally allow it to intervene in an appropriate case, as a purchaser subsequent to the filing of a valid notice of pendency, it is only entitled to assert such rights as could be asserted by FORKASH at the time of purchase. However, this would not prevent SHORE HOLDINGS from being substituted as a party defendant in the place and stead of FORKASH, whose surviving rights it may assert (*see generally* Polish Natl. Alliance of Brooklyn v. White Eagle Hall Co., 98 AD2d 400).

Finally, while undoubtedly affected thereby, SHORE HOLDINGS is not entitled to challenge the tax assessment with regard to the subject tax lots at this point in time. The time for raising an objection to a tax assessment within the City of New York is available only if the proceeding is timely commenced, a circumstance with which SHORE HOLDINGS cannot comply (*see* Matter of G.A.D. Holding Co. v. City of N Y Dept. of Fin., Real Prop. Assessment Bur. 192 AD2d 441, 442; NY City Charter §166). In addition, the failure to timely commence such a proceeding is a complete defense to any challenge to a tax assessment (*see* Real Property Tax Law §702[3]). Accordingly, SHORE HOLDINGS is time-barred from challenging the assessments underlying the subject tax lien foreclosure.

Any further arguments tendered in support of the movant's application have been considered and rejected.

In view of the above, SHORE HOLDINGS' related request for a stay of the foreclosure proceedings has been rendered academic.

Accordingly, it is

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ORDERED that the motion of SHORE HOLDINGS UK, LLC for, *inter alia*, leave to intervene, is denied in its entirety; and it is further

ORDERED that the movant be substituted in the place and stead of defendant FORKASH REALTY in the caption of this matter; and it is further

ORDERED that the Clerk mark his records accordingly.

E N T E R,

/s/ _____
HON. THOMAS P. ALIOTTA
J.S.C.

Dated: October 15, 2015