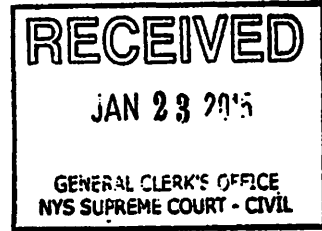


NYCTL 1998-2 Trust v IG Greenpoint Corp.
2015 NY Slip Op 32949(U)
January 13, 2015
Supreme Court, New York County
Docket Number: 108725/09
Judge: Saliann Scarpulla
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: PART 39



NYCTL 1998-2 TRUST, THE BANK OF NEW YORK
as Collateral Agent and Custodian for the NYCTL
1998-2 Trust,

Plaintiff,

Index No.: 108725/09
Submission Date: 6/26/14
Motion Seq. No. 013

-against-

IG GREENPOINT CORP., NEW YORK CITY
DEPARTMENT OF FINANCE, NEW YORK STATE
DEPARTMENT OF TAXATION AND FINANCE, NEW
YORK CITY ENVIRONMENTAL CONTROL BOARD,
CENTRAL AIR & HEAT LLC, THE GREENWICH
SAVINGS BANK, COLUMBIA PICTURES
INDUSTRIES, INC., GREENPOINT TERMINAL
WAREHOUSE, URN REALTY CORP., WEEB &
KNAPP, INC., CARL E. SIEGMOND, 43RD STREET
ESTATES CORP., POST OFFICE GARAGE INC., AVIS
RENT A CAR SYSTEM, INC., MALCOLM P. HOOD,
IMAGE PHOTOGRAPHIC LABORATORY, INC.,
VALOC ENTERPRISES, INC., GREYHOUND
LEASING COMPANY, NEW YORK CITY BUREAU
OF HIGHWAY OPERATIONS, MANHATTAN
COMPANY, IRVING TRUST COMPANY,
AVIS CAR RENTAL S/H/A JOHN DOE No.1, and
SCREEN GEMS INC. S/H/A JOHN DOE No.2,

DECISION and ORDER

FILED

JAN 23 2015

COUNTY CLERK'S OFFICE
NEW YORK

Defendants.

HON. SALIANN SCARPULLA, J.:

In this action to foreclose tax liens, defendant New Gold Equities Corp. ("New Gold") moves pursuant to CPLR § 2221 for an order granting leave to reargue its cross-motion which sought a declaration that defendant Valoc Enterprises, Inc. ("Valoc") must

liquidate funds from a collateral account and forward the proceeds to plaintiffs in partial satisfaction of the judgment.

Plaintiff NYCTL 1998-2 TRUST (“NYCTL”) is the holder of two tax liens from 2005 and 2008 that cover a property located at 217 East 43rd Street in New York County.¹ NYCTL and its collateral agent, the Bank of New York, commenced this action against the owner of the property, IG Greenpoint Corp. (“Greenpoint”) and the tenant, Valoc, based on their failure to pay the tax liens. Greenpoint was succeeded in interest by New Gold, the new owner of the property.

On May 9, 2012, Greenpoint and Valoc entered into a stipulation in which Valoc agreed to fund a collateral account of \$1,000,000 with Janney Montgomery Scott LLC. Pursuant to the stipulation, they further agreed that all funds would be released from the collateral account “to satisfy any judgment in this proceeding against Valoc by Plaintiffs or Greenpoint, the remainder being released from the Control Agreement.”²

¹ NYCTL 1998-2 TRUST was substituted in stead of NYCTL 2008-A TRUST and NYCTL 2005-A TRUST by order on February 28, 2014. For ease of reference, NYCTL 2008-A TRUST and NYCTL 2005-A TRUST will be referred to as “NYCTL” unless it is necessary for the Court to refer to those entities specifically.

² The May 9, 2012 stipulation also resolved an order to show cause brought by Greenpoint for possession of the property. On June 27, 2012, I ordered that, pursuant to the stipulation, “an amount equal to not less than \$1,000,000 in bonds or treasury notes is to be deposited with Janney Montgomery Scott LLC, subject [to] the control of the attorneys for both parties, to be held to satisfy the judgment, if a judgment is entered in favor of the plaintiff in the foreclosure action.”

Greenpoint and New Gold entered into a further stipulation on March 14, 2013. This stipulation stated that the collateral account shall be used “to satisfy any judgment entered in connection with the Foreclosure Action and/or the Cross-Claims Action as against Valoc and in favor of the Plaintiffs, 1998 Trust and/or New Gold/IG and/or any successor of any of the foregoing.”

On June 13, 2012, I granted plaintiffs' motions for summary judgment against Greenpoint and Valoc. This action was then sent to a referee to ascertain and compute the amount due to plaintiffs on the two liens. On February 28, 2014, I rendered a decision that: (1) confirmed the referee's determination that the amounts due on the 2005 and 2008 liens were \$517,038.18 and \$578,978.42, respectively; (2) issued a judgment of foreclosure and sale of the property; and (3) denied New Gold's cross-motion for a declaration that Valoc must liquidate the funds from the collateral account and forward the proceeds to plaintiffs in partial satisfaction of the judgment.³

In its motion, New Gold argues that the Court misapprehended the facts and law in denying its cross-motion because the stipulation requires the collateral account to be liquidated upon entry of a foreclosure judgment, not upon a deficiency judgment; and RPAPL § 1301 does not prohibit funds from the collateral account from being applied to the judgment. New Gold asserts that a foreclosure sale will never occur in this action because it intends to satisfy the liens, and attaches a copy of a check addressed to NYCTL 1998-2 TRUST in the amount of \$1,422,202.41.

Valoc disagrees with New Gold's reading of the stipulation and argues that the funds in the collateral account may only be released if plaintiffs obtained a deficiency judgment against Valoc, or if Greenpoint obtained a money judgment against Valoc.

³ In this decision, I further found that it was "undisputed that, pursuant to the terms of a lease between IG Greenpoint and Valoc, Valoc was obligated to pay real property taxes, assessments, water and sewer charges in connection with the property, including those incurred in years 2005 and 2008."

Valoc argues that New Gold seeks liquidation of the collateral account to avoid litigating the cross-claims between them.⁴

On June 13, 2014, New Gold's attorney Michael H. Levinson submitted a supplemental affirmation stating that New Gold paid a total of \$1,422,202.41 to NYCTL on or about April 25, 2014. Levinson states that this payment was made pursuant to a new stipulation between New Gold and Valoc executed on April 9, 2014, in which they agreed that New Gold could advance payments to plaintiffs, without prejudice to either parties' rights. Based on its payment to NYCTL, New Gold now requests that the funds from the collateral account be released to New Gold itself, in order to reimburse its payment to NYCTL. Plaintiffs do not submit any opposition to the motion.

Discussion

A motion to reargue is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law. *Opton Handler Gottlieb Feiler Landau & Hirsch v. Patel*, 203 A.D.2d 72 (1st Dep't 1994).

New Gold argues that I misapprehended the facts and the law in finding that the collateral account could not be liquidated until a deficiency judgment is entered. In reviewing my decision and order, I agree with New Gold that the stipulation does not condition the release of funds upon entry of a deficiency judgment. The May 9th

⁴ On June 27, 2012, I severed New Gold and Valoc's cross-claims into a separate action (Index # 600004/2013).

stipulation specifically states that funds from the collateral account were to be released “to satisfy any judgment in this proceeding against Valoc” obtained by plaintiffs or Greenpoint. Here, Plaintiffs have obtained a foreclosure judgment against Valoc, and therefore the conditions for the release of funds have been satisfied.⁵ The release of funds at this juncture is in accordance with my order on June 27, 2012, which stated that the funds from the collateral account are to be released “to satisfy the judgment, if a judgment is entered in favor of the plaintiff in the foreclosure action.”

Furthermore, RPAPL § 1301 does not bar liquidation of the collateral account. The purpose of Section 1301 is “to avoid multiple actions to recover the same debt and to confine the proceedings to collect the mortgage debt to one court and one action.” *Contemporary Mortg. Bankers, Inc. v. High Peaks Banks Camp, Inc.*, 156 B.R. 890, 894 (N.D.N.Y. 1993); *Central Trust Co. v. Dann*, 85 N.Y.2d 767, 772 (1995). Whether funds are applied to satisfy a judgment is unrelated to RPAPL § 1301 which is designed to prevent multiple recoveries on the same debt.

New Gold further informed the Court of its intention to redeem the liens, rather than let the property be sold at foreclosure. “The equity of redemption, which long predates the RPAPL, allows property owners to redeem their property by tendering the full sum at any point before the property is actually sold at foreclosure.” *NYCTL 1999-1*

⁵ Although the foreclosure judgment was entered against Valoc and New Gold jointly, this aspect of the judgment does not preclude the collateral funds from being released pursuant to the stipulation.

Trust v. 573 Jackson Ave. Realty Corp., 13 N.Y.3d 573, 579 (2009). An “unconditional tender of the full amount due is all that is required” to redeem the property. *Id.*

New Gold submits evidence that it advanced a total of \$1,422,202.41 to plaintiffs in partial satisfaction of the liens. This payment was made without prejudice to New Gold’s rights based on the April 9, 2014 stipulation between New Gold and Valoc. Based on my above finding that Valoc must release the funds from the collateral account, and New Gold’s advance payment to plaintiffs in satisfaction of the liens, I direct Valoc to forward the funds from the collateral account to New Gold as reimbursement for advancing funds to NYCTL. Although Valoc contends that New Gold only seeks the release of the collateral funds to avoid litigating the cross-claims, the release of funds has no effect on the cross-claims, which remain pending in a separate action.⁶

For the reasons stated above, I grant New Gold’s motion for reargument. Upon reargument, New Gold’s cross-motion is granted to the extent that Valoc is directed to release the funds from the collateral account to New Gold as reimbursement for advancing \$1,422,202.41 to NYCTL in partial satisfaction of the liens.

⁶ The February 28, 2014 decision stated that it was undisputed that “Valoc was obligated to pay real property taxes, assessments, water and sewer charges in connection with the property. . .” Although it is undisputed that Valoc was required to pay taxes pursuant to its lease with New Gold, this fact does not resolve the cross-claims between them. New Gold asserts that Valoc is solely responsible for failing to pay the liens, while Valoc argues that its failure to pay the tax liens resulted from New Gold’s failure to forward it tax notices.

In accordance with the foregoing, it is

ORDERED that defendant New Gold Equities Corp.'s motion pursuant to CPLR 2221 for an order granting leave to reargue its cross-motion is granted; and it is further

ORDERED that, upon reargument, New Gold Equities Corp.'s cross-motion seeking a declaration that defendant Valoc Enterprises, Inc., upon entry of the judgment, must liquidate the funds in the collateral account and forward the proceeds to plaintiffs in partial satisfaction of the judgment is granted only to the extent that Valoc is directed to release all funds in the collateral account to New Gold as reimbursement for the funds that New Gold advanced to plaintiffs in satisfaction of the judgment.

This constitutes the decision and order of the Court.

Dated: New York, New York
January 13, 2015

ENTER:

Saliann Scarpulla
Saliann Scarpulla, J.S.C.

FILED

JAN 23 2015

COUNTY CLERK'S OFFICE
NEW YORK