

<b>Brown v Home Sales Inc.</b>
2016 NY Slip Op 30390(U)
January 26, 2016
Supreme Court, Kings County
Docket Number: 504151/2015
Judge: Genine D. Edwards
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At an IAS Term, Part 80 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 26<sup>th</sup> day of January, 2016.

P R E S E N T:

Hon. Genine D. Edwards,  
Justice.  
-----X  
VETA BROWN,  
Plaintiff,

- against-

Index No. 504151/15

HOME SALES INC., ERIC TENN THOMAS JR. and  
"JOHN DOE '1'", "JOHN DOE '2'", "JOHN DOE '3'",  
an unknown Tenant(s) in Possession,  
Defendants.  
-----X

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KINGS COUNTY CLERK  
2016 FEB - 1 AM 09:33

The following papers numbered 1 to 10 read herein:

Papers Numbered

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	<u>1-3</u> <u>5-7</u>
Opposing Affidavits (Affirmations) _____	<u>4, 6-7</u> <u>8, 9</u>
Reply Affidavits (Affirmations) _____	<u>8</u> <u>10</u>

Upon the foregoing papers in this action regarding title to the three-family residential property at 1509 Park Place in Brooklyn, designated on the Tax Map of the City of New York as Block 1368, Lot 78 (Property), plaintiff, Veta Brown (Brown), moves, by order to show cause, for an order: (1) granting her a preliminarily injunction, pursuant to CPLR 6301, enjoining defendants from managing, operating, leasing, transferring, selling, pledging, assigning or otherwise disposing of the Property or permitting the Property to become

mot Seq 1 - XMG EXT  
mot Seq 2 - XMD

encumbered by a security interest or lien pending the final determination of this action; (2) directing defendants, Eric Thomas (Thomas) and Home Sales Inc. (HSI), “to [s]tay 100 feet away from the said [Property]”; and (3) appointing Brown or her designee “the Agent to run the said [Property],” pursuant to CPLR, Article 64.<sup>1</sup>

Thomas cross-moves for an order: (1) dismissing Brown’s verified complaint on the grounds that: (a) she “has no standing in this matter and that she is not a 100% owner of the [Property] . . . because any and all of her claims to ownership of said property were heretofore extinguished by the Judgment of Foreclosure and Sale, dated August 1, 2008, that was filed with the Kings County Clerk, under Index No. 6727/2007, on October 1, 2008 . . .” in the mortgage foreclosure action entitled *JPMorgan Chase Bank, N.A. v Errol Prince* (2007 Foreclosure Action); (b) there is no privity between Brown and Thomas “in that the subject property was conveyed to said defendant, in an arm’s length transaction, by the 10/27/2009 Deed from co-defendant [HSI]”; and (c) Brown failed to join Errol Prince as a necessary party to this action; (2) granting Thomas summary judgment on his cross-claim, which seeks an order directing HSI to execute a corrective deed conveying to Thomas “the entire Zoning Lot, Block: 1368. Lot: 78, consisting of Tax Lots 79 and 78 . . .”; (3) appointing a referee to determine whether the Property can be sold in one parcel; and (4) imposing sanctions upon Brown and her counsel, for frivolous conduct, pursuant to 22 NYCRR 130-1.1 (Part 130).<sup>2</sup>

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<sup>1</sup> See Brown’s April 10, 2015 Order to Show Cause (OSC).

<sup>2</sup> See Thomas’s August 3, 2015 Notice of Cross Motion.

## *Background*

### *The Property – 1509 Park Place (Block 1368, Lot 78)*

#### *A. Liat's 2002 Referee's Deed*

In 2002, the Property was transferred to Liat, LLC (Liat), the highest bidder at a tax lien foreclosure sale. The June 4, 2002 Referee's Deed, pursuant to which the court-appointed referee, Robert P. Kern, Esq., transferred the Property to Liat (Liat's 2002 Referee's Deed), states that it was granted "in pursuance of a judgment entered at an IAS part of the Supreme Court of the county of KINGS, State of New York on January 3, 2001 . . ." in a tax lien foreclosure action entitled *NYCTL 1998-2 Trust and the Bank of New York, As Collateral Agent and Custodian for the NYCTL 1998-2 Trust v Robert Caillot*, index No. 32490/1999 (1999 Tax Lien Foreclosure).

Liat's 2002 Referee's Deed was recorded with the Department of Finance in the City Register's office on July 26, 2002 under Reel 5728, Page 0383. Notably, the City Register's Recording and Endorsement Page reflects that Liat's 2002 Referee's Deed was only recorded with respect to the Property at Block 1368, Lot 78.<sup>3</sup>

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<sup>3</sup> The court, in its discretion, takes judicial notice of the 2002 Referee's Deed and the City Register's Recording and Endorsement Page, which were publically recorded and maintained by the New York City Department of Finance on the Automated City Register Information System (ACRIS), which "supports the Office of the City Register in recording and maintaining official documents" (*La Sonde v Seabrook*, 89 AD3d 132, 137 [2011] [holding that "[t]his Court has discretion to take judicial notice of material derived from official government web sites such as those generated by the New York State Department of State"]; *Kingsbrook Jewish Med. Ctr. v Allstate Ins. Co.*, 61 AD3d 13, 19-20 [2009] [holding that judicial notice is taken of "public documents that are generated in a manner which assures their reliability" such as "material derived from official government websites"]; *Des Fosses v Rastelli*, 283 App Div 1069, 1070 [1954] ["This court has taken judicial notice of the deed in the foreclosure action . . . recorded April 15, 1953"], *affd* 308 NY 850 [1955]).

Importantly, the November 28, 2000 Judgment of Foreclosure and Sale issued in the 1999 Tax Lien Foreclosure<sup>4</sup> – and referenced in Liat’s 2002 Referee’s Deed – ordered, adjudged and decreed that “the premises . . . *as hereinafter described* . . . be sold, *in one parcel*, at public auction . . .” and that “[a] description of the said premises hereinbefore mentioned is annexed hereto and made a part hereof (See SCHEDULE A)” (emphasis added). Schedule A to the November 28, 2000 Judgment of Foreclosure and Sale describes the foreclosed property as:

**“Section 05, Block 1368 and Lot 78**

ALL that certain plot, piece or parcel of land situate, lying and being in the Borough of Brooklyn, City and State of New York, designated on the Tax Map of the City of New York, for the Borough of Brooklyn, as said Tax Map was on January 17, 1978 and Current Block 1368 and Lot(s) 77 and 78 . . .”

***B. Brown’s 2004 Deed***

Liat sold the Property to Brown, pursuant to a December 30, 2004 bargain and sale deed (Brown’s 2004 Deed), which contains a hand-written notation inexplicably representing that “1509 Park Place *is new lot 79, Part of existing lot 78*” (emphasis added). Importantly, Block 1368, Lot 78 corresponds to 1507 Park Place (a/k/a 1505 Park Place), a separate three-family residential building directly adjacent to the Property (Adjacent Property).

Brown’s 2004 Deed was recorded with the Department of Finance in the City Register’s office on January 19, 2005 under City Register File Number (CRFN)

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<sup>4</sup> The Appellate Division, Second Department, has held that “[t]his court may take judicial notice of undisputed court records and files” (*Khatibi v Weill*, 8 AD3d 485, 485 [2004]).

2005000035841. Notably, the “Property Data” on the Recording and Endorsement Cover page reflects that Brown’s 2004 Deed was only recorded with respect to the Property at Block 1368, Lot 78.<sup>5</sup>

***The Adjacent Property – 1507 (a/k/a 1505) Park Place (Block 1368, Lot 79)***

***A. Liat Transfers The Adjacent Property To Errol Prince***

Liat, which apparently owned both the Property and the Adjacent Property in 2004, transferred *only* the Adjacent Property at 1507 Park Place to Errol Prince by a November 17, 2004 indenture, which includes handwriting regarding the description of the parcel of land being sold:

“**ALL** that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the

First Being *part of old Lot 78*. ‘**SEE ATTACHED SCHEDULE A**’  
‘Being the same premises conveyed to the Grantor herein by deed dated 6/4/2002, recorded 7/26/2002 in Reel, 5728, Page 384’ *is now new Lot 79*” (emphasis added, bold in original).<sup>6</sup>

Notably, Liat’s November 17, 2004 indenture was recorded in the City Register’s office on January 26, 2005 under CRFN 2005000051154 without “Attached Schedule A.”

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<sup>5</sup> A copy of Brown’s 2004 Deed with the City Register’s Recording and Endorsement Cover Page are collectively annexed as Exhibit B to Brown’s February 24, 2015 affidavit in support of her OSC (Brown Affidavit).

<sup>6</sup> A copy of Liat’s November 17, 2004 indenture with the Recording and Endorsement Cover Page is annexed as Exhibit L to the August 1, 2015 affirmation of Wolodymyr M. Starosolsky, Esq., submitted in opposition to Brown’s OSC and in support of Thomas’s cross motion (Starosolsky Opposition Affirmation).

***B. The 2007 Foreclosure Action***

Three years later, JPMorgan Chase, N.A. (Chase), foreclosed upon the Adjacent Property in the 2007 Foreclosure Action against Errol Prince, the record owner of the Adjacent Property. Brown was a named defendant to the 2007 Foreclosure Action, presumably since the wording of Brown's 2004 Deed seemingly granted her an interest in the Adjacent Property.

Chase obtained an August 1, 2008 Judgment of Foreclosure and Sale, on default (2008 Foreclosure Judgment), in which the court ordered, adjudged and decreed that the Adjacent Property "be sold, *in one parcel*, at public auction . . ." by and under the direction of Referee William Thompson, Esq. (*see* Starosolsky Opposition Affirmation, Exhibit H). The 2008 Foreclosure Judgment reflects, on its face, that the 2007 Foreclosure Action regards the foreclosure of "1507 Park Place in Brooklyn, NY, Block 1368, Lot 79" (*id.* at page 1).

Referee Thompson's Notice of Sale, which was filed with the Kings County Clerk in the 2007 Foreclosure Action, states that "I, the undersigned Referee will sell at public auction . . . premises known as 1507 PARK PLACE, BROOKLYN, NY 11213 . . . Block 1368 Lot 79 . . . subject to provisions of filed judgment Index # 6727/2007."

***C. HSI's 2008 Referee's Deed***

Referee Thompson's November 20, 2008 Report of Sale regarding the "Premises: 1507 Park Place, Brooklyn, NY 11213," which is also filed with the Kings County Clerk in the 2007 Foreclosure Action, documents that: (1) a public foreclosure auction was held on

November 20, 2008, at which Chase emerged as the successful bidder; (2) Chase “duly assigned its bid to [HSI]”; and (3) Referee Thompson, on that same day, “made, executed and delivered to such Purchaser a good and sufficient deed of conveyance for the said mortgaged premises so sold.”

Referee Thompson thus issued a November 20, 2008 Referee’s Deed (HSI’s 2008 Referee’s Deed), pursuant to which the Adjacent Property was conveyed from Referee Thompson as “Grantor” to HSI as “Grantee” (Brown Affidavit, Exhibit D). HSI’s 2008 Referee’s Deed was recorded with the Department of Finance in the City Register’s office on December 19, 2008 at CRFN 2008000481921 (*id.*).

Importantly, the “Property Data” on the Recording and Endorsement Cover page of HSI’s 2008 Referee’s Deed reflects that it erroneously identifies the Adjacent Property as “Lot 78” (*id.*). Consequently, HSI’s 2008 Referee’s Deed for the Adjacent Property was improperly recorded with the City Register under Lot 78 (which actually corresponds to the Property).

***D. HSI’s 2009 Correction Deed***

Referee Thompson, on August 28, 2009, issued a “Correction Deed” transferring the Adjacent Property at 1507 Park Place to HSI (HSI’s 2009 Correction Deed), which provides that:

“This is a correction deed for the purpose of correcting deed dated 11/20/2008 and recorded on 12/19/2008 in CRFN 2008000481921 in the City Register for the County of Kings, *as said deed was recorded under*

*incorrect Lot 78 instead of correct Lot # 79*” (Brown Affidavit, Exhibit E [emphasis added]).

HSI’s 2009 Correction Deed indicates that 1507 Park Place is also known as 1505 Park Place. HSI’s 2009 Correction Deed was recorded with the City Register’s office on November 5, 2009 at CRFN 2009000361875 (*id.*).

***E. The HSI Indenture***

One week later, HSI (“dba HOMESALES, INC., of Delaware, through its Limited Power of Attorney Olympus Asset Management”) transferred the Adjacent Property to Thomas, pursuant to an “Indenture,” which was executed by Mason Legendre, Vice President of Olympus Asset Management, on September 8, 2009 and “delivered October 27, 2009” (HSI Indenture) (Brown Affidavit, Exhibit F).

Notably, the HSI Indenture between HSI as “Grantor” and Thomas as “Grantee,” explicitly states that it transfers “the same premises conveyed to the Grantor by Referee’s Deed dated November 20, 2008 . . . and by Correction Deed dated August 28, 2009 and recorded in the Office of the City Register of the City of New York just prior to this deed” (*id.*).

Importantly, the HSI Indenture identifies the “TAX ACCOUNT NO.” as “Block 1368 Lot 79” and the “PROPERTY ADDRESS” as “1507 Park Place, a/k/a 1505 Park Place, Brooklyn, New York 11213” (*id.*). The HSI Indenture was subsequently recorded with the City Register’s office on November 5, 2009 at CRFN 2009000361876 (*id.*).

***The Allegedly Fraudulent Confirmatory Deed,  
Which Thomas Admittedly Executed To Evidence His  
Ownership Of Both The Property And The Adjacent Property***

Meanwhile, Thomas documented his ownership of *both* the Property and the Adjacent Property by unilaterally executing a “CONFIRMATORY DEED” dated (yet not executed) on September 8, 2009, which provides that HSI as “Grantor” transfers “1507 AND 1509 PARK PLACE, City of BROOKLYN, State of NEW YORK: 1368 LOT 78 AND 79 . . .” to Thomas as “Grantee” (Brown Affidavit, Exhibit C [Confirmatory Deed]).

Schedule “A” to the Confirmatory Deed contains a “NOTE” stating that:

“1507 AND 1509 PARK PLACE, BLOCK 1368 TAX LOTS 79 AND 78 IS DESIGNED AS ONE ZONING LOT AND TWO TAX LOTS. ANY FUTURE CHANGES MUST TAKE INTO CONSIDERATION BOTH LOTS TOGETHER. RECORDED IN THE COUNTY CLERK’S OFFICE IN CRFN #2004000057977 IN PAGE NO. REEL 612 PAGE 1389” (*id.*).

Importantly, ACRIS reflects that a November 17, 2003 “Zoning Lot Description” was recorded with the City Register on January 30, 2004 at CRFN 2004000057977 (Zoning Lot Description).

The Zoning Lot Description reflects that it was prepared by a title insurance company which certified that Liat owned “a tract of land, either unsubdivided *or consisting of two or more lots of record*, contiguous for a minimum of ten linear feet located within a single block . . .”; “[t]he subject tract of land with respect to which the foregoing parties are the parties in interest as aforesaid, is known as Tax Lot Number(s) 78, 79 In Block 1368 on the Tax Map of the City of New York, KINGS County . . .”; and “[t]hat the said premises are

known as and by street address(es) 1507 PARK PLACE and 1509 PARK PLACE, as shown on the following DIAGRAM . . .”

Oddly, *two years later*, on June 3, 2011, Thomas (rather than HSI) admittedly executed and acknowledged the Confirmatory Deed purporting to transfer the Property and the Adjacent Property to himself. Thomas, on June 30, 2011, recorded the Confirmatory Deed with the City Register’s office under CRFN 20011000231187 (*id.* at Exhibit C).

### ***The Pending Foreclosure Action***

Meanwhile, the Property has been the subject of a pending action to foreclose upon a first mortgage based on Brown’s alleged payment default thereunder, entitled *U.S. Bank Nat’l Assoc., as Trustee For Mastr Asset Backed Securities Trust 2006-FRE2 v Brown*, index No. 22623/08, which was commenced by Fremont Investment and Loan *over seven years ago*, on or about August 5, 2008 (Pending Foreclosure Action).

By order dated July 24, 2014, the court (Silber, J.): (1) granted the plaintiff an order of reference, on default, referring the Pending Foreclosure Action to “Alex Singer, Esq. having an office located at 26 Court Street in Brooklyn, telephone number (718) 625-3204, as Referee to ascertain and compute the amount due to the [p]laintiff herein for principal, interest, and other disbursements advanced as provided for by statute and in the Note and Mortgage upon which this action was brought”; (2) amended the caption by substituting Yolane Lherison, Tameika Hill, Nicole Peters and Mathon Williams in place and instead of the “John Doe” defendants; and (3) amended the caption to substitute “U.S. Bank Nat’l

Assoc., as Trustee For Mastr Asset Backed Securities Trust 2006-FRE2” in place of the original plaintiff, Fremont Investment and Loan.

***The Instant Action***

Seven months later, on or about February 24, 2015, Brown commenced this action by filing a summons and a verified complaint asserting two causes of action against HSI and Thomas for: (1) “fraud, trickery, deceit and conversion, of the Plaintiff’s record ownership of the [P]roperty . . .” and (2) unjust enrichment based on “proceeds, rents, and profits wrongfully retained . . .” from the Property.<sup>7</sup> Brown also sued three “John Doe” defendants, alleging that “each [is] an unknown Tenant in Possession of Apartments 1, 2 and 3 respectively, pursuant to the wrongful actions of Defendant(s)” (Brown Affidavit, Exhibit A [Complaint at ¶ 5]).<sup>8</sup>

Brown’s verified complaint alleges that Brown “was and still is a 100% record Owner of [the Property] having acquired said Premises from LIAT, LLC by [Brown’s 2004 Deed],” a copy of which is annexed to and incorporated by reference into Brown’s complaint (Complaint at ¶ 1 and Exhibit A). The complaint further alleges that Brown is “the true and only owner of the [P]roperty, known as 1509 Park [Place], Brooklyn, New York” (Complaint at ¶ 13).

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<sup>7</sup> See ¶¶ 4 and 19 of Brown’s verified complaint, a copy of which is annexed as Exhibit A to the Brown Affidavit.

<sup>8</sup> Presumably, the “unknown Tenant[s] in Possession of Apartments 1, 2 and 3 . . .” are the same individuals who were substituted in for the “John Doe” defendants in the Pending Foreclosure Action – Yolane Lherison, Tameika Hill, Nicole Peters and Mathon Williams.

Brown alleges, upon information and belief, that HSI “became the purported record Owner of the Property . . .” pursuant to the Confirmatory Deed, a copy of which is also annexed to and incorporated by reference into Brown’s verified complaint (Complaint at ¶ 2 and Exhibit B). Notably, Brown alleges that Thomas “is an individual residing at [the Adjacent Property]” (Complaint at ¶ 3).

Brown’s first cause of action alleges that the Confirmatory Deed “was the result of Defendant’s attempt to convert the Plaintiff’s property . . .” (*id.* at ¶ 4). Brown thus alleges that the Confirmatory Deed, which Thomas “acknowledged on June 3, 2011 and recorded on June 3[0], 2011 . . . is the result of fraud, forgery, trickery, deceit, and conversion . . .” and that “Defendants conspired to deprive [her] of her 100% [o]wnership of the [Property]” (*id.* at ¶¶ 7 and 11). Brown further alleges that Thomas “has and continues to have no right of ownership in the [Property]” and seeks an order setting aside, cancelling and rendering the Confirmatory Deed “null and void” (*id.* at ¶ 14).

Brown’s second cause of action alleges “[t]hat as a result of the Defendant’s within described acts of fraud, trickery, deceit, and conversion, the Defendant(s) has been unjustly enriched in the sum of not less than \$650,000.00 . . .” and “demands [an] accounting . . . to determine the proceeds, rents, and profits wrongfully retained by the Defendant, along with a Judgment for \$650,000.00 . . . as well as the ejectment of the Defendant(s), ‘John Doe 1’, ‘John Doe 2’ and ‘John Doe 3’, who have no right to occupy the [Property], as the

Defendants occupancy was and is based upon a fraudulent [Confirmatory Deed]” (Complaint at ¶ 19).

Notably, Brown’s verified complaint fails to mention the fact that the Property is currently the subject of the Pending Foreclosure Action.

### ***Brown’s Instant Motion***

Soon thereafter, Brown, on April 10, 2015, moved, by order to show cause with a temporary restraining order (TRO),<sup>9</sup> for an order: (1) granting Brown a preliminary injunction, pursuant to CPLR 6301, “staying the Defendant, pending the Final Determination of this Action, so that the [Property] cannot be managed, operated, leased, transferred, sold, pledged, assigned or otherwise disposed of or permitted to become subject to a security interest or lien . . .”; (2) directing Thomas and HSI “to [s]tay 100 feet away from the [Property]”; and (3) appointing Brown or her designee “the [a]gent to run the said [Property], pursuant to Article 64 of the CPLR.”<sup>10</sup>

Brown contends that Thomas, who resides at the Adjacent Property, “pretended to be an authorized agent of [HSI] and then signed [the Confirmatory Deed] . . . and conveyed the [P]roperty to himself” when Brown relocated to Georgia after the financial crisis, “having

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<sup>9</sup> The TRO provided that “the Defendant, pending the Hearing . . . of this motion, is stayed so that the Premises, 1509 Park Place, Brooklyn, New York, cannot be managed, operated, leased, transferred, sold, pledged, assigned or otherwise disposed of or permitted to become subject to a security interest or lien, by the Defendant(s), Eric Te[n]u Thomas and Home Sales Inc., its agents, servants, employees, and contractors, who are also hereby stayed from being within 100 feet of said premises.”

<sup>10</sup> See Brown’s OSC at 1-2.

seen an opportunity to take my home, obviously believing that I would never return” (*id.* at ¶¶ 7-8).

In addition to a preliminary injunction maintaining the Property’s status quo during the pendency of this action, Brown contends that she should be “appointed the managing agent so that the [P]roperty is properly operated until the Final Judgment is entered herein” for numerous reasons, including: (1) that she “is the true and only owner” of the Property, which she acquired from Liat; (2) that the Confirmatory Deed falsely states that “1507 and 1509 PARK PLACE, BLOCK 1368 TAX LOTS 79 AND 78 IS DESIGNED AS ONE ZONING LOT AND TWO TAX LOTS[,]” which evidences defendants’ “fraud, trickery, deceit and conversion” of her Property; (3) “[t]hat the Defendant(s) fraudulently obtained 100% of an asset valued at not less than \$650,000.00 with ZERO consideration paid to the Plaintiff”; and (4) “Thomas . . . has and continues to have no right of ownership . . .” (*id.* at ¶¶ 4 and 5 [a]-[p]).

Brown contends “[t]hat the subject [P]roperty needs a managing agent, as same is a three (3) family house with . . . Thomas . . . having not only signed [the Confirmatory Deed] giving himself my property, but decided to rent out my (3) family home as well, and to collect the [r]ent” (*id.* at ¶ 6). Brown’s counsel contends that the appointment of a temporary receiver, pursuant to CPLR 6401, is warranted because “the actions of Defendant, in forging a deed and now collecting rent, and in shutting Plaintiff out of her [P]roperty, and operating a business without the Plaintiff’s knowledge and/or consent, evidences the danger of material

injury to the Plaintiff.”<sup>11</sup> Brown’s counsel further contends that “[t]he Plaintiff or her designee should be appointed the managing agent, as she will preserve the [P]roperty and assets so that there is no waste of such [P]roperty and assets” (Altman Affirmation at ¶ 20).

Brown’s OSC annexes a copy of her verified complaint (*id.* at Exhibit A); Brown’s 2004 Deed to the Property (*id.* at Exhibit B), the allegedly fraudulent Confirmatory Deed executed by Thomas (*id.* at Exhibit C); HSI’s 2008 Referee’s Deed (*id.* at Exhibit D); HSI’s 2009 Correction Deed, specifically stating that the 2008 Referee’s Deed “was recorded under incorrect Lot 78 instead of correct Lot # 79” (*id.* at Exhibit E); and the HSI Indenture (*id.* at Exhibit F).

### ***HSI’s Partial Opposition To Brown’s Motion***

HSI, on June 19, 2015, submitted an affirmation in partial opposition to Brown’s motion, affirming that HSI “only opposes that branch of the motion that seeks to enjoin it from coming within 100 feet of the [Property] and takes no position regarding the other relief sought . . .”<sup>12</sup>

HSI explains that it “engages in the business of obtaining and selling real property in, among other areas, Brooklyn, New York,” and thus, “[a]n injunction prohibiting [it] from coming within 100 feet of the [Property] could prevent [it] from lawfully engaging in

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<sup>11</sup> See ¶ 17 of the March 26, 2015 affirmation of Joseph A. Altman, Esq. in support of Brown’s OSC (Altman Affirmation).

<sup>12</sup> See ¶ 3 of the June 9, 2015 affirmation of Christopher J.W. Verby, Esq., in Partial Opposition to Brown’s OSC (Verby Partial Opposition Affirmation).

potential business pertaining to other properties near the [Property]” (Verby Partial Opposition Affirmation at ¶ 9). HSI contends that “Plaintiff cannot succeed on the merits against [it] because there is no justiciable controversy between them” and “[it] was not a party to the transaction on which this action is based, the Confirmatory Deed” (*id.* at ¶ 17).

HSI confirmed and documented the facts that: (1) HSI *only* acquired the Adjacent Property at 1507 Park Place pursuant to HSI’s 2008 Referee’s Deed, after Chase successfully foreclosed upon the Adjacent Property in the 2007 Foreclosure Action against Errol Prince, and (2) HSI then conveyed *only* the Adjacent Property at 1507 Park Place to Thomas, pursuant to the HSI Indenture (*id.* at ¶¶ 4-5 and Exhibits A, B and C).

Significantly, HSI confirms that Thomas had no authority to execute the Confirmatory Deed on behalf of HSI:

“[o]n June 3, 2011 THOMAS executed what he styled a ‘confirmatory deed’ . . . on behalf of HOMESALES, *even though he had no authority* from HOMESALES (recorded June 30, 2011). The Confirmatory Deed purportedly conveyed title to both 1507 Park and the [Property] to THOMAS. It appears that THOMAS was attempting to ‘confirm’ that he has title to both 1507 and 1509 Park Place, when in fact *he only purchased 1507 Park* from HOMESALES

“The Confirmatory Deed is signed only by THOMAS, the alleged ‘grantee.’ Nowhere does the Confirmatory Deed bear an authorized signature from HOMESALES as grantor” (*id.* at ¶¶ 6 and 7 [emphasis added] [defined terms omitted]).

### ***Thomas’s Answer And Cross-Claim Against HSI***

Thomas, on or about August 1, 2015, belatedly served his answer to Brown’s complaint, denying the allegations therein and asserting two affirmative defenses, alleging

that: (1) Brown “has no standing in this action and is precluded from filing same in that she is not an owner of the subject [P]roperty in that whatever rights to ownership therein she might have had were judicially taken away by virtue of the herein mentioned [2008] Judgment of Foreclosure and Sale,” and (2) “[p]laintiff’s claim should be dismissed based upon the absence of privity” between Brown and Thomas.<sup>13</sup>

Thomas also asserted a cross-claim against HSI, alleging that HSI “has defrauded [him] in that, in said Grantor’s Deed of October 27, 2009, defendant [HSI] in the attached thereto Metes and Bounds description of the [Adjacent] property purports to convey only a portion of the Zoning Lot and not the Entire Lot as it was/is obliged to do” and seeks an order directing HSI “to execute a Corrective Deed conveying to [him] the entire Zoning Lot on Block 1368 with both Tax Lots 79 and 78 thereon . . .” (Starosolsky Opposition Affirmation, Exhibit O at page 4).

### ***Thomas’s Cross Motion***

A few days later, Thomas cross-moved for an order dismissing Brown’s complaint on the grounds that: (1) Brown lacks standing “because any and all of her claims to ownership of said [P]roperty were heretofore extinguished” by Chase’s 2008 Foreclosure Judgment in the 2007 Foreclosure Action; (2) there is no privity between Brown and Thomas; and (3) Brown failed to join Errol Prince (the defendant borrower in the 2007 Foreclosure Action)

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<sup>13</sup> A copy of Thomas’s answer is annexed as Exhibit O to the August 1, 2015 affirmation of Wolodymyr M. Starosolsky, Esq. submitted in opposition to Brown’s OSC and in support of Thomas’s cross motion (Starosolsky Opposition Affirmation).

as a necessary party. In addition, Thomas seemingly seeks summary judgment on his cross-claim against HSI because he seeks an order: (1) directing HSI to execute a Corrective Deed conveying the Property to him; (2) referring this matter to a referee “to determine whether the subject premises can be sold in one parcel”;<sup>14</sup> (3) granting Thomas attorneys fees and costs; and (4) imposing sanctions upon Brown and her counsel, pursuant to Part 130, for frivolous conduct.

Thomas attests that he “purchased the real property subject to this proceeding October 27, 2009 . . .” and annexes a copy of the HSI Indenture, pursuant to which HSI transferred *only* the Adjacent Property at 1507 Park Place (a/k/a 1505 Park Place) to Thomas (Thomas Cross-Moving Affidavit at ¶ 3 and Exhibit A [emphasis added]).

Thomas admits that he resides at the Adjacent Property “that is known by the address 1507 (a.k.a. 1505) Park Place[,]” yet contends that the Adjacent Property “is listed on the Tax Map in Kings County as Block # 1368, Lot # 78 & 79” (Thomas Cross-Moving Affidavit at ¶ 6). Thomas explains that “I, initially became interested in this property when I learned of it being advertised as a referee’s foreclosure sale of Block 1368, Lot 78” subsequent to Chase’s foreclosure of the Adjacent Property in the 2007 Foreclosure Action (*id.* at ¶ 22).

Thomas seeks dismissal of Brown’s complaint on the ground that Brown lacks standing to sue because Chase’s 2008 Foreclosure Judgment in the 2007 Foreclosure Action “extinguished any and all rights and interest that VETA BROWN ever had in the subject

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<sup>14</sup> See ¶ 1 of Thomas’s August 3, 2015 affidavit in opposition to Brown’s OSC and in support of Thomas’s cross motion (Thomas Cross-Moving Affidavit).

property” (*id.* at ¶¶ 19-20). Thomas inexplicably contends that the 2007 Foreclosure Action “‘reunited’ Tax Lot 78 and Tax Lot 79 into one Zoning Lot that is subject to conveyance as a whole, and not in separate portions thereof” (*id.* at ¶ 21).

Thomas admits that he filed the Confirmatory Deed with the City Register on June 22, 2011, based on the advice of an unidentified “official in the NYC Department of Finance” in order “to protect my property, i.e., the property that I acquired on 10/27/2009 from defendant [HSI]” (*id.* at ¶¶ 16 and 24). Thomas argues that his representations in the Confirmatory Deed are not fraudulent and states that “I deny any wrongdoing in this matter . . .” (*id.* at ¶ 18).

Thomas also seeks “the appointment of a referee, to investigate this matter, to report to the court as to his/her findings and to recommend to the court whatever solution/resolution of this matter[,]” and annexes the June 1, 2011 Order of Reference appointing a referee in the Pending Foreclosure Action (*id.* at ¶ 4 and Exhibit B).

### ***HSI’s Partial Opposition To Thomas’s Cross Motion***

HSI “only opposes that branch of the [cross] motion that seeks an order directing it to issue a corrective deed conveying the [Property] to THOMAS . . .”<sup>15</sup> To the extent that Thomas seeks an order granting him summary judgment on his cross-claim, HSI contends that it “must be denied because there is no legal basis whatsoever for [it] to convey title to

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<sup>15</sup> See ¶ 3 of the September 24, 2015 affirmation of Christopher J. W. Verby, Esq. in “Partial Opposition to Defendant Eric Renu Thomas’ Cross-Motion to Dismiss, To Compel Defendant [HSI] to Issue a Corrective Deed and for Sanctions” (Verby Opposition Affirmation).

the Subject Premises to him [because it] *never held title to the Subject Premises*” (Verby Opposition Affirmation at ¶ 4 [emphasis added]; *see also* ¶ 18 [“the court should deny THOMAS’ cross-motion to direct (HSI) to issue a corrective deed because (HSI) never acquired title to the Subject Premises and therefore cannot now convey title to THOMAS”]). HSI cites case law for the legal principle that “a party cannot convey more than the interest it holds in real property,” as a matter of law (*id.* at ¶ 20).

HSI clarifies that the 2007 Foreclosure Action in which Chase obtained the 2008 Foreclosure Judgment “had nothing whatsoever to do with the Subject Premises” (*id.* at ¶ 5). HSI documents the fact that it acquired title to the Adjacent Property at 1507 Park Place by HSI’s 2008 Referee’s Deed in the 2007 Foreclosure Action and that it subsequently conveyed the Adjacent Property to Thomas pursuant to the HMI Indenture.

HSI, once again, confirmed the fact that Thomas executed the Confirmatory Deed purporting to transfer both the Property at 1509 Park Place and the Adjacent Property at 1507 Park Place to himself “even though he had no authority from [HSI] and even though [HSI] never held title to the Subject Premises” at 1509 Park Place (*id.* at ¶ 8).

***Brown's Reply In Further Support Of Her Motion  
And In Opposition To Thomas's Cross-Motion***

Brown, in reply, clarifies that the Property and the Adjacent Property “are two (2) separate and distinct properties, each with its own Block and Lot and legal description; hence, the Defendant has no valid claim or interest in the Plaintiff’s [P]roperty.”<sup>16</sup>

Brown contends that Thomas “offers neither fact nor law which permits him to fabricate a Con[firmatory] Deed and forge the signature of [HSI] to obtain the Plaintiff’s property” (Altman Reply Affirmation at ¶ 11). Brown further argues that “the Defendant cannot possess more than he bought and a thief can never acquire good marketable title to the property he stole” (*id.* at ¶ 14). Brown accuses Thomas of intentionally trying to “mislead the Court” by suggesting that Errol Prince had an ownership interest in the Property (*id.* at ¶ 15).

Brown annexes a copy of a Title Report for the Property issued by Old Republic National Title Insurance Company as evidence that Thomas’s Confirmatory Deed signed by Thomas as both “Grantor” and “Grantee” “has placed a cloud on title . . .” warranting its vacatur and cancellation (*id.* at ¶¶ 17, 18 and 27 and Exhibit E). Brown further contends that Thomas failed to dispute “the fact that [he] has nothing to do with [HSI] and committed a fraud and forgery when he signed the [Confirmatory Deed] on behalf of the Co-Defendant [HSI]” (*id.* at ¶ 28).

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<sup>16</sup> See ¶ 10 of the August 12, 2015 reply affirmation of Joseph A. Altman, Esq. in further support of Brown’s OSC and in opposition to Thomas’s cross-motion (Altman Reply Affirmation).

Finally, Brown improperly seeks to expand her motion, on reply, to include a request for a hearing to determine the imposition of costs and sanctions against Thomas, pursuant to CPLR 8303-a and Part 130, based on the contention that Thomas's cross motion, answer and cross-claim are "frivolous" (*id.* at ¶¶ 35, 37 and 38-40).

***Thomas's Reply In Further Support Of His Cross Motion***

Thomas's reply in further support of his cross motion makes the conclusory claim that Brown only "acquired interest in one half (1/2) of the property that LIAT, LLC acquired on 6/8/2002, by way of [Liat's 2002] Referee's Deed in which the property was described as Block 1368, Lot 78, on Park Place in Brooklyn, New York."<sup>17</sup> Thomas contends that Brown's 2004 Deed from Liat "is illegal and rights claimed thereunder [sic] are not enforceable in that the deed attempts to convey . . . only a portion of a Zoning Lot . . ." (Starosolsky Reply Affirmation at ¶ 11). Thomas accuses Liat, a non-party, of "creat[ing]" two Tax Lots "and thereafter, fraudulently, convey[ing] the mentioned Tax Lots, as if these were legally conveyable Zoning Lots" to Errol Prince and Brown (*id.* at ¶ 13).

Thomas inexplicably contends that the documents annexed to his reply make it "evident" that Chase's 2007 Foreclosure Action regarding the Adjacent Property was actually "an action to foreclose on property designated as Block 1368, Tax Lot 78 and Tax Lot 79" and that "by operation of law, [Chase] did, in fact, foreclose on the entire Zoning Lot 78, in Block 1368, with Tax Lot 78 and Tax Lot 79 thereon" (*id.* at ¶¶ 20 and 26). Essentially,

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<sup>17</sup> See ¶ 10 of the October 6, 2015 reply affirmation of Wolodymyr M. Starosolsky, Esq. in further support of Thomas's cross motion (Starosolsky Reply Affirmation).

Thomas contends that Tax Lots 78 and 79 – although they relate to two distinct three-family properties – constitute one zoning lot that cannot be separately encumbered or conveyed (*id.* at ¶ 22).

Based on this theory, Thomas seeks an order directing HSI to issue a corrective deed “conveying to THOMAS title to the property situated on Park Place in Brooklyn, New York, in Block 1368, that is Lot 78 (23 feet 9 inches wide) with two Tax Lots thereon, to wit, Tax Lot 78 and Tax Lot 79 . . .” (*id.* at ¶ 25). Thomas contends that it is “of no consequence” that HSI “cannot convey 1509 Park Place to THOMAS because it did not hold an interest in it” (*id.* at ¶ 34).

Finally, Thomas opposes Brown’s motion for an injunction directing him to stay 100 feet away from the Property because Thomas “and his family have continually resided at . . . 1507 Park Place and 1505 Park Place in Brooklyn, NY as of the date that defendant THOMAS purchased the property from co-defendant [HSI] on 9/8/2009” (*id.* at ¶ 5).

### *Discussion*

#### *(1)*

#### *Brown’s Motion*

##### *A. Brown’s Motion For A Preliminary Injunction Pending The Final Determination Of This Action*

Brown seeks a preliminary injunction, pursuant to CPLR 6301, enjoining defendants from managing, operating, leasing, transferring, selling, pledging, assigning or otherwise disposing of the Property or permitting the Property to become encumbered by a security interest or lien pending the final determination of this action. Essentially, Brown seeks a

preliminary injunction in order to maintain the Property's status quo during the pendency of this action.

CPLR 6301 specifically provides that a preliminary injunction may be granted:

“in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to judgment restraining the defendant from the commission or continuance of an act, which, if committed or continuing during the pendency of the action, would produce injury to the plaintiff.”

It is well-established that a party seeking a preliminary injunction must demonstrate, by clear and convincing evidence: (1) a likelihood of success on the merits; (2) the danger of irreparable harm absent an injunction; and (3) a balancing of the equities in the movant's favor (*Alayoff v Alayoff*, 112 AD3d 564, 565 [2013]; *Kurlandski v Kim*, 111 AD3d 676, 677 [2013]; *Joseph v Joseph*, 108 AD3d 597, 598 [2013]). “Although the purpose of a preliminary injunction is to preserve the status quo pending a trial, the remedy is considered a drastic one, which should be used sparingly” (*Alayoff*, 112 AD3d at 565; *see also County of Suffolk v Givens*, 106 AD3d 943, 944 [2013]; *Town of Carmel v Melchner*, 105 AD3d 82, 90-91 [2013]; *L&M 353 Franklyn Ave., LLC v S. Land Dev., LLC*, 98 AD3d 721, 721-722 [2012]).

Here, Brown has demonstrated her entitlement to a preliminary injunction maintaining the Property's status quo pending the final determination of this action.

Brown has adequately documented and evidenced the chain of title to the Property at 1509 Park Place since 2002. First, Brown evidenced that Liat acquired the Property at 1509 Park Place after the Property was foreclosed upon, pursuant to Liat's 2002 Referee's Deed. Second, Brown evidenced her ownership interest in the Property at 1509 Park Place based on Brown's 2004 Deed from Liat. Brown demonstrated the likelihood of success on the merits of her cause of action against Thomas for conversion of her Property and that the equities balance in her favor, since Thomas admittedly prepared and unilaterally executed the Confirmatory Deed purporting to transfer the Property from HSI to himself. Importantly, HSI confirmed that Thomas had no authority to execute the Confirmatory Deed on its behalf, especially since HSI had no ownership interest in the Property. Brown also demonstrated the likelihood of her success on the merits regarding her cause of action against Thomas for conversion, since Thomas does not deny that he rented out the Property to tenants and has been collecting rental income derived therefrom.

Furthermore, there is an apparent danger that Thomas may attempt to exercise an ownership interest in the Property, further encumber the Property or create additional confusion in the City Register's office pending the final determination of this action, especially since Thomas cross-moved for an order referring this action to a referee "to determine whether the subject premises can be sold in one parcel" (Thomas Cross-Moving Affidavit at ¶ 1). Consequently, Brown is entitled to a preliminary injunction maintaining the Property's status quo pending a final determination of this action.

**B. *Brown's Motion To Appoint A Receiver***

Brown also seeks the appointment of a receiver, pursuant to CPLR Article 64, and requests that Brown or her designee be appointed the managing agent for the Property.

CPLR 6401(a) provides that a receiver may be appointed “upon motion of a person having an apparent interest in the property which is the subject of an action in the Supreme Court . . . where there is danger that the property will be removed from the state, or lost, materially injured or destroyed.” The moving party must make a “clear evidentiary showing of the necessity of conserving the property and protecting that party’s interests” (*Kristensen v Charleston Square, Inc.*, 273 AD2d 312, 312 [2000]).

Here, the appointment of a receiver to ensure that the Property is properly managed during the pendency of this action is appropriate and warranted, since there is no dispute that Thomas rented the three rental units at the Property, which are occupied by tenants selected by Thomas. However, the court declines Brown’s request that she or her designee be appointed managing agent of the Property. Given the parties’ conflicting claims regarding their respective ownership interests in the Property, this court has determined that an independent receiver should collect rental income at the Property. This court appoints Alex Singer, Esq. as receiver, since he is the appointed referee in the Pending Foreclosure Action and is, thus, familiar with the Property.

***C. Brown's Motion For An Injunction Directing Defendants To Stay 100 Feet From The Property***

Brown's motion for an injunction directing Thomas and HSI to stay 100 feet away from the Property pending the final determination of this action is denied. Brown has not demonstrated that an injunction precluding HSI and Thomas from coming within 100 feet of the Property is necessary or warranted to protect her ownership interest in the Property. Furthermore, the injunction Brown seeks would be inequitable under the factual circumstances presented here.

HSI was apparently sued as a party defendant in this action because it is identified as the "Grantor" of the Property in the Confirmatory Deed and it formerly owned the Adjacent Property. However, Brown's causes of action for fraud and unjust enrichment are asserted only against defendant Thomas, the alleged tortfeasor. Enjoining HSI from coming within 100 feet of the Property is inequitable because HSI "engages in the business of obtaining and selling real property in . . . Brooklyn" and an injunction could prevent HSI from lawfully engaging in potential business opportunities near the Property (Verby Partial Opposition Affirmation at ¶ 9).

Regarding Thomas, there is no dispute that: (1) he owns the Adjacent Property at 1507 Park Place (a/k/a 1505 Park Place), which he purchased from HSI pursuant to the HSI Indenture, and (2) Thomas and his family have resided at the Adjacent Property since Thomas purchased the Adjacent Property in 2009. Consequently, an injunction barring Thomas from coming within 100 feet of the Property at 1509 Park Place is unwarranted

because it would encroach on, and interfere with, his ownership interest in, and use and enjoyment of, the Adjacent Property.

(2)

***Thomas's Cross Motion***

***A. Thomas's Cross Motion To Dismiss***

Thomas's contention that Brown lacks standing to commence this action because Chase's foreclosure of the Adjacent Property in the 2007 Foreclosure Action extinguished Brown's rights and interest in the Property is preposterous.

Chase's 2007 Foreclosure Action, the foreclosure auction and the referee's November 20, 2008 sale to HSI pertained *only* to the Adjacent Property. Chase's 2008 Foreclosure Judgment annexed to Thomas's cross motion reflects, on its face, that it relates *only* to 1507 Park Place in Brooklyn, designated as Block 1368, Lot 79 (Thomas Cross-Moving Affidavit, Exhibit H). Furthermore, the court (Hinds-Radix, J.) specifically ordered, adjudged and decreed that the Adjacent Property "is to be sold *in one parcel* in 'as is' physical order and condition on the day of sale . . ." (Thomas Cross-Moving Affidavit, Exhibit H at 8 [emphasis added]). Thus, the 2007 Foreclosure Action and the 2008 sale of the Adjacent Property to HSI did not extinguish Brown's rights and interest in her neighboring Property at 1509 Park Place.

For the same reason, Brown's verified complaint is not subject to dismissal based on Brown's failure to sue Errol Prince, the mortgagor and former owner of the Adjacent

Property. According to CPLR 1001 (a), necessary parties are “[p]ersons who ought to be parties if complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action.” Errol Prince is not a necessary party to Brown’s action regarding the Property because he does not have an ownership interest in or right to the Property, and therefore, could not conceivably be inequitably affected by a judgment herein.

Finally, while Thomas argues that dismissal of Brown’s complaint is warranted because there is no privity between Brown and Thomas, he fails to explain this legal theory and provides no case law to support his cross motion to dismiss. Consequently, that branch of Brown’s cross motion seeking an order dismissing Brown’s verified complaint is denied.

***B. Thomas’s Cross Motion For An Order Granting His Cross-Claim Against HSI***

Thomas seemingly cross-moves for summary judgment on his cross-claim against HSI and seeks an order: (1) directing HSI to execute a corrective deed conveying the Property to Thomas, and (2) referring this matter to a referee to determine whether the subject premises can be sold in one parcel.

The Court of Appeals has long held that “the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). “It is well-settled that on a motion for summary judgment, the moving party has the initial burden of demonstrating, by

admissible evidence, its right to judgment” (*Bendik v Dybowski*, 227 AD2d 228, 228 [1996]). “To obtain summary judgment it is necessary that the movant establish his cause of action or defense ‘sufficiently to warrant the court as a matter of law in directing judgment’ in his favor (CPLR 3212, subd. [b]), and he must do so by tender of evidentiary proof in admissible form” (*Friends of Animals, Inc. v Associated Fur Mfrs., Inc.*, 46 NY2d 1065, 1067 [1979]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). “If the moving party fails to meet this initial burden, summary judgment must be denied regardless of the sufficiency of the opposing papers” (*Voss v Netherlands Ins. Co.*, 22 NY3d 728, 734 [2014] [internal quotations omitted]).

Here, Thomas has utterly failed to demonstrate his entitlement to summary judgment on his cross-claim for an order directing HSI to execute a corrective deed conveying the Property to him. Thomas has failed to demonstrate that the HSI Indenture pursuant to which HSI conveyed *only* the Adjacent Property to Thomas was erroneous in any respect and HSI has confirmed that it never had an ownership interest in the Property at 1509 Park Place. HSI correctly argues that it cannot be compelled to transfer property which it does not own.

Thomas’s cross motion for an order referring this action to a referee to determine whether the subject premises can be sold in one parcel seeks relief that is entirely unnecessary, particularly since the court (Silber, J.) has already appointed a referee in the Pending Foreclosure Action to make that determination. Consequently, Thomas’s motion for an order of reference is moot.

*C. Thomas's Application For Sanctions,  
Attorneys' Fees And Litigation Costs*

Finally, Thomas seeks the imposition of Part 130 sanctions upon Brown and her counsel based on the contention that “plaintiff’s action is frivolous and has subjected defendant to otherwise avoidable attorney fees and costs of this litigation . . .” It is pellucidly clear that Thomas failed to demonstrate any basis for sanctioning Brown based on allegedly frivolous conduct. Accordingly, it is

**ORDERED** that the branch of Brown’s motion seeking a preliminarily injunction, pursuant to CPLR 6301, enjoining defendants from managing, operating, leasing, transferring, selling, pledging, assigning or otherwise disposing of the Property or permitting the Property to become encumbered by a security interest or lien pending the final determination of this action is granted; and it is further

**ORDERED** that the branch of Brown’s motion seeking the appointment of a receiver, pursuant to CPLR 6401(a), to manage the Property pending the final determination of this action is granted to the extent that Alex Singer, Esq.,<sup>18</sup> having an office located at 26 Court Street, Brooklyn, New York 11242, telephone number (718) 625-3204, is hereby appointed receiver of the Property for the purpose of collecting rental income derived from the Property during the pendency of this action; and it is further

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<sup>18</sup> Alex Singer, Esq. is the Referee who was appointed in the Pending Foreclosure Action to ascertain and compute the amount due from Brown.

**ORDERED** that the branch of Brown's motion seeking an injunction directing defendants to stay 100 feet away from the Property pending the final determination of this action is denied; and it is further

**ORDERED** that the branch of Brown's motion seeking a hearing to determine the amount of costs to be awarded against Thomas, pursuant to CPLR 8303-a, is denied; and it is further

**ORDERED** that the branch of Thomas's cross motion seeking an order dismissing Brown's verified complaint is denied; and it is further

**ORDERED** that the branch of Thomas's cross motion seeking summary judgment on his cross-claim against HSI is denied; and it is further


**ORDERED** that the branch of Thomas's cross motion seeking an order referring the action to a referee to determine if the Property can be sold in one parcel is denied as moot; and it is further

**ORDERED** that the branch of Thomas's cross motion, pursuant to Part 130, seeking the imposition of sanctions upon Brown and her counsel for frivolous conduct is denied; and it is further

**ORDERED** that the branch of Thomas's cross motion seeking an award of attorneys fees and costs is denied.

This constitutes the decision and order of this court.

E N T E R,

  
\_\_\_\_\_  
J. S. C.

**HON. GENINE D. EDWARDS**

FILED  
KINGS COUNTY CLERK  
2016 FEB - 1 AM 09:04