

**Wells Fargo Bank, N.A. v Vuksanovic**

2016 NY Slip Op 30741(U)

April 25, 2016

Supreme Court, Westchester County

Docket Number: 13963/08

Judge: Lewis J. Lubell

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

Dispo

To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

**SUPREME COURT OF THE STATE of NEW YORK  
COUNTY OF WESTCHESTER**

-----X  
WELLS FARGO BANK, N.A.,

Plaintiff,

-against -

LILLIAN VUKSANOVIC a/k/a LILLIAN  
VUKSANOVIC-BOJOVIC; THE BOARD OF  
MANAGERS KENSICO ARMS CONDOMINIUM;  
"MR" HEITZELMAN,

Defendants.

-----X  
**LUBELL, J.**

**DECISION & ORDER**

Index No. 13963/08

Sequence No. 7 & 8

This is a residential foreclosure action brought in connection with a first mortgage on the now vacant condominium unit located at 60 Kensico Road, Apartment 10, Thornwood, New York (the "Premises"). The underlying mortgage was recorded with the Westchester County Clerk on May 19, 2006. The only opposition to plaintiff's motion for a Judgment of Foreclosure and Sale is the relief demanded by the Board of Managers of Kensico Arms Condominium (the "Condominium") by way of cross-motion. A lien for common charges was filed by the Condominium on April 16, 2008.

The Condominium's application for an Order pursuant to paragraphs (1) and (3) of RPAPL §1307 directing plaintiff to maintain the Premises by, "among other things, paying all common charges and special assessments due the Condominium from June 19, 2015 through and up to the date of delivery of the Referee's deed to the purchaser at the auction sale" is denied.

To the extent relevant, RPAPL §1307 provides:

- (1) A plaintiff in a mortgage foreclosure action who obtains a judgment of foreclosure and sale pursuant to section thirteen hundred fifty-one of this article, involving residential real property, as defined in

section thirteen hundred five of this article, that is vacant, or becomes vacant after the issuance of such judgment, or is abandoned by the mortgagor but occupied by a tenant, as defined under section thirteen hundred five of this article, shall maintain such property until such time as ownership has been transferred through the closing of title in foreclosure, or other disposition, and the deed for such property has been duly recorded

. . .

. . .

(3) . . . [A] board of managers of a condominium in which the premises are located or a homeowners association if said premises are subject to the rules and regulations of such an association, shall have the right to enforce the obligations described in this section in any court of competent jurisdiction after at least seven days notice to the plaintiff in the foreclosure action unless emergency repairs are required. Any entity acting pursuant to this subdivision shall have a cause of action in any court of competent jurisdiction against the plaintiff in the foreclosure action to recover costs incurred as a result of maintaining the property. The authority provided by this subdivision shall be in addition to, and shall not be deemed to diminish or reduce, any rights of the parties described in this section under existing law against the mortgagor of such property for failure to maintain such property.

. . .

(5) For the purposes of this section "maintain" shall mean keeping the subject property in a manner that is consistent with the standards set forth in the New York property maintenance code chapter 3 sections 301, 302 (excluding 302.2, 302.6 and 302.8), 304.1, 304.3, 304.7, 304.10, 304.12, 304.13, 304.15, 304.16, 307.1, and 308.1; provided, however, that if the property is occupied by a tenant, then such property must also be

maintained in a safe and habitable condition.

Without ruling on whether the condominium common charges and special assessments sought to be recovered by the Condominium fall within the definition of "maintenance" as defined in paragraph (5) of section 1307, the Court notes that any obligation imposed upon a plaintiff in a foreclosure action under section 1307 does not commence until such time that the plaintiff "obtains a judgment of foreclosure and sale pursuant to section thirteen hundred fifty-one of this article" (RPAPL §1307). Here, that will not occur until the simultaneous execution of this Decision & Order and the accompanying Judgment of Foreclosure and Sale. As such the application is denied as to any alleged past obligation to "maintain" the property and is premature and speculative as to any future obligation.

Furthermore, the Condominium has failed to establish that any of the obligations sought to be imposed upon plaintiff properly fall within the parameters of "maintenance" as set forth in paragraph (5) of section 1307. In fact, the Condominium does not even cite to paragraph (5) which specifically refers us to various sections of Chapter 3 of the New York Property Maintenance Code which are, as well, left unaddressed.

The Court is also not persuaded that an application made by way of cross-motion against a foreclosing plaintiff is the proper mechanism through which to enforce the obligations described in section 1307 where, as here, no such counter-claim exists.

Although paragraph (3) of section 1307 allows a plaintiff, such as Condominium, to "enforce the obligations described in [1307] in any court of competent jurisdiction after at least seven days notice to the plaintiff in the foreclosure action unless emergency repairs are required" and, as well, provides, that "[a]ny entity acting pursuant to this subdivision shall have a cause of action in any court of competent jurisdiction against the plaintiff in the foreclosure action to recover costs incurred as a result of maintaining the property" and that ". . . the authority provided by this subdivision shall be in addition to, and shall not be deemed to diminish or reduce, any rights of the parties described in this section under existing law against the mortgagor of such property for failure to maintain such property", paragraph (3) does not specifically provide for the enforcement of "maintenance" charges against a plaintiff within the context of the foreclosure action where, as here, no counterclaim for same is asserted.

Having ruled as such, the Court need not address whether a board of managers' attempt under RPAPL 1307 to compel a mortgagee

in a foreclosure action to pay common charges or special assessments would be violative of section 339-z of the Real Property Law which specifically provides for the subordination of an unpaid condominium common charge lien to a first mortgage of record and which further provides for the extinguishment of such liens upon the foreclosure of the first mortgage (see 339-z; Bankers Trust Co. v. Bd. of Managers of Park 900 Condominium, 181 AD2d 274, 277 [1st Dept 1992] affd, 81 NY2d 1033 [1993]).

That aspect of Condominium's cross-motion seeking an amendment to the language of the proposed Judgment of Foreclosure and Sale is granted. There is no opposition to same and it otherwise appears appropriate.

Based upon the foregoing, it is hereby

ORDERED, that the cross-motion to amend language in the proposed Judgment of Foreclosure and Sale is granted and to any further extent, the motion is denied; and it is further,

ORDERED, that the motion for a Judgment of Foreclosure and Sale is granted as provided in the Judgment of Foreclosure and Sale simultaneously executed this date.

The foregoing constitutes the Opinion, Decision, and Order of the Court.

The Court has considered following papers in connection with this determination:

<b>PAPERS</b>	<b>NUMBERED</b>
NOTICE OF MOTION/PROPOSED JFS/AFFIRMATION/ EXHIBITS A-G	1
NOTICE OF CROSS MOTION/AFFIRMATION/AFFIDAVITS/ EXHIBITS 1-6	2
OPPOSITION TO CROSS MOTION/EXHIBITS A-D	3

Dated: White Plains, New York  
April 25, 2016

S/

---

**HON. LEWIS J. LUBELL, J.S.C.**

Rosicki, Rosicki & Associates, P.C.  
By: Robert H. King, Esq.  
Attorney for Plaintiff  
51 E. Bethpage Road  
Plainview, NY 11803

Ms. Lillian Vuksanovic  
41 Hickory Lane  
Thornwood, New York 10594

Levine & Montana  
By: Fred C. Quagliato, Esq.  
Attorney for Def. Board  
1019 Park Street  
PO Box 668  
Peekskill, New York 10566

Bold & Duker  
By: Naomi Ducker, Esq., Referee  
470 Mamaroneck Avenue, Suite 210  
White Plains, New York 10605