

U.S. Bank N.A. v Rahmaan

2016 NY Slip Op 32670(U)

October 31, 2016

Supreme Court, Nassau County

Docket Number: 13475/13

Judge: Thomas A. Adams

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER
SUPREME COURT - STATE OF NEW YORK

PRESENT: HON. THOMAS A. ADAMS,
Supreme Court Justice

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U.S. BANK NATIONAL ASSOCIATION, et al.,

Plaintiff,

FORECLOSURE PART
NASSAU COUNTY

- against -

INDEX NO.: 13475/13

Motion Seq. No.: 1 & 2

FAZRUL RAHMAAN, et al.,

Motion Date: 10/11/16

Defendants.

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The defendants Fazrul Rahman and Narinan Rahman's motion, pursuant to CPLR 2201, to stay the foreclosure sale of 33 Cloverfield South in Valley Stream during the pendency of their request for a HAMP modification and the plaintiff's motion to set aside the sale and reschedule a new foreclosure sale are determined as hereinafter provided.

On December 23, 2014 the plaintiff was awarded a Judgment of Foreclosure and Sale and a Referee, Judith Powell, Esq., was appointed to sell the aforementioned premises at public auction (*see* Defendants' Exh. E). On June 10, 2016, four (4) days prior to the foreclosure sale, the defendants filed an Order to Show Cause to stay the sale during the pendency of their request for a HAMP modification. However, the Court (Cozzens, J.) struck their request for an interim stay and on June 14, 2016 a non-party, NAMAC, Inc., by David Marnesh, was the successful bidder. Upon executing the terms of sale (*see* Plaintiff's Exh. D) and paying the downpayment, his \$355,000.00 bid was contemporaneously assigned to two additional non-parties, Wahid M. Ally and Rafeena Rahman-Ally (*see* Wahid M. Ally's 8/22/16 Affidavit, Exh. A) who subsequently retained Intercoastal Abstract Co., Inc. (hereinafter Intercoastal Abstract) in anticipation of the July 15, 2016 closing.

At that time, the purchasers and Intercoastal Abstract learned of the defendants' motion. Notwithstanding the fact that, in the absence of a stay, the sale had previously

transpired, the title company “declined to insure [the] property” (*id.*, Exh. B). The plaintiff rejected the purchasers’ request for an adjournment, title did not close and, ultimately, the plaintiff moved to set aside the June 14, 2016 sale and reschedule a new foreclosure sale.

The defendants’ motion to stay the foreclosure sale during the pendency of their application for a HAMP modification is dismissed as academic. In any event, their September 9, 2015 application (*see* Defendants’ Exh. E) is allegedly incomplete. Moreover “[u]nder New York law, plaintiff is under no obligation to modify the terms of [defendants’] mortgage” (*Eastern Savings Bank, FOB v Aufiero*, 2016 US Dist. LEXIS 32470 [E.D.N.Y., 3/14/16]) and is only required to negotiate in good faith (*see U.S. Bank v Sarmiento*, 121 AD3d 187). Indeed, the relevant statute, 12 USC § 2605(f) (12 CFR § 1024.41[a]), “does not permit injunctive relief” (*Wenegieme v Bayview Loan Servicing, LLC*, 2016 US Dist. LEXIS 82385 [S.D.N.Y., 6/24/16]).

The terms of sale are also explicit. They declare, *inter alia*, that “[t]ime is of the essence” and “[t]he failure of Purchaser’s title insurance vendor . . . to be ready close . . . is not a valid reason to adjourn the closing date and constitutes a default” (*see* Plaintiff’s Exh. D, para. Fourth). In the event of a default, the plaintiff’s optional remedies include a resale (*id.*, para. Eleventh).

It has been repeatedly observed that “[a] marketable title is a title free from reasonable doubt, but not from every doubt” (*Bank of New York v Segui*, 91 AD3d 689 quoting *Barrera v Chambers*, 38 AD3d 699, 700). “Something more than a mere assertion of a right is essential to create an unmarketable or doubtful title” (*Bank of New York, supra* quoting *Nasha Holding Corp. v Ridge Bldg. Corp.* 221 AD 238, 243). Here, the defendants’ tenuous and academic attempt to stay the June 14, 2016 sale does not “constitute reasonable doubt sufficient to affect the marketability of title” (*Bank of New York, supra* at 690; *see Argent Mtge. Co., LLC v Leveau*, 46 AD3d 727). Accordingly, the plaintiff’s motion to set aside the June 14, 2016 sale and remand this matter for a new foreclosure sale is granted.

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Supreme Court Justice