

Board of Mgrs. of Towers on the Park Condominium v Morrow
2019 NY Slip Op 31446(U)
May 24, 2019
Supreme Court, New York County
Docket Number: 158313/2017
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 32

Justice

INDEX NO. 158313/2017
MOTION DATE N/A, N/A
MOTION SEQ. NO. 004 005

BOARD OF MANAGERS OF TOWERS ON THE PARK
CONDOMINIUM

Plaintiff,

- v -

JACQUELINE MORROW a/k/a JACQUELINE CREIGHTNEY a/k/a
JACQUELINE RICHARDSON a/k/a JACKQUELINE CREIGHTNEY
a/k/a DONNA CREIGHTNEY and TYRONE J. MORROW a/k/a TJ
MORROW,

Defendant.

DECISION, ORDER &
JUDGMENT

The following e-filed documents, listed by NYSCEF document number (Motion 004) 79, 80, 81, 82, 83,
84, 85, 86, 87, 88, 89, 90, 91, 92, 93

were read on this motion to/for DISMISSAL

The following e-filed documents, listed by NYSCEF document number (Motion 005) 94, 95, 96, 97, 98,
99, 100, 101, 102, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120,
121, 122, 124

were read on this motion to/for JUDGMENT - FORECLOSURE & SALE

Motion Sequence Number 004 and 005 are consolidated for disposition. The motion by
defendant to dismiss (MS 004) is denied. The motion by plaintiff for a judgment of foreclosure and sale
(MS005) is granted and the cross-motion to dismiss by defendants is denied.

Discussion

In this common charge lien foreclosure case, defendants move to dismiss on the ground
that the instant action is time-barred. Defendants claim that plaintiff elected its remedy by
participating in a prior foreclosure action brought by a bank against defendants (which was
dismissed in 2016). As an initial matter, defendants raised the same statute of limitations

argument in opposition to prior motions in this case (*see* NYSCEF Doc. Nos. 24, 28 [opposition to plaintiff's summary judgment motion]; 70 [opposition to plaintiff's motion to amend]).

Defendants' efforts were unsuccessful and the Court granted plaintiff's motions. Defendants cannot rehash previously-rejected arguments in this motion in lieu of appealing previous Court decisions or making a motion to renew or reargue.

Even if the Court were to consider defendants' motion to dismiss on the merits, it would be denied. Plaintiff was named as a defendant in a separate mortgage foreclosure case initiated by defendants' bank. Being named as a defendant in that case did not commence the statute of limitations for plaintiff to recover its common charges. Plaintiff has six years from the time it filed its common charge lien, not six years from when it was named as a defendant in the bank's foreclosure case (Real Property Law § 339-aa). Here, plaintiff filed the lien in February 2014 (NYSCEF Doc. No. 91). That makes this action timely.

With respect to the motion for a judgment of foreclosure and sale, defendants make the same arguments in support of their cross-motion to dismiss. As explained above, plaintiff's action is not time-barred and defendants do not offer any sufficient reason to deny confirmation of the referee's report.

Accordingly, it is hereby

ORDERED that the motion by defendants to dismiss this action as time-barred (MS004) is denied; and it is further

ORDERED and ADJUDGED that the motion (MS005) by plaintiff to confirm the Referee's report and for a judgment of foreclosure and sale is granted and the cross-motion by defendants to dismiss is denied; and it is further

ORDERED that the mortgaged property described in the complaint and as described in this judgment, or such part thereof as may be sufficient to discharge the mortgage debt, the expense of sale and the costs of this action as provided in the RPAPL be sold within 90 days of this judgment, in one parcel, at a public auction at the New York County Courthouse located at 60 Centre Street, New York, New York under the direction of Mark McKew, who is appointed Referee for this purpose; and it is further

ORDERED that the Referee shall give public notice of the time and place of sale in accordance with RPAPL 231(2) in the following publication *New York Law Journal*; and the referee need not conduct the sale unless plaintiff shall provide the referee with proof of publication of the notice of sale, and if the sale is adjourned due to plaintiff's failure to provide such proof, then said adjournment shall not be considered at the referee's request and it is further

ORDERED that by accepting this appointment the Referee certifies that she/he is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2 (c) ("Disqualifications from appointment"), and §36.2 (d) ("Limitations on appointments based upon compensation"), and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall immediately notify the Appointing Judge; and it is further

ORDERED that the Referee is prohibited from accepting or retaining any funds for herself/himself or paying funds to him/herself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED that the Referee shall conduct the foreclosure sale only if Plaintiff, its successors and/or assignees or its representatives is present at the sale or the Referee has

received a written bid and Terms of Sale from Plaintiff, its successors and/or assigns, or its representatives; and it is further

ORDERED that if the Referee cannot conduct the sale within 90 days of the date of this judgment, plaintiff must make a motion to extend the time to sell the subject property explaining the reasons for the delay; and it is further

ORDERED that at the time of sale the Referee may accept a written bid from the Plaintiff or the Plaintiff's attorney, just as though Plaintiff were physically present to submit said bid; and it is further

ORDERED that the Referee shall accept the highest bid offered by a bidder who shall be identified upon the court record, and shall require that the successful bidder immediately execute Terms of Sale for the purchase of the property, and pay to the Referee in cash, certified check or bank check, ten percent (10%) of the sum bid, unless the successful bidder is Plaintiff, in which case no deposit against the purchase process shall be required and it is further

ORDERED that notwithstanding the previous paragraph, the Referee shall have the right to refuse cash payments and require a bank or certified check from the successful bidder and the Referee shall be entitled to qualify bidders and require bidders to show proof of funds before or during the auction; and it is further

ORDERED that in the event the first successful bidder fails to execute the Terms of Sale or fails to immediately pay the ten percent (10%) deposit as required, the property shall be immediately reoffered at auction on the same day; and it is further

ORDERED the Referee shall deposit the down payment and proceeds of sale, as necessary in an FDIC-insured bank where the Referee has an account for that purpose in accordance with CPLR 2609; and it is further

ORDERED that after the property is sold, the Referee shall execute a deed to the purchaser in accordance with RPAPL 1353 and the terms of sale (which shall be deemed a binding contract); and it is further

ORDERED that in the event a party other than Plaintiff becomes the purchaser at the sale, the closing of title shall be held no later than 30 days after the date of such sale unless otherwise stipulated by all parties to the sale and the Referee; and it is further

ORDERED that, pursuant to RPAPL 1353(1), if Plaintiff (or its affiliate as defined in paragraph [a] of subdivision one of section six-1 of the banking law) is the purchaser, the property shall be placed back on the market for sale or other occupancy within 180 days of the execution of the deed of sale or within 90 days of construction, renovation, or rehabilitation of the property, provided that such construction, renovation or rehabilitation proceeded diligently to completion, whichever comes first, provided that this court grants an extension upon a showing of good cause; and it is further

ORDERED that the Referee, after receiving the proceeds of the sale, shall pay (from the proceeds) the taxes, assessments, sewer rents, or water rates, which are, or may, become liens on the property, in accordance with their priority according to law with such interest or penalties which may have lawfully accrued thereon to the date of payment; and it is further

ORDERED that the Referee shall deposit the balance of the proceeds from the sale in her own name as Referee in an FDIC-insured bank where the Referee has an account for that purpose and shall make the following payments in accordance with RPAPL 1354:

1. The Referee's statutory fees for conducting the sale, which are \$1,100. Plaintiff shall compensate the Referee in the sum of \$350 for each adjournment or cancellation made on less than two business days' notice unless the Referee caused the delay.

2. All taxes, assessments and water rates that are liens upon the property and monies necessary to redeem the property from any sales for unpaid taxes, assessments or water rates and any other amounts due in accordance with RPAPL 1354(2). The purchaser shall be responsible for interest and penalties accrued *after* the sale. The Referee shall not be responsible for the payment of penalties or fees pursuant to this appointment. The purchaser shall hold the Referee harmless from any such penalties or fees assessed;
3. The expenses of the sale and the advertising expenses as shown on the bills presented and certified by the Referee to be correct, copies of which shall be annexed to the report of sale.
4. The Referee shall also pay to the Plaintiff or its attorneys the following:
 - a. Amount Due from the Referee's Report \$239,761.88 with interest from January 18, 2019, and such additional common charges and assessments, late fees and legal fees as may accrue up to date of sale or so much of it as the purchase money of the mortgage premises will pay of the same together with any advances which Plaintiff had made for taxes, fire insurance, principal, and interest and any other charges due to prior mortgages or to maintain the property pending consummation of the foreclosure sale, not included in the computation upon presentation of receipts for said expenditures to the Referee, and then with interest from the date of entry of this judgment at the statutory rate until the date the deed is transferred
 - b. Costs and Disbursements: _____ [to be inserted by the County Clerk] to Plaintiff for costs and disbursements in this action as calculated by

the clerk with interest at the statutory judgment rate from the date of entry of this judgment;

5. Surplus monies from the sale shall be paid into Court by the Referee within five days after receipt in accordance with RPAPL 1354(4); and it is further

ORDERED that if Plaintiff is the purchaser of the property, or in the event that the rights of the purchasers at the sale and the terms of sale under this judgment shall be assigned to or be acquired by Plaintiff, and a valid assigned is filed with the Referee, the Referee shall not require Plaintiff to pay in cash the entire amount bid at sale, but shall execute and deliver to Plaintiff or its assignee, a deed or deeds of the property sold upon the payment to said Referee of the amounts specified as 1, 2, and 3 above, and the Referee shall allow Plaintiff to pay the amounts specified in 2 and 3 above when it is recording the deed; that the balance of the bid, after deducting the amounts paid by Plaintiff shall be applied to the amount due to Plaintiff as specified in 4 above; that Plaintiff shall pay any surplus after applying the balance of the bid to the Referee, who shall deposit it in accordance with 5 above; and it is further

ORDERED that all expenses of recording the Referee's deed, including real property transfer taxes, which is not a lien upon the property at the time of sale, shall be paid by the plaintiff from the sale proceeds; and it is further

ORDERED that Plaintiff may seek to recover a deficiency judgment against defendants Jacqueline Morrow and Tyrone J. Morrow (aka TJ Morrow) in accordance with RPAPL 1371 if applicable;

ORDERED that if the property is sold in one parcel in "as is" physical order and condition, subject to any condition that an inspection of the property would disclose; any facts that an accurate survey of the property would show; any covenants, restrictions, declarations,

reservations, easements, right of way, and public utility agreements of record, if any; any building and zoning ordinances of the municipality in which the mortgaged property is located and possible violations of same; any rights of tenants or persons in possession of the subject property; prior liens of record, if any, except those liens addressed in RPAPL 1354, any equity of redemption of the United States of America to redeem the property within 120 days from the date of sale, any rights pursuant to CPLR 317, 2003 and 5015 or any appeal of the underlying action or additional litigation brought by any defendant or its successor or assignee contesting the validity of this foreclosure; and it is further

ORDERED that the purchaser be let into possession of the property upon production in hand of the Referee's Deed or upon personal service of the Referee's deed in accordance with CPLR 308; and it is further

ORDERED that defendants in this action and persons claiming through them and any person obtaining an interest in the property after the Notice of Pendency are barred and foreclosed of all right, claim, lien, title, and interest in the property after the sale of the mortgaged property; and it is further

ORDERED that within 14 days after completing the sale and executing the proper conveyance to the purchaser, the Referee shall file with the clerk a report under oath of the disposition of the proceeds of the sale and upload the report to NYSCEF if it is an e-filed case; and it is further

ORDERED that if the purchaser or purchasers at said sale default upon the bid or terms of sale, the Referee may place the property for resale without prior application to this Court unless Plaintiff's attorney elect to make such an application; and it is further

ORDERED that Plaintiff shall serve a copy of this judgment with notice of entry upon the owner of the equity of redemption, any tenants named in this action, and any other parties entitled to service, including the Referee appointed herein; and it is further

ORDERED that nothing herein shall be deemed to relieve Plaintiff of any obligation imposed by RPAPL 1307 or 1308 to secure and maintain the property until ownership of the property has been transferred and the deed duly recorded; and it is further

ORDERED that when the Referee files a report of sale, she or he shall also file a Foreclosure Action Surplus Monies Form and also upload this document to NYSCEF; and it is further

ORDERED that the Referee shall e-mail Thomas Maser (tmmaser@nycourts.gov) to inform the Court about the auction date; and it is further

ORDERED that, without further order of the Court, the referee shall be entitled to an additional fee of \$950 for conducting and attending a closing with a purchaser other than plaintiff, plus, if such a closing is scheduled for the referee's conference room, then the referee shall be entitled to a reasonable fee for use thereof, without further order of the Court.

The property is commonly known as 301 Cathedral Parkway Unit 2V, New York, New York, 10026, Block 1846, Lot 1038.

Next Conference: October 24, 2019 @ 2:15 p.m. If the report of sale and Foreclosure Action Surplus Monies Form have been e-filed prior to the conference, then plaintiff may request that the conference be canceled by e-filing a letter to the court at least 48 hours prior to the conference. Otherwise, plaintiff must come to the conference prepared to discuss the status of the case.

5/24/19

DATE

HON. ARLENE P. BLUTH

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE