

<b>HSBC Mtge. Corp. (USA) v Wu</b>
2019 NY Slip Op 32500(U)
August 29, 2018
Supreme Court, New York County
Docket Number: 102179/09
Judge: Joan A. Madden
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 11

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HSBC MORTGAGE CORPORATION (USA),

Plaintiff,  
-against-

INDEX NO. 102179/09

**INTERIM DECISION  
AND ORDER**

RICHARD WU, BOARD OF MANAGERS OF RIVINGTON TOWER CONDOMINIUM, FRANK R. GENCORELLI, HSBC MORTGAGE CORPORATION (USA), NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, NEW YORK CITY PARKING VIOLATIONS BUREAU, NEW YORK CITY TRANSIT ADJUDICATION BUREAU, JOHN DOE (Said name being fictitious, it being the intention of Plaintiff to designate any all occupants of premises being foreclosed herein, and any parties, corporations or entities, if any, having or claiming an interest or lien upon the mortgaged premises.),

**FILED**

SEP 06 2018

COUNTY CLERK'S OFFICE  
NEW YORK

Defendants.

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JOAN A. MADDEN, J.:

Defendant Richard Wu moves for order directing the Office of the State Comptroller, Office of Unclaimed Funds (the "State Comptroller"), to release certain funds to him. The State Comptroller opposes the motion.

On April 6, 2018, this Court signed a Consent Order directing the New York City Commissioner of Finance to release to defendant Richard Wu certain funds deposited with the Court as an undertaking on October 11, 2012, in the original amount of \$30,000. Shortly thereafter, counsel for defendant Wu contacted the New York City Department of Finance and was advised that in April 2016, the funds were transferred to the State Comptroller's Office of Unclaimed Funds. By letter dated June 5, 2018, the State Comptroller advised Mr. Wu's counsel

of the procedure that must be followed to secure release of the “unclaimed funds,” and enclosed a “Certificate of Deposit” certifying that in “April 2016, the New York City Department of Finance paid to the State Comptroller the amount of \$29,859.12 and reported that the said amount was the then balance of moneys deposited October 11, 2012 pursuant to an order of the Supreme Court, County of New York, dated October 2, 2012” and that “[t]his Office holds \$29,895.12 plus statutory interest pursuant to Abandoned Property Law §1405.”

On or about June 12, 2018, defendant Wu made the instant motion on notice to plaintiff, HSBC Mortgage Corporation, and the State Comptroller, for an order resettling the Consent Order dated April 4, 2018, and directing the State Comptroller to “pay out the deposit posted by Defendant Richard Wu on October 11, 2012, less any fee of the Department.”

In opposition to the motion, the State Comptroller argues that the funds now constitute “abandoned property” within the meaning of the Abandoned Property Law (“APL”), and for the funds to be released to defendant Wu, the APL requires “service of notice upon the state comptroller and upon *due notice to all parties* to the action or proceeding which resulted in the monies being paid into court” (emphasis added). APL §§ 600(1)(a), 1406(2)(a). The State Comptroller asserts that the instant motion was served only on plaintiff and the State Comptroller, and since the other parties in the underlying action were not served, they have been deprived of the “opportunity to assess whether they have an interest in the abandoned funds.” The State Comptroller submits a page from the New York City Automated City Register Information System (“ACRIS”) for the condominium unit that was the subject of this action, which shows that defendant Board of Managers of Rivington Tower Condominium filed a lien for common charges in May 2010. Based on that document, the State Comptroller asserts that

“[i]t is possible other defendants may have an interest in the abandoned property.”

In reply, defendant Wu argues that he is the only defendant who answered in this action, and since the other defendants defaulted, they were not entitled to notice of the instant motion. He also asserts that he “lacks information to effect service upon those defaulted defendants” and does not know Frank R. Gencorelli, one of the named and defaulting defendants.

At the outset, the Court notes that the State Comptroller neglects to mention that the ACRIS listing for the subject condominium unit shows that in March 2012, the Board of Managers of Rivington Tower Condominium filed a satisfaction of its lien, and that ACRIS lists no other liens of record on the property. Notwithstanding that fact, however, it is clear that pursuant to APL §600(1)(a), the funds originally deposited by Mr. Wu with the court in October 2012, were properly deemed abandoned property since they remained with the New York City Department of Finance for more than three years, and were properly transferred to the State Comptroller’s Office of Abandoned Property in April 2016.<sup>1</sup> Moreover, since the funds are now deemed abandoned property, the release of such funds is governed by the statutory procedure mandated by APL §1406(2)(a), which requires “service of notice upon the state comptroller” and “due notice to all parties to the action or proceeding which resulted in the monies being paid into court.” It is undisputed that only the State Comptroller and plaintiff in the underlying action were served with this motion, and that no co-defendants were served or otherwise notified.

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<sup>1</sup>APL §600(1) (a) provides in pertinent part as follows: “1. The following claimed property shall be deemed abandoned property: (a) Any moneys . . . paid into court, which . . . shall have remained in the hands of . . . the commissioner of finance of the city of New York, for three years together with all accumulations of interest or other increment thereon, less such legal fees as he may be entitled to.”

Defendant Wu's argument that the defaulting defendants are not entitled to notice, is contrary to the plain language of the statute, which requires notice to "all parties to the action" without limitation. APL §1406(2)(a). Also, while defendant Wu asserts that he does not know co-defendant Frank R. Gencorelli, the record contains affidavits of service, attempted service and mailing for that individual at two different addresses in Great Neck, New York, and a third address in Boca Raton, Florida.<sup>2</sup> The record also contains affidavits of service for each named defendant, and an affidavit of vacancy that "[t]here are no 'John Doe' defendants at the aforementioned residence [the condominium unit at 62 Rivington St, Unit 3B, New York, NY, the subject of this mortgage foreclosure action] and the residence is vacant."

Thus, in the absence of service of the motion on all named co-defendants, defendant Wu not entitled to release of the funds, since he has failed to comply with the statutory notice requirements of APL §1406(2)(a). However, rather than denying the motion, the motion will be adjourned in order to give defendant Wu an opportunity to cure this defect by serving the motion by mail, on all co-defendants, and providing the Court with an affidavit as to such mailings.

Accordingly, it is

ORDERED that on or before September 7, 2018, defendant Wu shall mail to all co-defendants, copies of this Interim Decision and Order together with his original motion papers and the annexed exhibits; and it is further

ORDERED that on or before September 14, 2018, defendant Wu shall provide the Court with an affidavit as to such mailings; and it is further

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<sup>2</sup>The affidavits provide the following addresses for Frank R. Gencorelli: 4 Maple Drive, Apt. 2D, Great Neck, NY 11021; 8 Bond Street, Ste 401, Great Neck, NY 11021; and 6638 Villa Sonrisa Drive, Apt. 621, Boca Raton, FL 10002.

ORDERED that co-defendants shall have until September 24, 2018 to submit opposition to the motion and the failure to do so will be deemed a default on the motion; and it is further

ORDERED that all submissions shall be directly to Judge Madden's chambers, Room 611, 60 Centre Street, New York, NY 10007; and it is further

ORDERED that the instant motion is adjourned to September 27, 2018 and if there is no opposition to the motion, no appearance is required on that date and the motion will be submitted.

The court is faxing this Interim Decision and Order to counsel for defendant Wu and counsel for the State Comptroller.

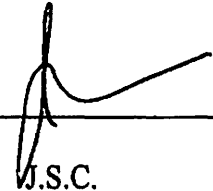
DATED: August 29, 2018

ENTER:

**FILED**

SEP 06 2018

COUNTY CLERK'S OFFICE  
NEW YORK

  
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J.S.C.

**HON. JOAN A. MADDEN  
J.S.C.**