

Board of Mgrs. of Strivers Gardens Condominium v Moore

2019 NY Slip Op 33537(U)

December 3, 2019

Supreme Court, New York County

Docket Number: 161402/2013

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

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INDEX NO. 161402/2013

THE BOARD OF MANAGERS OF STRIVERS GARDENS
CONDOMINIUM, ON BEHALF OF ITS UNIT OWNERS,

MOTION DATE 12/03/2019

Plaintiff,

MOTION SEQ. NO. 009 010

- v -

WANDA MOORE, BAC HOME LOAN SERVICING, LP,
CRIMINAL COURT OF THE CITY OF NEW YORK, and
JOHN DOE,

DECISION + ORDER ON
MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 009) 153, 154, 155, 156,
157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 174, 175, 176

were read on this motion to/for MISCELLANEOUS

The following e-filed documents, listed by NYSCEF document number (Motion 010) 168, 169, 170, 171,
172, 173, 177, 178, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197,
198, 199, 200

were read on this motion to/for AMEND/MODIFY DECISION/ORDER/JUDGMENT

ORDER

Upon the foregoing documents, it is

ORDERED that the motion of non-party assignee 21647, LLC to
amend the Judgment of Foreclosure and Sale, nunc pro tunc, to
reflect that the sale of the subject premises is not subject to
the mortgage lien of defendant BAC Home Loan Servicing f/k/a
Countrywide Home Loan Servicing LP pursuant to RPAPL § 1353 and
CPLR § 5019(Motion Sequence Number 010) is DENIED; and it is
further

ORDERED that the motion of plaintiff for an order extending the closing beyond the 90 day period in the Judgment of Foreclosure and Sale (Motion Sequence Number 009) is DENIED; and it is further

ORDERED that the cross motion of defendant Wanda Moore to vacate the Judgment of Foreclosure and Sale (Motion Sequence Number 009) is GRANTED; and it is further

ORDERED that the Stipulation of Discontinuance with Prejudice dated May 15, 2014 between plaintiff and defendant BAC Home Loan Servicing LP f/k/a Countrywide Home Loan Servicing is VACATED, nunc pro tunc, and of NO FORCE and EFFECT, as it is nullity; and it is further

ORDERED that the Judgment of Foreclosure and Sale entered on January 17, 2017 is VACATED; and it is further

ORDERED that defendant Moore shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that this action against Bank of America, N.A., sued as BAC Home Loan Servicing LP f/k/a Countrywide Home Loan Servicing, LP is reinstated against such defendant; and it is further

ORDERED that the parties are directed to appear for a preliminary conference in IAS Part 59, 60 Centre Street, Room 331, on December 3, 2019, 2:30 PM.

DECISION

By Stipulation dated May 15, 2014, plaintiff and defendant BAC Home Loan Servicing LP f/k/a Countrywide Home Loan Servicing LP ("bank") purported to discontinue the herein action to foreclose on a condominium unit common charge lien brought by plaintiff condominium board against defendant bank, with prejudice, without ever presenting, let alone securing the agreement of defendant Moore, the unit owner, as required pursuant to CPLR 3217(a)(2). Such mandatory provision was violated, and therefore the Stipulation is a complete nullity. See C.W. Brown, Inc. v HCE, Inc., 8 AD3d 520 (2d Dept. 2004).

Neither counsel for plaintiff nor counsel for defendant bank deigned to move for such relief as required under CPLR 3217(b), which failure, in this court's opinion, constituted totally improper practice. Such lack of transparency caused extreme prejudice to the defendant Moore, who, inter alia, suffered in having to appear and defend herself in the action at

bar as well as in a separate related action wherein defendant bank sought to foreclose on a mortgage lien on the same condominium unit in BAC Home Loan Servicing, LP v Moore (New York County Supreme Court Index No. 110848/2009), before a different judge, and which latter action is currently on the trial calendar.

The Judgment of Foreclosure and Sale entered on January 17, 2017 in this action is likewise a nullity, as defendant Moore never had the opportunity to raise the matter of the purported mortgage lien held by defendant bank in this action, having been deprived of her right to contest the discontinuance of this action against such bank.

The Clerk of the Court has reassigned the foregoing mortgage foreclosure action, which is completely related to this herein action, to the undersigned, which will be tried jointly with the action at bar.

12/3/2019
DATE

Debra A. James
DEBRA A. JAMES, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED SETTLE ORDER GRANTED IN PART OTHER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN SUBMIT ORDER FIDUCIARY APPOINTMENT REFERENCE