

City of New York v M133D LLC
2020 NY Slip Op 30146(U)
January 17, 2020
Supreme Court, New York County
Docket Number: 452091/2016
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

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INDEX NO. 452091/2016

CITY OF NEW YORK,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 001

- v -

M133D LLC AND THE LAND AND BUILDING THEREON
KNOWN AS 516 WEST 134TH STREET, NY, NY, BLOCK
1987, LOT 46, JANE DOE, JANE DOE, JANE DOE, JANE
DOE, JANE DOE, JANE DOE, JANE DOE, JANE DOE,
JANE DOE, JANE DOE

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37

were read on this motion to/for

EXTEND

The motion by plaintiff to extend the notice of pendency is denied.

Background

In this action to foreclose on a relocation lien, plaintiff alleges that on January 22, 2013 the New York City Department of Buildings ("DOB") directed the immediate vacatur of three apartments located at a building owned by defendant M133D LLC. DOB found there was an imminent danger to the life and safety of the occupants and to public safety. This lawsuit seeks to recover the relocation expenses incurred by plaintiff in connection with the displacement of the tenants residing in the affected apartments.

Plaintiff initially filed a notice of pendency in this action on November 3, 2016 (NYSCEF Doc. No. 8). However, plaintiff later filed an affirmation stating that an amended

notice of pendency was served on defendant's counsel on November 9, 2016 (NYSCEF Doc. No. 11).

In its moving papers, plaintiff argues that "Without an extension of the October 13, 2015 Notice of Pendency, potential future purchasers (and others) would not be advised of the instant litigation" (NYSCEF Doc. No. 15 at 11). Curiously, plaintiff also claims that the amended notice of pendency is dated November 25, 2016 (*id.* at 1, 10), although that appears to be when an attorney affirmation (NYSCEF Doc. No. 11) was e-filed. That document is clearly dated November 9, 2016 (*id.*).

In opposition, defendant argues that the motion is untimely and plaintiff let the notice of pendency expire. Defendant contends that the notice of pendency was filed with the County Clerk on November 3, 2016 and that is the relevant date the Court should consider in this motion. Defendant maintains that the date the amended notice of pendency was served on its counsel (November 9, 2016) is not relevant and, even if it were, is still untimely because the instant order to show cause was signed more than three years after that date.

In reply, plaintiff blames defendant for ignoring its discovery demands in this case. Plaintiff points out that it filed the instant order to show cause on November 8, 2019, which is within three years after the notice of pendency was filed. Plaintiff explains that the initial notice of pendency (filed on November 3, 2016) was rejected by the County Clerk because it contained numerous errors, and the corrected notice of pendency was filed on November 9, 2016. Plaintiff asks the Court to grant the extension *nunc pro tunc* to the extent that the applicable date of the order to show cause is the filing date (November 12, 2019) and observes that oral argument occurred after a three-day weekend (after Veterans Day).

Discussion

“A notice of pendency is valid for three years from the date of filing and may be extended for additional three-year periods upon a showing of good cause. The extension, however, must be requested prior to the expiration of the prior notice. This is an exacting rule; a notice of pendency that has expired without extension is a nullity . . . Because CPLR 6513 provides that a notice of pendency terminates automatically on the expiration of the three-year period unless extended, a lapsed notice of pendency may not be revived” (*In re Sakow*, 97 NY2d 436, 442, 741 NYS2d 175 [2002]).

Here, the initial question is the applicable date of the notice of pendency. The Court finds that the date is November 9, 2016. Although plaintiff filed an initial notice of pendency on November 3, 2016, the County Clerk informed plaintiff that the second paragraph contained the wrong Block and Lot number and closing property description (*see* Comments on NYSCEF Doc. No. 8).¹ This issue was corrected and the notice of pendency was uploaded on NYSCEF on November 9, 2016 (*see Aiello v Gross*, 205 AD2d 483, 614, NYS2d 262 (Mem) [2d Dept 1994] [finding that a notice of pendency filed against the wrong parcel did not alter the effective date of an amended notice of pendency]).

Next, the Court must consider whether the three-year period expired. The Court finds that it expired because plaintiff did not get its order to show cause (containing a TRO) signed until November 12, 2019. A review of the NYSCEF docket for this case shows that plaintiff waited until 12:53 p.m. on November 8, 2019 before filing the instant order to show cause. The Court has no idea why plaintiff waited until Friday afternoon (before a holiday weekend) to e-file an order to show cause given that the notice of pendency (according to plaintiff) expired on

¹ The Court observes that the “filed date” for this document remains November 3, although the received date is November 9.

November 9, 2019. Case law is clear that a notice of pendency terminates automatically when the three-year period expires (*In re Sakow*, 97 NY2d at 442).

And plaintiff provided no binding caselaw holding that a court can simply extend a notice of pendency *nunc pro tunc* under the instant circumstances. Rather, plaintiff cites to cases where errors by the County Clerk prevented the timely filing of a notice of pendency (*see e.g., H.M. Hughes Co. v Carmania Corp.*, 187 AD2d 287, 589 NYS2d 170 [1st Dept 1992]). There was no error by the County Clerk here. The error was plaintiff's bizarre decision to wait until the very last moment to file an order to show cause and its inability to get it signed (with a TRO) before the expiration of the three-year time period.

Critical to the Court's decision is the nature of a notice of pendency. As described by the Court of Appeals, "the notice of pendency is a unique provisional remedy, in that the statutory scheme permits a party to effectively retard the alienability of real property without any prior judicial review" (*In re Sakow*, 97 NY2d at 441). A plaintiff need not make any showing that its case has merit; it can obtain a notice of pendency simply by serving a summons and complaint and filing a proper notice of pendency (*id.*). Because a notice of pendency is a powerful provisional remedy, the Court cannot simply overlook plaintiff's failure to get its order show cause signed before the notice of pendency expired.

Plaintiff's request that the Court consider the interest of justice as a basis to grant the extension is also denied. The docket of this case demonstrates that plaintiff has had little interest in prosecuting this case. Plaintiff commenced this case in October 2016 and did not file a request for judicial intervention ("RJI") until it filed the instant order to show cause in November 2019 (NYSCEF Doc. No. 19). The fact that there may have been other litigation between the parties does not explain why plaintiff did not file an RJI and consequently get a judge assigned

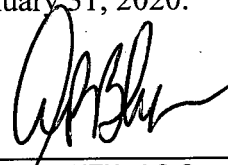
for three years. Moreover, the Court finds that plaintiff must file its note of issue on or before January 31, 2020—this case is over three years old and discovery should be completed.

Accordingly, it is hereby

ORDERED that the motion by plaintiff to extend its notice of pendency is denied; and it is further

ORDERED that plaintiff shall file a note of issue on or before January 31, 2020.

1/17/2020
DATE


ARLENE P. BLUTH, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE