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| <b>Matter of Rockman v Nassau County Sheriff's Dept.</b>                                                                                                                                                                       |
| 2022 NY Slip Op 35248(U)                                                                                                                                                                                                       |
| May 29, 2022                                                                                                                                                                                                                   |
| Supreme Court, Nassau County                                                                                                                                                                                                   |
| Docket Number: Index No. 612361/2017                                                                                                                                                                                           |
| Judge: Thomas Rademaker                                                                                                                                                                                                        |
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| This opinion is uncorrected and not selected for official publication.                                                                                                                                                         |

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU**

**Present:**

**HON. THOMAS RADEMAKER, J.S.C.**

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**In the Matter of the Application of  
GEORGE ROCKMAN,**

**Plaintiff,**

**Trial/IAS Part 14**

**Index No.: 612361/2017**

**Motion Sequence: 006, 008, 009**

**DECISION AND ORDER**

**Submitted: May 19, 2023**

*against*

**NASSAU COUNTY SHERIFF'S  
DEPARTMENT and ANA ROCKMAN  
a/k/a ANA D. GAMERO,**

**Defendants.**

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UPON DUE DELIBERATION AND CONSIDERATION BY THE COURT of the foregoing papers, including e-filed documents/exhibits numbered 179 - 184; 189; 200 -212; and 218 - 227, motion sequences 006, 008, and 009<sup>1</sup> are decided as follows:

In motion sequence 006, JP Morgan Chase, as lienholder, moves the Court by Order to Show Cause for an Order amending the judgment to make clear that the Sheriff's sale will be made subject to the existing liens and mortgages, or alternatively, directing that the minimum but at the Sheriff's auction be set at an amount sufficient to satisfy the existing mortgage lien, homestead exemption and the sheriff's fees with respect to a property known as 13 Crystal Street, Elmont, NY 11003 ("Subject Property").

In motion sequence 008, the Respondent, Ana Rockman a/k/a Ana Gamero ("Ana Rockman"), moves the Court by Order to Show Cause for an Order which, inter alia, a) stays the sale

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<sup>1</sup> Motion Sequence 007 permitted the withdrawal of Respondent's prior counsel and allowed for the substitution of Respondent's new counsel. The Court granted the Respondent's former counsel's motion through its Decision and Order dated September 28, 2022.

of the Subject Property by the Sheriff of Nassau County and enjoining Petitioner George Rockman and the Nassau County Sheriff from selling the subject premises; b) vacates and cancelling the said property execution and execution to garnishee and declaring the same null and void; and c) reduces Petitioner George Rockman's judgment and awarding Respondent Ana Rockman a credit against said judgment in the amount of \$140,069.00.

In motion sequence 009, the Petitioner moves by Notice of Cross Motion for an Order which, *inter alia*, sets aside Respondent's conveyance of the subject property to a family member and a declaration that said conveyance was fraudulent. Additionally, the Petitioner seeks to restrain the Respondent from being directly or indirectly being involved in any future transfers of the property.

Motion sequence 006 was submitted to the Court unopposed. The Nassau County Sheriff's Department served a notice of sheriff's sale scheduling the Property for sale on November 3, 2021 (Notice of Sale"). The Notice of Sale sets a bid of \$179,975.00, which the notice states is intended to cover the homestead exemption and sheriff's fees. The Notice of Sale did not advise bidders that the sale is subject to Chase's mortgage lien, nor does the Notice of Sale include the payoff amount of Chase's mortgage lien in the minimum bid. Through its interim order, dated November 1, 2021, and entered with the Court on November 3, 2021, the Nassau County Sheriff was stayed from conducting said sale.

In motion sequence 008, the Respondent Ana Rockman contends that she is entitled to adjustments and credits and that after the credits are made, that there will not be sufficient funds left from the sale of the residence to satisfy the Petitioner's judgement, and claims that the consolidated mortgage and lien on the property had a balance of \$184,214.00 as March 5, 2013. Ana Rockman contends that has made one hundred fourteen (114) straight mortgage payments in the sum of \$2,457.83, totaling \$280,196.62. Since Petitioner is named on the mortgage, he is contractually

obligated to pay  $\frac{1}{2}$  of the mortgage, so his share of the mortgage paid solely by Ana equals \$140,096.00, and accordingly, argues that Ana Rockman is entitled to a credit in the sum of \$140,096.00 representing the Petitioner's half share of a mortgage that he allegedly had never paid, and according to the Respondent Ana Rockman has refused to pay.

In opposition, the Petitioner contends that he was awarded the sum of \$51,246.61, in valuable and separate property contributions with respect to the increased value of the subject property, along with a separate judgment for the total sum of \$105,539.99 which may be recorded in the Office of the County Clerk of Nassau County "in such manner as to constitute a lien upon Defendant's "separate real property located at 13 Crystal Street, Elmont, NY" (the Subject Property). (Rockman v. Rockman, September 27, 2016, Sup Ct Ulster County, Mizel, J., Index No. 2385/2015, "Judgement of Divorce").

The Petitioner references the Court's May 21, 2021 Decision and Order which denied the Respondent's motion sequences 004 and 005. Previously, the Respondent sought a stay in this proceeding pending an appeal with regard to the divorce action, a protective order which regulates or conditions the use of an enforcement proceeding, and to vacate the Order of the Court dated October 22, 2020 ( Rockman v Nassau County Sheriff's Department, et al, May 25, 2021, Sup. Ct., Nassau County, Rademaker, J., Decision and Order). In contrast, the Petitioner contends that the issues raised by the Respondent in motion sequence 008 are those previously rejected by the Court.

The Respondent opposes the Petitioner's Cross Motion in that the proper action to set aside a deed is through the filing of a petition. The Respondent contends that the property in question was conveyed for value and adequate consideration to Anibal E. Flores Salvador ("transferee"). The facts also establish that the transferee is not a party to this proceeding. It is further established that Petitioner failed to serve his cross-motion on the transferee.

The motions at bar present the Court with new factual developments. The first is the intervention of Chase Bank in motion sequence 006, which was not presented to the Court when motion sequences 004 and 005 were decided. The interests of Anibal Flores were also only presented to the Court for the first time through Respondent's motion sequence 008.

The Court in its discretion may consider these new facts not offered on the prior motion that would change the prior determination or demonstrate that there has been a change in the law that would change the prior determination. (CPLR § 2221[e][2]), and in part the Respondent's change in counsel reflects different approach to this matter, and the prior failure to present such facts on the prior motion. (CPLR § 2221[e][3]).

Upon review of the papers submitted, including their supporting exhibits, and in consideration of the equities presented, motion sequence 006 is **GRANTED**, and the sale of the premises is enjoined, and it is further

**ORDERED**, that motion sequence 008 is **GRANTED** to the extent that sale of premises located at and known as 13 Crystal Street, Elmont, New York is hereby stayed, and the Petitioner George Rockman and the Nassau County Sheriff are enjoined from selling the subject premises until further Order of the Court; and it is further

**ORDERED**, that the said property execution and execution to garnishee and declared null and void, and are vacated, and it is further

**ORDERED** that Respondent Ana Rockman is awarded a credit against any future judgment with respect to the Subject Property in the amount of \$140,069.00, and it is further

**ORDERED**, that motion sequence 009 is **DENIED** in its entirety for failure to serve a necessary party, and it is further

**ORDERED**, that a new judgment is to be settled on notice by Respondent, with the

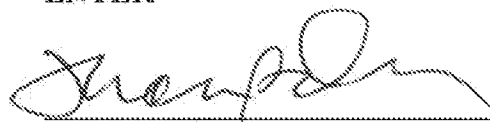
Petitioner having a right to submit a counter judgment for the Court's consideration, and it is further

**ORDERED**, that all other requested relief, not specifically addressed herein, is hereby  
**DENIED**.

This constitutes the Decision and Order of this Court.

DATED: Mineola, New York  
May 29, 2022

ENTER

  
HON. THOMAS RADEMAKER, J.S.C.

**ENTERED**

**Jun 05 2023**

NASSAU COUNTY  
COUNTY CLERK'S OFFICE