

Matter of Emigrant Mtge. Co. v Long

2023 NY Slip Op 32400(U)

July 14, 2023

Supreme Court, New York County

Docket Number: Index No. 151310/2023

Judge: John J. Kelley

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

PRESENT: HON. JOHN J. KELLEY **PART** **56M**

Justice

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In the Matter of

EMIGRANT MORTGAGE COMPANY,

Petitioner,

INDEX NO. 151310/2023

MOTION DATE 05/05/2023

MOTION SEQ. NO. 001

- v -

ANNE LONG and MARCIA LONG,

Respondents.

**DECISION, ORDER, and
JUDGMENT**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10

were read on this motion to/for ORDER TO PAY MONIES INTO COURT.

In this proceeding pursuant to CPLR 2601, Emigrant Mortgage Company (Emigrant) petitions for permission to deposit, into the court, the surplus proceeds that it obtained upon the foreclosure and sale of shares in a residential cooperative corporation. The respondent borrowers, whose shares had been foreclosed, do not oppose the petition. The petition is granted.

On January 4, 2000, Emigrant initiated a loan to Marcia Long and Anne Long (together the borrowers) in the principal amount of \$125,000.00. Emigrant secured repayment of the loan by perfecting a security interest in the shares of capital stock and a proprietary lease that had been issued by residential cooperative corporation 325 East 80th Apts. Corp. in connection with Apartment 4H, 325 East 80th Street, New York, New York. Emigrant perfected the security interest by filing a UCC-1 financing form with the New York City Register on January 14, 2000, as amended January 18, 2000, supplemented March 28, 2006, and further supplemented March 20, 2008. The borrowers thereafter defaulted on their loan obligations by failing to pay the regular monthly installments of principal and interest as they became due.

Where a cooperative tenant-shareholder defaults “on a security agreement which underlies a loan related to the purchase of shares in a cooperative, the remedies found in UCC article 9 are available to the lender” (*Fridman v Dime Sav. Bank of N.Y.*, 204 AD2d 387, 388, [2d Dept 1994]). On June 27, 2022, after providing notice to the borrowers, Emigrant thus conducted a non-judicial foreclosure with respect to the shares and proprietary lease pursuant to UCC 9-610, which provides that, when a debtor defaults on a security agreement, the secured party “may sell, lease, license, or otherwise dispose of any or all of the collateral” (UCC 9-610[b]; see *LI Equity Network, LLC v Village in the Woods Owners Corp.*, 79 AD3d 26, 30 [2d Dept 2010]). At the auction, Emigrant sold the collateral to Zeev Sheinfeld for the sum of \$395,000.00. From the proceeds of the sale, the sum of \$86,588.78 was paid to Emigrant in satisfaction of the borrowers’ loan obligations, and an additional sum was paid to Emigrant’s attorneys as and for their fees. There are no other lienholders with respect to the shares and proprietary lease. A surplus in the sum of \$304,427.87 currently remains, subject to any further request for an award of attorneys’ fees that Emigrant may submit to the court.

Emigrant’s attorneys thereafter attempted to contact the borrowers so that they could be paid the portion of the surplus that was owed to them. On or about October 3, 2022, Emigrant’s attorneys contacted Plymouth Management Group (PMG), which manages the subject cooperative apartment building. Although PMG provided counsel with a cell phone number for Anne Long, and Emigrant’s attorneys left a voicemail, they never received a response. On November 14, 2022, Emigrant’s attorneys performed an online search, obtained last known addresses and possible email addresses for both Marcia Long and Anne Long, and immediately mailed and emailed them a letter at the addresses obtained from the search, advising them of the surplus and providing them with information necessary for Emigrant to release the surplus to them. The borrowers nonetheless failed to respond. This proceeding ensued.

Shares in a residential cooperative corporation are considered personal property rather than real property (*Matter of Pollack*, 18 AD3d 555, 557 [2d Dept 2005]). In connection with the

foreclosure and sale of personal property that had been the subject of a security interest, UCC 9-615(d) provides that, with certain exceptions not applicable here, the “secured party shall account to and pay a debtor for any surplus.” UCC article 9 does not, by its terms, compel the secured party to deposit the surplus into court where the payees cannot be located (cf. RPAPL 1354[4] [requiring that any surplus remaining after a mortgagee’s lien has been satisfied from the proceeds of sale of real property must be paid into court]), but research has revealed no authority prohibiting a court from exercising its jurisdiction pursuant to CPLR 2601 to direct such a deposit under the circumstances presented here. CPLR 2601(b) provides, in pertinent part, that

“[a]ll moneys and securities paid into court shall be delivered either by the party making the payment into court . . . or to such other county treasurer as the court specially directs. . . . The commissioner of finance of the city of New York shall be considered the treasurer of each of the counties included within the city.”

The court concludes that there is sound basis for directing Emigrant to deposit the surplus of the foreclosure sale in this case with the Commissioner of the New York City Department of Finance, who shall hold the deposit in trust for Marcia Long and Anne Long, who, in turn, shall be entitled to the payment of the amount so deposited upon their compliance with the provisions of the New York City Administrative Code and the Rules of the City of New York applicable to claims upon such funds.

Accordingly, it is

ADJUDGED and ORDERED that the petition is granted, without opposition, and the petitioner, Emigrant Mortgage Company, is authorized and directed to deposit, with the Commissioner of the New York City Department of Finance, the first \$294,427.87 of the surplus proceeds arising from its June 27, 2022 nonjudicial foreclosure and sale of shares of stock in 325 East 80th Apts. Corp., and the proprietary lease issued by 325 East 80th Apts. Corp., in connection with Apartment 4H, 325 East 80th Street, New York, New York; and it is further,

ORDERED that the attorney for Emigrant Mortgage Company shall hold in escrow the remaining \$10,000.00 of those surplus proceeds, pending its post-disposition application to this court for an award of attorney’s fees incurred in litigating this proceeding and, if the court awards it less than \$10,000.00, it shall be directed to make a separate deposit of the difference with the Commissioner of the New York City Department of Finance.

This constitutes the Decision, Order, and Judgment of the court.

7/14/2023
DATE


JOHN J. KELLEY, J.S.C.

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