

**Su Hwa Chu v Lai**

2023 NY Slip Op 34408(U)

December 12, 2023

Supreme Court, Kings County

Docket Number: Index No. 500668/2014

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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SU HWA CHU and DAVID CHU, individually and  
as shareholders of SHUNSING ENTERPRISES, INC.,  
suing on behalf of themselves and SHUNSING  
ENTERPRISES, INC., and YI HSIUNG CHU,

Plaintiffs, Decision and order

- against -

Index No. 500668/2014

LISA LAI, CHING JUH LAI and DAPHNE CHEN,  
Defendants,

December 12, 2023

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #16, 17 & #19

The plaintiff moves seeking to modify an order of the court dated December 4, 2017. The defendants have likewise moved seeking to modify that order. Non-party David Plotch has moved seeking to order the referee to accept his bid at the auction. The motions have been opposed respectively. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

In an order dated December 4, 2017 the court granted plaintiff's motion seeking summary judgement. Specifically, the court held that a condominium located at 80 Riverside Boulevard, Unit No. 5H, in New York City 10069, also identified as Block 1171 and Lot 4060 should be partitioned and sold. On March 29, 2018 the court appointed a receiver to sell the condominium at a public auction. The order stated that the "Referee shall accept at such sale the highest bid offered by a bidder, who shall be identified upon the court record" (see, Order of Reference, page

2 [NYSCEF Doc. No. 346]). The auction was conducted on June 20, 2019 and Adam Plotch was the highest bidder with a bid of \$500,000. The referee rejected the bid on the grounds it was below the minimum sales price. Plotch now moves seeking to order the referee to accept his bid. He asserts neither the order of reference nor the court's order granting summary judgement ever required a bid that was above the minimum sales price. Thus, his bid should have been accepted. The plaintiff and defendant both move seeking to modify prior court orders to include the language that the highest bid must be above the minimum sales price and that upon such modification the auction should be conducted again.

There is scant authority outlining the precise responsibilities of the referee and the discretion afforded the referee. Thus, in Phelan v. Phelan, 148 AD2d 433, 538 NYS2d 827 [2d Dept., 1989] the court held the referee exceeded his authority when he announced, prior to the sale, that the sale was subject to any liens upon the property when the interlocutory judgement directing the sale only mentioned four liens. Again, in Bank of New York v. Love, 3 AD3d 303, 772 NYS2d 645 [1<sup>st</sup> Dept., 2004] the court held a referee exceeded his authority by requiring all taxes to be paid at closing without any credits, which contradicted the judgement as well as RPAPL §1354. Of course, a referee has no discretion to alter the terms of a court

order delineating the terms of any sale (Paragon Federal Credit Union v. Sklara, 186 AD3d 840, 127 NYS2d 781 [2d Dept., 2020]). By contrast, the referee has the discretion whether a partition sale should be conducted in parcels (Underhill v. Underhill, 113 NY 666, 21 NE 1115 [1889]). Further, the referee maintains discretion to "consummate the foreclosure sale so as to best protect the rights of the mortgagees while simultaneously ensuring a successful completion of the sale...A referee must retain limited flexibility, while still acting within the authority of the court as conferred in the judgment of foreclosure, to meet those unforeseen circumstances that might otherwise jeopardize the success of a foreclosure sale" (Glenville and 110 Corp., v. Tortora, 137 AD2d 654, 524 NYS2d 747 [2d Dept., 1988]). Moreover, the referee has the discretion to extend the time for the completion of the purchase (Tambasco v. Pesce, 213 AD2d 821, 823 NYS2d 405 [3<sup>rd</sup> Dept., 1995]). Significantly, in Salvation Army v. Simpson, 268 NY 499, 198 NE 373 [1935] the Court of Appeals affirmed a lower court ruling that denied a request to compel a referee to accept bids on property that were being sold following a partition. The court rejected the argument the referee was merely a ministerial job and maintained no discretion to reject a bid on the grounds it was inadequate. That case squarely approves of the referee's decision to reject Plotch's bid.

In this case the referee refused to accept the highest bid on the grounds it was well below the minimum sales price. Thus, the court is responsible with supervising all judicial sales and thus it is appropriate to examine the precise facts which took place at the judicial sale (Fisher v. Hersey, 78 NY2d 387, 33 Sickles 387 [1879]). Indeed, in that case the court explained that "Courts of equity exercise a supervision of sales made under their decrees, which is not in all cases controlled by legal rules, but may be guided by considerations resting in discretion. They may set aside their own judicial sales...may relieve against mere accidents or hardships or oppressive or unfair conduct of others, though such conduct may not amount to a violation of law" (id).

Thus, a court may invalidate a judicial sale where the price is so low as to shock the conscious of the court or if not that low but is inadequate and is accompanied by mistakes, accidents, hardships or surprise (Alben Affiliates v. Astoria Terminal Inc., 34 Misc2d 246, 226 NYS2d 1007 [Supreme Court Queens County 1007]).

In this case, the court already concluded there had been an offer for \$1.3 million. Thus, a bid of approximately a third of the value was wholly inadequate. Moreover, other irregularities took place at the judicial sale, namely neither party was present at the time of the sale. Thus, the court reviewing the sale


surely has the discretion to confirm the referee's determination rejecting Plotch's bid. As noted, the referee maintains that discretion despite whether such authority appears in any orders Salvation Army v. Simpson (supra).

Therefore, the motion seeking to compel the acceptance of the bid by Plotch is denied. The motions of the plaintiff and the defendant seeking to amend the order of sale is granted to the extent that if the parties cannot agree on a sale of the premises without judicial intervention then another judicial sale will take place. A new referee will be appointed. The parties may submit a proposed order delineating the duties and responsibilities of such referee.

So ordered.

ENTER:

DATED: December 12, 2023  
Brooklyn N.Y.

  
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Hon. Leon Ruchelsman  
JSC