

Wilmington v McDermott

2024 NY Slip Op 32860(U)

June 11, 2024

Supreme Court, Kings County

Docket Number: Index No. 514423/16

Judge: Lawrence Knipel

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FSMP, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 11th day of June 2024.

P R E S E N T:

HON. *Lawrence Knipel*
J.S.C.

Index No.: 514423/16

_____ x

WILMINGTON,

Plaintiff,

DECISION AND ORDER

-against-

ROLAND MCDERMOTT et al,

Defendant,

_____ x

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion:

| Papers | Numbered |
|---------------|-----------------|
| Motion (MS 5) | <u>1</u> |
| Opposition | <u>2</u> |
| Reply | — |

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

On March 4, 2024, Defendant’s order to show cause seeking an order staying the sale of the property 1 was signed by the Honorable Cenceria Edwards. In doing so, Judge Edwards already granted a portion of the requested relief as Plaintiff was forced to cancel the scheduled auction. Plaintiff then opposed.

Defendant argues that the stay from the prior order to show cause was still in effect, barring Plaintiff from scheduling the auction cancelled by this one. That is incorrect. The stay terminated upon “hearing” – that is, when the motion was taken on submission – in November.

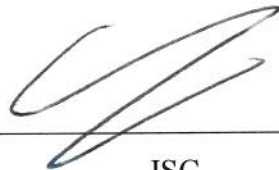
Defendant’s desire to do further loss mitigation is insufficient to warrant a stay of this action. That said, if Defendant submits a timely loss mitigation package, it should be considered by Plaintiff.

It is true that the scheduled auction was untimely under RPAPL 1351 – largely due to Defendant’s actions in causing the cancellation of prior scheduled sales. The Court can (see, *BNY v Ramsamooj*, 219 AD3d 1402, 1403 [2d Dept 2023]) and will extend the time to hold the sale where, as here, it is warranted.

Defendant argues that he is in military status and that Plaintiff cannot proceed with the action. However, it is clear from his proffer that he is in the reserves rather than in active military service. His financial submission makes it clear that he is working two jobs – at a hospital and a home – and that nothing regarding his military role (if any) prevents him from actively participating in this action.

Motion denied. In the interest of judicial economy, Plaintiff’s time to hold a foreclosure sale is extended until one year following entry of the instant order. Plaintiff shall serve notice of entry of this order forthwith upon Defendant/movant and all parties who have appeared in this action.

This constitutes the decision and order of the Court.

ENTER: 

Hon. JSC
Lawrence
Knipel

HON. LAWRENCE KNIPEL
ADMINISTRATIVE JUDGE

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KINGS COUNTY CLERK
FILED