

**Webster Bank v Board of Directors of Coventry
Homeowners Assn., Inc.**

2024 NY Slip Op 35158(U)

October 9, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 619426/2023

Judge: Linda Kevins

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

INDEX No. 619426/2023

CAL. No. _____

**SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 29 - SUFFOLK COUNTY**

P R E S E N T:

HON. LINDA KEVINS
Justice of the Supreme Court

MOTION DATE: 08/06/24
MOT. SEQ. # 1 – MG

-----X
WEBSTER BANK,

Plaintiff,

- against -

BOARD OF DIRECTORS OF COVENTRY
HOMEOWNERS ASSOCIATION, INC.;
CLERK OF THE SUFFOLK COUNTY
DISTRICT COURT; CAVALRY SPV I, LLC,

Defendants.
-----X

Upon the following papers e-filed (documents # 23 through # 32) it is,

ORDERED AND ADJUDGED that the motion by plaintiff for an order: a) granting it leave to enter a default judgment against the defendants Clerk of the Suffolk County District Court and Cavalry SPV I, LLC is **GRANTED**, and b) granting it summary judgment against defendant Board of Directors of Coventry Homeowners Association, Inc. is **GRANTED**; and it is further

ORDERED AND ADJUDGED that if defendants Clerk of the Suffolk County District Court, Cavalry SPV I, LLC and Board of Directors of Coventry Homeowners Association, Inc. shall desire to redeem the Mortgage bid by the successful bidder, defendants shall, within forty-five (45) days from the service of the copy of this decision and Order upon them, or their attorney, give plaintiff notice of defendants' desire and intent to so redeem; and it is further

ORDERED AND ADJUDGED that, if such notice of a desire to redeem be served upon the plaintiff within the time required, plaintiff may promptly apply, upon proper notice to the

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defendants, or their attorney, at IAS Part 29 of this Court, for the appointment of a referee to take and state the amount due the plaintiff, and to determine plaintiff's interest in the mortgage debt as applicable to the lands so bid off by it; and it is further

ORDERED AND ADJUDGED that within thirty (30) days from the time of making said report and the service of a copy thereof upon defendants or their attorneys, plaintiff shall make an application on notice to confirm or reject the referee's report; and it is further

ORDERED AND ADJUDGED that, if defendants shall, within thirty (30) days from confirmation of the referee's report, pay to the plaintiff the same in the manner required in the amount in the confirmed referee report, such payment shall operate as a redemption of the plaintiff's mortgage, and all the plaintiff's rights and interests in and to said mortgage shall become vested in the defendants Clerk of the Suffolk County District Court, Cavalry SPV I, LLC and Board of Directors of Coventry Homeowners Association, Inc., and upon such payment shall by proper conveyance duly acknowledged, convey the mortgage to defendants free and clear of all encumbrances by plaintiff; and it is further

ORDERED AND ADJUDGED that, in case of compliance with the foregoing provision by defendants, the same shall be without costs to either party herein; and it is further

ORDERED AND ADJUDGED that, if defendants shall fail to give notice of its desire to redeem or shall fail to complete such redemption within the requisite time period, then after such period of time expires, plaintiff shall make a prompt application to the Court upon notice to defendants for a judgment, along with a proposed order and judgment, and it shall be ordered and adjudged that defendants, and all persons claiming under them, do stand and be forever barred and foreclosed of and from all right, title, interest and equity of redemption of, in and to the mortgaged premises so bid off by the plaintiff; all interest they have upon said lands so bid off the plaintiff by virtue of said mortgage, or any other existing on or after the time of the commencement of said foreclosure action, are to be adjudged as cut off and foreclosed, and the plaintiff to hold the title thereto free from all such liens; and it is further

ORDERED that upon Entry of this Order, the movant is directed to promptly serve a copy of this Order with Notice of Entry upon all parties and to promptly file the affidavits of service with the Clerk of the Court.

Plaintiff commenced this action on August 4, 2023, pursuant to RPAPL § 1352 known as a "Strict Foreclosure", to foreclose any rights of redemption defendants may have in real property ("subject property") known and located at 101 Drexelgate Court, Middle Island, New York 11953 (Dist: 0200; Sec: 323.00; Blk: 05.00; Lot: 028.000). Defendants Clerk of the Suffolk County District Court, Cavalry SPV I, LLC and Board of Directors of Coventry Homeowners Association, Inc. have judgment liens against the subject property, which lien interests are subsequent and subordinate to the lien created by the mortgage, and which lien interests have not been extinguished by the foreclosure action because defendants Clerk of the Suffolk County District Court, Cavalry SPV I, LLC and Board of Directors of Coventry Homeowners

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Association, Inc. were not made parties to the foreclosure action and did not have an opportunity to be heard therein.

Plaintiff now makes an application for an order: a) pursuant to CPLR § 3215 granting it leave to enter a default judgment against the defendants Clerk of the Suffolk County District Court and Cavalry SPV I, LLC on the ground that they have not served an answer to the complaint and have otherwise failed to appear in this action.

On a motion for leave to enter a default judgment pursuant to CPLR § 3215, the plaintiff is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defendant's default in answering or appearing (*Wilmington Savings Fund Society, FSB v Chishty*, 179 AD3d 1147, 114 NYS3d 701 [2d Dept 2020]; *Moran v BAC Field Services Corporation*, 164 AD3d 494, 83 NYS3d 111 [2d Dept 2018]; *BAC Home Loans Servicing, LP v Reardon*, 132 AD3d 790, 18 NYS3d 664 [2d Dept 2015]).

Here, plaintiff has demonstrated that defendants Clerk of the Suffolk County District Court and Cavalry SPV I, LLC were served with the summons and complaint, and that defendants Clerk of the Suffolk County District Court and Cavalry SPV I, LLC did not answer or otherwise appear in this action. Regarding, proof of the facts constituting the claim, Section 1352 of the Real Property Actions and Proceedings Law (RPAPL) states, in sum and substance that the Court is authorized to issue a judgment that fixes a time period within which any person or entity having a right of redemption or right to foreclose a subordinate lien must act to redeem or begin a foreclosure action.

More specifically, the statute provides a remedy for a third-party purchaser of real property where necessary parties in the original foreclosure action were omitted from the action, as their rights remain unaffected by the judgment of foreclosure and sale and such is considered void as against those necessary parties who were not joined (*Jamison v Aquai*, 128 AD3d 775, 10 NYS3d 119 [2d Dept 2015]; *1426 46 St., LLC v Klein*, 60 AD3d 740, 876 NYS2d 475 [2d Dept 2009]; *6820 Ridge Realty LLC v Goldman*, 263 AD2d 22, 701 NYS2d 69 [2d Dept 1999]). The purchaser may bring an action under the statute, known as "strict foreclosure," to adjudicate the rights of those who have subordinate interests in the property. These persons are given a time period to act to either redeem or bring a foreclosure action, and their failure to act excludes them from claiming any title or interest in the property extinguishing and terminating their rights in the property.

Here, plaintiff's submissions, including the judgment of foreclosure and sale, dated November 1, 2021 (e-filed document # 20), establish proof of the facts constituting the claim. Defendants Clerk of the Suffolk County District Court and Cavalry SPV I, LLC do not oppose the relief requested herein. Accordingly, the motion by plaintiff against defendants Clerk of the Suffolk County District Court and Cavalry SPV I, LLC is granted.

With respect to the motion for an order: b) granting summary judgment against defendant Board of Directors of Coventry Homeowners Association, Inc., it is well settled that a party

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moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065, 1067, 416 NYS2d 790 [1979]). The failure of the moving party to make a prima facie showing requires the denial of the motion regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]). The burden then shifts to the party opposing the motion which must produce evidentiary proof in admissible form sufficient to require a trial of the material issues of fact (*Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). The court’s function is to determine whether issues of fact exist, not to resolve issues of fact or to determine matters of credibility; therefore, in determining the motion for summary judgment, the facts alleged by the opposing party and all inferences that may be drawn are to be accepted as true (*see Roth v Barreto*, 289 AD2d 557, 735 NYS2d 197 [2001]; *O’Neill v Fishkill*, 134 AD2d 487, 521 NYS2d 272 [1987]).

Here, plaintiff has established its entitlement to summary judgment based upon its submissions herein.

In opposition, defendant Board of Directors of Coventry Homeowners Association, Inc. submits only an attorney’s affirmation. Although it is well settled that an attorney’s affirmation alone lacks probative value to defeat a motion for summary judgment (*Schwartz v Licht*, 173 AD2d 458 [2d Dept 1991]), defendant Board of Directors of Coventry Homeowners Association, Inc. mainly opposes the motion based upon the ground of laches. Such ground is without merit under the circumstances (*First Federal Savings and Loan Association of Rochester v Capalongo*, 152 AD2d 833, 544 NYS2d 44 [3d Dept 1989] [if the strict foreclosure action is commenced within the six-year limitations period, the doctrine of laches is no defense to a foreclosure action]). Therefore, defendant Board of Directors of Coventry Homeowners Association, Inc. has not met its burden in opposition.

Accordingly, the motion by plaintiff for summary judgment is granted.
Anything not specifically granted herein is hereby denied.

This constitutes the decision and **Order** of the Court.



LINDA KEAVINS, JSC

Dated: 10.9.24

_____ FINAL DISPOSITION X NON-FINAL DISPOSITION