

**Federal Natl. Mtge. Assn. v Castera-Mullings**

2025 NY Slip Op 30917(U)

March 11, 2025

Supreme Court, Nassau County

Docket Number: Index No. 008004/2012

Judge: Jeffrey A. Goodstein

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT: STATE OF NEW YORK  
COUNTY OF NASSAU

PRESENT:

HON. JEFFREY A. GOODSTEIN,  
A.J.S.C.

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FEDERAL NATIONAL MORTGAGE ASSOCIATION

Plaintiff,

- against -

TRIAL/IAS PART 49

Index No. 008004/2012

Sequence No.: 011

DECISION & ORDER

ANGELA CASTERA-MULLINGS A/K/A ANGELA  
MULLINGS; NEW YORK STATE DEPARMTNET OF  
TAXATION AND FINANCE CCED-CHILD SUPPORT  
MULLINGS; AYANA MULLINGS; TRAVOR  
MULLINGS

Defendants.

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The following papers were reviewed for this motion:

Notice of Motion; Affirmation in Support and Exhibits.....	1
Affidavit in Opposition and Exhibits.....	2
Affirmation in Reply and Exhibits.....	3

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Plaintiff filed this motion seeking an order vacating this Court's Decision and Order dated December 14, 2023 ("Decision and Order").

Defendant Angela Castera-Mullings opposes the motion in its entirety.

The Decision and Order was rendered based upon the Third-party Intervenor's request for an order renewing a writ of assistance which was granted on March 10, 2020. The Decision and Order set forth, in pertinent part, as follows:

Here, as Defendant filed a valid Chapter 13 bankruptcy petition in advance of the January 8, 2019 sale, the sale is void ab initio, and the Referee's Deed into MTGLQ is a nullity rendering the instant application wholly without merit. Accordingly, it is hereby:

ORDERED, that the motion is hereby DENIED in its entirety and the sale held in January 8, 2019 is hereby cancelled and set aside. Accordingly, the Nassau County Clerk is hereby directed, upon the payment of any applicable fees, to cancel, discharge, and expunge from the land records the Deed dated January 17, 2019 and recorded June 28, 2019 under Instrument Number 2019-00053489 as against the real property known as 131 Independence Avenue, Freeport, New York and under tax map designation Section: 55, Block: 365, Lots: 784-787.

Plaintiff argues that the Court lacked jurisdiction to *sua sponte* set aside the January 8, 2019 foreclosure sale and was precluded from doing so pursuant to the doctrine of law of the case. The Plaintiff provides a history of this case, which is as follows: January 31, 2018, the Court entered a judgment of foreclosure and sale which was scheduled for May 8, 2018. On May 4, 2018, the Defendant filed an Order to Show Cause to vacate the judgment. On May 7, 2018, the Defendant filed a bankruptcy and the First Foreclosure Sale was cancelled. On July 20, 2018, the First Bankruptcy was closed and the foreclosure sale was rescheduled for September 11, 2018. On September 10, 2018, the Defendant filed another Order to Show Cause to vacate the judgment of foreclosure and sale. On September 10, 2018, the Defendant filed a second bankruptcy petition and the Second Foreclosure Sale was cancelled. On December 10, 2018, the Second Bankruptcy was closed and the foreclosure sale was rescheduled for January 18, 2019. On January 7, 2019, the Defendant filed a third bankruptcy petition. The Third Foreclosure Sale took place as scheduled on January 8, 2019. Plaintiff was the successful bidder. MTGLQ was the owner of the subject loan.

On December 7, 2019, MTGLQ filed a motion for a writ of assistance, which was granted by Decision and Order dated March 10, 2020 (J. Adams). On January 7, 2020, the Defendant filed a motion (sequence 008) to set aside the Third Foreclosure Sale alleging fraud and collusion and that the sale was stayed by the Third Bankruptcy. This motion was denied on February 3, 2020, by Judge DeStefano who found that there was no evidence of fraud or collusion, and that there was no bankruptcy stay in place due to Defendant's multiple bankruptcy filings.

Then, this Court's Decision and Order (motion sequence 010) as set forth above, vacated the Third Foreclosure Sale despite the Defendant not filing a cross motion and only submitting opposition.

Plaintiff argues that the Court lacked jurisdiction to vacate the Third Foreclosure Sale because Defendant did not seek such affirmative relief. Plaintiff further argues that based upon the law of this case, the Court inappropriately granted *sua sponte* relief to the Defendant.

The Defendant argues that the attorney for the Plaintiff has no standing and denies every allegation set forth except agrees to the

timeline of filings of motions, bankruptcy petitions and scheduled foreclosure sales. The Defendant contends that this Court had jurisdiction to vacate the Third Foreclosure Sale due to the bankruptcy filing on January 7, 2019.

In Reply, the Plaintiff argues that a stay was never in effect based upon the Third Bankruptcy Filing because 11 USC 362c)(4)(A) states that when 2 or more bankruptcy cases were pending within the previous year but dismissed, the stay shall not go into effect upon the filing of the later case.

Here, the Defendant had 2 prior bankruptcy cases pending that were dismissed in the year prior to her third bankruptcy filing. Accordingly, the automatic stay never went into effect and therefore an order from the bankruptcy court lifting the non-existent stay was not required.

Pursuant to CPLR §5015(a), a court may vacate an order due to lack of jurisdiction. Furthermore, a court may vacate its own order for sufficient reason and in the interests of substantial justice. *Woodson v. Mendon Leasing Corp.*, 100 NY2d 62 (2003); *Ilan v. Washington*, 190 AD3d 554 (1<sup>st</sup> Dept 2021). The Court may only grant relief sua sponte if it is warranted by the facts appearing on the papers on both sides, if the relief granted is not too dramatically unlike the relief sought, the proof offered supports it, and there is no prejudice to any party. *USAA Fed. Sav. Bank v. Calvin*, 145 AD3d 704 (2d Dept. 2016). "The lack of notice and opportunity to be heard implicates the fundamental issue of fairness that is the cornerstone of due process." *Aurora Loan Services, LLC v. Moreno*, 166 AD3d 933 (2d Dept. 2018).

"The doctrine of the 'law of the case' is a rule of practice, an articulation of sound policy that, when an issue is once judicially determined, that should be the end of the matter as far as Judges and courts of co-ordinate jurisdiction are concerned." *Martin v. City of Cohoes*, 37 NY2d 162 [1975]; *PHH Mtge. Corp. v. Burt*, 176 AD3d 1242 (2d Dept. 2019). The doctrine applies only to legal determinations that were necessarily resolved on the merits in the prior decision, and to the same questions presented in the same case. *Id* at 1243. Law of the case precludes reconsideration of an issue decided on a prior motion. *Bank of New York Mellon v. Singh*, 205 AD3d 866 (2d Dept. 2022); *US Bank N.A. v. Ramanababu*, 202 AD3d 1139 (2d Dept 2022).

Based upon the facts and circumstances of this case, as well as the relevant caselaw set forth above, this Court erred in vacating the Third Foreclosure sale as there was no stay in place based upon the Defendant's numerous prior bankruptcy filings within one year and based upon the law of this case.

Accordingly, it is hereby

ORDERED, that the Plaintiff's motion is **GRANTED** and the Decision and Order dated December 14, 2023 which vacated the January 8, 2019 foreclosure sale is **VACATED**.

Dated: Mineola, New York

March 11, 2025

ENTER:



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HON. JEFFREY A. GOODSTEIN, A.J.S.C.