

NYCTL 2017-A Trust v Gonzales

2025 NY Slip Op 34543(U)

November 24, 2025

Supreme Court, New York County

Docket Number: Index No. 157754/2019

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

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NYCTL 2017-A TRUST, THE BANK OF NEW YORK
MELLON AS COLLATERAL AGENT AND CUSTODIAN
FOR THE NYCTL 2017-A TRUST,

Plaintiff,

- v -

JESSE GONZALES, NONNETTE G. OFRASIO, JOSEFINA
G. JURADO, AGAPITO AGUILA, ALBERTO AGUILA,
LEOPOLDO AGUILA, NICHOLAS AGUILA, BENJAMIN
AGUILA, DANIEL AGUILA, JOSE AGUILA, NESTOR
AGUILA, ANTONIO AGUILA, LAURO AGUILA, REYNALDO
BITONG, ANDRELLINA GUZMAN, MELITA BITONG-DUMO,
CELIA BITONG-DUMO, LEO BITONG, ELLA BITONG,
ARVIN G. AMATORIO, UNKNOWN HEIRS OF THE
ESTATE OF EZER B. GONZALES, NEW YORK STATE
DEPARTMENT OF TAXATION AND FINANCE, UNITED
STATES OF AMERICA, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD, NEW YORK CITY
PARKING VIOLATIONS BUREAU, JP MORGAN CHASE
BANK, N.A. AS ULTIMATE SUCCESSOR TO THE
LINCOLN SAVINGS BANK, JOHN DOE NO. 1 THROUGH
JOHN DOE NO. 100 INCLUSIVE, THE NAMES OF THE
LAST 100 DEFENDANTS BEING FICTITIOUS, THE TRUE
NAMES OF SAID DEFENDANTS BEING UNKNOWN TO
PLAINTIFF, IT BEING INTENDED TO DESIGNATE FEE
OWNERS, TENANTS OR OCCUPANTS OF THE LIENED
PREMISES, INDIVIDUAL DEFENDANTS BE DEAD, THEIR
HEIRS AT LAW, NEXT OF KIN, DISTRIBUTEES,
EXECUTORS, ADMINISTRATORS, TRUSTEES,
COMMITTEES, DEVISEES, LEGATEES, AND THE
ASSIGNEES, LIENORS,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 71, 72, 73, 74, 75,
76, 77, 78, 79, 80

were read on this motion to/for INJUNCTION/RESTRAINING ORDER

Upon the foregoing documents, and after a final submission date of October 28, 2025,
Defendant Arvin G. Amatorio as Preliminary Executor of the Estate of Ezer G. Gonzales'
("Defendant") motion for a stay of the auction/sale of the premises known as Block 2068, Lot 8

DECISION + ORDER ON
MOTION

on the Tax Map of New York County, also known as 459 West 153rd Street, New York, New York (the “Premises”) and for cancellation of the scheduled auction/sale due to the failure to comply with RPAPL § 1351 is denied.

Defendant claims he entered a contract of sale for the Premises on May 15th, 2023 for the purchase price of \$1,200,000.00, and the buyer is allegedly still interested. On October 14, 2024, Defendant filed a petition in Surrogate’s Court to order the sale of the Premises and to approve the contract of sale dated May 15th, 2023, but this appears to still not have taken place. Defendant’s counsel represents that Defendant “is currently working on filing an Amended Petition in Surrogate’s Court because the Estate must obtain jurisdiction over all the interested parties of the proceeding” (NYSCEF Doc. 72 at ¶ 15). Defendant claims his petition to approve the sale of the Premises was made returnable on September 30, 2025 and the sale of the Premises in this action should be stayed until Surrogate’s Court rules on Defendant’s petition. Notably, the application is supported only by an affirmation from counsel and not an affidavit or affirmation from the Defendant himself.

Plaintiff opposes and argues that Defendant raised the issue of the May 15th, 2023 contract of sale in the prior motion to confirm the referee report and this Court rejected it. Plaintiff further argues that Defendant’s RPAPL § 1351 argument is without merit because the notice of sale was published within the statutory time frame and the foreclosure auction did not take place within the ninety-day time frame due to scheduling conflicts between the special referee and the County Clerk. Defendant submits no reply. To date, Defendant has not submitted any Decision and Order from the Surrogate’s Court, nor has he submitted the amended petition which his counsel claims he was working on to obtain the requisite jurisdiction (NYSCEF Doc. 72 at ¶ 15).

Absent an affidavit from someone with personal knowledge of the facts, the Court declines to grant a stay based on counsel's unsupported representation that a buyer is still interested in closing on the Premises based on a contract of sale that has not been consummated for over two years (*see, e.g. Beltre v Babu*, 32 AD3d 722, 723 [1st Dept 2006] [facts verified only by counsel are purely hearsay, devoid of evidentiary value]). According to that contract, closing was to take place on June 14, 2023, and there is no evidence that the closing date was extended by agreement of the parties.

Moreover, the Court finds the equities do not weigh in favor of granting a stay. There is no reason why Defendant waited until the eve of the auction date to seek the stay, which only served to delay the foreclosure and auction and delay Plaintiff's statutory right to foreclose on the property. Nor should Plaintiff be prejudiced by Defendant's dilatory behavior in seeking the Surrogate's Court approval of the May 15th, 2023 contract. The judgment in this case was not entered until June 10, 2025 (NYSCEF Doc. 66), meaning Defendant had over two years to obtain the Surrogate's Court's approval of the May 15th, 2023, contract, and he proffers no excuse for not having done so earlier. Therefore, Defendant's application is denied. The Court has considered Defendant's remaining contentions and finds them unavailing.

Accordingly, it is hereby,

ORDERED that Defendant Arvin G. Amatorio as Preliminary Executor of the Estate of Ezer G. Gonzales' motion for a stay of the auction/sale of the premises known as Block 2068, Lot 8 on the Tax Map of New York County, also known as 459 West 153rd Street, New York, New York (the "Premises") and for cancellation of the scheduled auction/sale due to the failure to comply with RPAPL § 1351 is denied; and it is further

ORDERED that within ninety days of entry of this Decision and Order, counsel for Plaintiff shall cooperate to the fullest extent necessary with the special referee appointed by this Court and the New York County Clerk to provide notice of the rescheduled foreclosure auction and sale of the Premises in the New York Law Journal and to hold the foreclosure auction and sale in accordance with RPAPL § 1351; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

11/24/2025
DATE

Mary V Rosado, JSC
HON. MARY V. ROSADO, J.S.C.

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