

Somekh v 434 W. 154th St. Realty Inc.

2012 NY Slip Op 30682(U)

March 14, 2012

Supreme Court, New York County

Docket Number: 110995/2009

Judge: Joan A. Madden

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At Part 11 of the Supreme Court of the State of New York held in and for the County of New York, at the Courthouse, 60 Centre Street, New York, New York, on the 17 day of March, 2012

HON. JOAN A. MADDEN
J.S.C.

Present:
HON. _____
Justice

-----X
NISSIM SOMEKH and NILI SOMEKH,

Plaintiffs,

- against -

434 WEST 154TH ST. REALTY INC., MICHAEL GIBSON,
NEW YORK STATE DEPARTMENT OF TAXATION AND
FINANCE, NEW YORK CITY ENVIRONMENTAL CONTROL
BOARD, DEPT. OF HOUSING PRESERVATION &
DEVELOPMENT, MU REALTY, LLC, CARON GIBSON,
MICA GIBSON, JOSEPH KNIGHT d/b/a B. KNIGHT OR
DAY CLEANING SERVICES, MICHAEL C. GIBSON,

Defendants.
-----X

Index No.: 110995/2009

**JUDGMENT OF
FORECLOSURE
AND SALE WITH
LEGAL DESCRIPTION**

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PART 11

FORECLOSURE OF:

434 West 154th Street
New York, New York

BLOCK: 2068 LOT: 41

UPON the Summons, Verified Complaint and Notice of Pendency duly filed in this action on August 3, 2009, the Order of Reference dated January 7, 2011, the Notice of Motion dated September 27, 2011 and all proceedings thereon; and upon the Affirmation of DAVID M. NAMM, dated October 19, 2010 in support of the Order of Reference and showing that all of the Defendants herein have been duly served with the Summons and Verified Complaint in this action, or have voluntarily appeared personally or by their respective attorneys, and stating that more than (20) twenty days had elapsed since said Defendants were so served and/or appeared; and that

None of the Defendants having served an answer to the aforesaid Verified Complaint, nor had their time to do so been extended; and that the Verified Complaint herein and due Notice of Pendency

containing all the particulars required to be stated herein was duly filed in the Office of the Clerk of the County of New York on August 3, 2009, and has not been amended to add new parties or to embrace real property not described in the original Complaint and a Referee having been duly appointed to compute the amount due to the Plaintiff upon the note and mortgage set forth in the Verified Complaint and to examine and report whether the mortgaged premises can be sold in parcels;

AND on reading and filing the Report of CAROL LILIENFELD, ESQ., the Referee named in said Order of Reference to Compute, by which Report, dated May 11, 2011 attached hereto, it appears that the sum of \$830,000.00, together with interest thereon at the default rate of 24.00% per annum from February 27, ~~2008~~²⁰⁰⁸ through and including April 15, 2011 in the amount of \$625,115.00 is due and owing; and that the mortgaged premises should be sold in one parcel.

J.S.C.

NOW, upon proof of due notice of this application upon all parties who had not waived same, and upon proof of service of the Order of Reference as provided therein,

ON MOTION OF DAVID M. NAMM, attorney for the Plaintiff, it is:

ORDERED, that the motion is granted ^{on default} and it is further

ORDERED, ADJUDGED AND DECREED, that the report of the Referee, CAROL LILIENFELD, ESQ., dated May 11, 2011, be and hereby is in all respects ratified and confirmed; and it is further

ORDERED, ADJUDGED AND DECREED, that the above-described mortgaged premises or such part thereof as may be sufficient to discharge the mortgage debt, the expenses of the sale and the costs of this action as provided by the Real Property Actions and Proceedings Law, be sold in one parcel, at public auction ^{at 60 Centre Street, Room 130,} ~~in Room 130 of the New York County Supreme Court, 111 Centre Street,~~ New York, New York, on any Wednesday, except for holidays, at ^{2:00} ~~4:00~~ P.M., by and under the direction of CAROL LILIENFELD, ESQ., who is hereby appointed Referee for that purpose; and that said Referee,

on the date of such sale shall report with a copy of this Judgment to the Motion Support Office, Room 119, at 12:30 PM so the sale may proceed promptly at ^{2:00 PM} ~~1:00~~ pm; that said Referee shall set the date of sale and give public notice of the time and place of such sale in accordance with ^{law and rules and} ~~RRAPL § 251,~~ in ^{practice} of this Court

J.S.C.

J.S.C. The New York Law Journal; and it is further

law and rules and practice of this Court

ORDERED, ADJUDGED AND DECREED, that said Referee shall accept at such sale the highest bid offered by a responsible bidder, who shall be identified upon the court record, and shall require that such successful bidder immediately pay to the Referee in cash or certified or bank check payable to such Referee, ten (10%) percent of the sum bid and shall execute Terms of Sale for the purchase of the premises, unless such successful bidder is the plaintiff herein, in which case no deposit against the purchase price shall be required; and it is further

ORDERED, ADJUDGED AND DECREED, that in the event the first successful bidder fails to immediately pay the ten (10%) percent deposit as provided herein or fails to execute the Terms of Sale immediately following the bidding upon the subject property, the property shall thereafter immediately, on the same day, be reoffered at auction; and it is further

ORDERED, ADJUDGED AND DECREED, that the closing of title shall take place at the office of the Referee or at such other location as the Referee shall determine, within forty-five (45) days after such sale unless otherwise stipulated by all parties. The Referee shall transfer title only to the successful bidder at the auction. Any delay or adjournment of the closing date beyond the forty-five (45) days may be stipulated among the parties, with the Referee's consent, up to ninety (90) days from the date of sale, but any adjournment beyond ninety (90) days may be agreed only with the approval of this Court; and it is further

ORDERED, ADJUDGED AND DECREED, that the Referee deposit all funds received pursuant to this Order in his/her own name as Referee ~~in Referee's IOLA account maintained for legal clients at a bank within the State of New York or in an FDIC insured bank of Referee's choice within the State of New York~~ in Capital One Bank, 31 E 17th St, New York, NY 10003; and it is further

J.C.

ORDERED, ADJUDGED AND DECREED, said Referee on receiving the proceeds of such sale shall forthwith pay therefrom:

The statutory fees of said Referee not exceeding \$500

~~FIRST: The Referee shall pay the sum of \$500.00 for the Referee's statutory fees, as provided in CPLR § 8003(b), unless the sale price exceeds \$50,000.00. In the event the sale price exceeds \$50,000.00 an additional compensation (including commissions) in excess of \$500.00 is sought pursuant to CPLR § 8003(b) and if no surplus monies are produced by the sale, the parties may present a stipulation signed by the Referee and all parties appearing agreeing to a stated sum to be so ordered by this Court. Where~~

attorney for the Plaintiffs in addition to costs, with interest thereon from the date hercof;] and also the sum of \$1,455,115.00, the amount reported due as aforesaid, together with interest thereon pursuant to the terms of the Note from May 11, 2011, the date interest was calculated to in said Report, to the date of entry of this order and thereafter at the statutory post judgment rate to the date of transfer of title, or so much thereof as the purchase money of the mortgage premises will pay of the same, ~~together with~~

~~together with any advances~~ ~~together with any advances as~~ ~~provided for in the note and mortgage,~~ ~~provided for in the note and mortgage,~~ ~~which Plaintiff may have made for taxes, insurance, principal and~~ ~~interest and any other charges due to prior mortgages, or to maintain the premises pending consummation~~ ~~of the foreclosure sale not previously included in the computation and upon presentation of receipts for~~ ~~said expenditures to the Referee, all together with interest thereon pursuant to the note and mortgage as~~ ~~above provided. Copies of such receipts shall be annexed to the Referee's Report of Sale.~~

interest and any other charges due to prior mortgages, or to maintain the premises pending consummation of the foreclosure sale not previously included in the computation and upon presentation of receipts for said expenditures to the Referee, all together with interest thereon pursuant to the note and mortgage as above provided. Copies of such receipts shall be annexed to the Referee's Report of Sale.

~~Plaintiff shall timely move to confirm the Referee's Report of Sale pursuant to RPAPL § 1355;~~

~~and it is further~~

ORDERED, ADJUDGED AND DECREED that if the Plaintiffs are the purchaser of

the mortgaged premises at said sale (or if the rights of the purchaser shall be assigned to and acquired by the Plaintiffs, and a valid assignment thereof is filed with the Referee), the Referee shall not require the Plaintiffs to pay in cash the entire amount bid at the sale, but shall execute and deliver to the Plaintiffs a deed of the mortgaged premises sold upon payment to the Referee of the amounts specified above in clauses "FIRST", "SECOND", and "THIRD" if such expenses were paid by the Referee or in lieu of the payment of said last mentioned amounts, upon filing with the Referee receipts of the proper governmental authorities showing the payment thereof. The balance of the amount bid, after deducting therefrom the aforesaid payments to the Referee for compensation and expenses, taxes, assessments, sewer rents, water rates and priority liens of a city agency shall be allowed to the Plaintiffs and applied by said Referee upon the amounts due to the Plaintiffs as specified above in item marked "FOURTH". If, after so applying the balance of the amount bid, there shall be a surplus over and above said amounts due to the Plaintiffs, the Plaintiffs shall pay to the Referee upon delivery to the Plaintiffs of the Referee's deed the amount of such surplus [which shall be applied by the Referee upon motion made pursuant to RPAPL § 1351(3) and proof satisfactory to the Referee of the sums due thereon, to any subordinate mortgage duly recorded

against the property pursuant to RPAPL § 1354(3), which payment shall be reported in the Referee's Report of Sale.] Any surplus remaining after all payments as herein provided shall be deposited into Court in accordance with RPAPL § 1354(4) and the Referee shall immediately give notice of such surplus to the owner of the mortgaged premises as identified by Plaintiff at the time of the sale; and it is further

ORDERED, ADJUDGED AND DECREED, that the Referee shall take the receipt of the Plaintiffs or the attorney for the Plaintiffs for the amounts paid as directed in item "FOURTH" above, and file it with the Report of Sale of the Referee. The Referee shall deposit the surplus moneys, if any, with the New York County Clerk within five (5) days after the same shall be received unless such period be deemed extended by the filing of an application for additional compensation as set forth herein, to the credit of this action, to be withdrawn only on an order of this Court signed by a Justice of this Court. The Referee shall make a report of such sale under oath showing the disposition of the proceeds of the sale and accompanied by the vouchers of the persons to whom payments were made, and shall file the Report of Sale with the office of the New York County Clerk ~~with a copy to the Chambers of the Appointing Justice~~ within thirty (30) days after completing the sale and executing the proper conveyance to the purchaser or within thirty (30) days of the decision of the Court with respect to any application for additional compensation; and it is further

ORDERED, ADJUDGED AND DECREED, that if the proceeds of the sale are insufficient to pay the amount reported due to the Plaintiffs and the expenses of the sale, interest, costs and allowances, the Plaintiffs may recover from the Defendants, 434 WEST 154TH ST. REALTY INC. and MICHAEL GIBSON, the whole deficiency or so much thereof as this Court may determine to be just and equitable of the residue of the debt remaining unsatisfied after a sale of the mortgaged premises and the application of the proceeds thereof, provided a motion for a deficiency judgment shall be made as prescribed by Section 1371 of the Real Property Actions and Proceedings Law within ninety (90) days of the delivery of the deed by the Referee, and the amount thereof is determined and awarded by an order of this Court as provided for in said action, and it is further

ORDERED, ADJUDGED AND DECREED, that the purchaser(s) at said sale be let into possession on production or delivery of the Referee's Deed or Deeds; and it is further

ORDERED, ADJUDGED AND DECREED, that each and all of the Defendants in this action and all persons claiming under them or any of them, after the filing of such Notice of Pendency of this action, be and the same hereby are forever barred and foreclosed of all right, claim, lien, title, interest, and equity of redemption in said mortgaged premises and every part thereof; and it is further

ORDERED, ADJUDGED AND DECREED, that the mortgaged premises is to be sold in one parcel in "as is" physical order and condition, subject to any state of facts than an inspection of the mortgaged premises would disclose, any state of facts that an accurate survey of the mortgaged premises would show, any covenants, restrictions, declarations, reservations, easements, rights of way and public utility agreements of record, if any, and any building and zoning ordinances of governmental authorities and possible violations thereof, any rights of tenants or persons in possession of the mortgaged premises, prior liens of record, if any, except those liens addressed in Section 1354 of the Real Property Actions and Proceedings Law, and any equity of redemption of the United States of America to redeem the mortgaged premises within one hundred twenty (120) days from the date of sale. Risk of loss shall not pass to
~~—purchaser until closing of title.~~

~~—ORDERED, that in absence of the Referee, the Court may designate a Substitute Referee—
—forthwith; and it is further—~~

ORDERED, that the Referee appointed herein is subject to the requirements of Rule 36.2 of the Chief Judge, and if the Referee is disqualified from receiving appointment pursuant to provisions of that Rule, the Referee shall immediately notify the Appointing Judge forthwith; and it is further


Ordered, that the issues of the reasonableness of the amount of attorney fees and additional expense for preservation of property
~~—ORDERED, that a copy of this Judgment with Notice of Entry shall be served upon the—
—designated Referee, owner of the equity of redemption, as of the date of this Order, any tenants named in—
—this action and any other party entitled to notice within twenty (20) days of entry and no less than thirty
—(30) days prior to sale; and it is further—~~
are severed for input and assessment upon service on the Trial Support Support office of a conformed copy of this judgment.

ORDERED, that the Plaintiff shall serve a copy of the Notice of Sale upon the Ex Parte Office as least ten (10) days prior to the scheduled sale.

Said premises commonly known as 434 West 154th Street, New York, New York. A description of said mortgaged premises is annexed hereto and made a part hereof as Schedule A.

Dated: _____, 2012

ENTER,



HON. JOAN A. MADDEN
J.S.C.

J.S.C.