

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-00144-WJM-MJW

MICHAEL D. RUDNICK and ANN K. SMITH RUDNICK,

Plaintiffs,

v.

BANK OF AMERICA, NATIONAL ASSOCIATION, as SUCCESSOR BY MERGER TO
LASALLE BANK, NATIONAL ASSOCIATION, TRUSTEE UNDER THE POOLING AND
SERVICING AGREEMENT DATED AS OF FEBRUARY 1, 2007, GSAMP TRUST
2007-NC-1;
LITTON LOAN SERVICING, LP;
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.;
PUBLIC TRUSTEE OF DENVER COUNTY; and
All Unknown Persons Who Claim Any Interest in the Subject Matter of this Action,
Defendants.

**ORDER APPROVING AND IMPLEMENTING
SETTLEMENT AGREEMENT**

THIS MATTER is before the Court on Plaintiff's Unopposed Motion for Order Approving and Implementing Settlement Stipulation. (ECF No. 161.) Being fully informed, the Court makes the following Findings, Conclusions, and Orders.

1. This Court has jurisdiction over the subject matter and Parties to this action. (ECF No. 154.)
2. Venue is proper in the State and District of Colorado.
3. Defendant Public Trustee for the City and County of Denver ("Public Trustee") has disclaimed all right, title and interest in and to the property that is the subject of this action except with respect to the Public Trustee's official capacity and

responsibilities under Colorado statutes with respect to foreclosures, but otherwise stands ready to carry out any lawful orders of this Court. (ECF No. 145).

4. Each of the Parties has been given a fair and adequate opportunity to be heard.

5. On August 29, 2011, the Parties filed a Joint Status Report and Stipulation Regarding Settlement (ECF No. 149) in which the Parties requested this Court to enter Orders necessary to assure performance of the Stipulation Regarding Settlement. The Parties also agreed, *inter alia*, as a material part of their Settlement Agreement, to comply with the requirements of the Public Trustee (ECF Nos. 119, 119-1) to restore title to the subject property in the Rudnicks and protect Bank of America as Trustee's security interest in the property, and to jointly request that this Court enter Orders necessary to accomplish this purpose (ECF No. 149 at 2-4).

6. This Court has reviewed the Unopposed Motion for Order Approving and Implementing Settlement Stipulation (ECF No. 161) and the sealed, executed Settlement Agreement (ECF No. 162) and Loan Modification Agreement (ECF No. 162-1) filed therewith.

7. In reviewing the relief sought by the parties pursuant to their settlement (in particular, the rescission of the foreclosure sale), the Court has carefully considered whether issuing an Order granting such relief would violate the *Rooker-Feldman* doctrine. Previously, the District Court for the City and County of Denver in Case No. 2009CV7496 issued an order authorizing the foreclosure sale. This Court, pursuant to the parties' settlement, is now rescinding that foreclosure sale. However, by doing so,

this Court is in no way calling into question the propriety of the state court's decision at that time to authorize the foreclosure sale; this Court is not conducting any review of the state court judgment. Instead, the parties have now reached a settlement under which they simply seek to undo the foreclosure. Under these circumstances, this Court's order rescinding the foreclosure sale does not violate *Rooker-Feldman*. See *Bolden v. City of Topeka, Kan.*, 441 F.3d 1129, 1143 (10th Cir. 2006) ("Appellate review – the type of judicial action barred by *Rooker-Feldman* – consists of a review of the proceedings already conducted by the 'lower' tribunal to determine whether it reached its result in accordance with law.").

8. In accordance with the foregoing, it is hereby ORDERED as follows:

a. The foreclosure sale held by the Public Trustee for the City and County of Denver for Public Trustee Foreclosure No. 2009-2997 is hereby rescinded. The Certificate of Purchase which was issued to the Bank of America as Trustee on October 22, 2009 and recorded with the Clerk and Recorder of the City and County of Denver at Reception No. 2009141462 on October 27, 2009, and the Public Trustee's Confirmation Deed granted to Bank of America as Trustee on November 18, 2009 and recorded with the Clerk and Recorder of the City and County of Denver at Reception No. 2009151397 on November 18, 2009, are both null and void.

b. The Public Trustee for the City and County of Denver is Ordered, forthwith, to re-record the voided Public Trustee's Confirmation Deed, along with a copy of this Order voiding said Public Trustee's Confirmation Deed, with the Clerk and Recorder of the City and County of Denver, and to deliver certified copies of said recording to the legal counsel for the Bank of America as Trustee, and to legal counsel for Michael D. Rudnick and Ann K. Smith Rudnick. Bank of America as Trustee shall remit to the Public Trustee the recording and certification costs prescribed by the Clerk and Recorder.

c. The Note executed by Michael D. Rudnick and Ann K. Smith Rudnick on November 6, 2006, and the Deed of Trust executed by the Michael D. Rudnick and Ann K. Smith Rudnick on November 6, 2006, and recorded with the Clerk and Recorder of the City and County of Denver at Reception No. 2006188529, are hereby re-instated, and shall both be marked and signed by the

Public Trustee for the City and County of Denver as “Reinstated by Order of the Court.”

d. Legal counsel for Bank of America as Trustee shall submit to the Public Trustee a request for withdrawal of the Notice of Election and Demand filed for Foreclosure No. 2009-2997, along with the complete payment of all fees and costs owed and incurred for the above, including a withdrawal fee in the amount authorized by section 38-37-104(1)(b)(V), C.R.S. The Public Trustee shall thereupon record the withdrawal with the Clerk and Recorder for the City and County of Denver, terminating Foreclosure No. 2009-2997; shall deliver the re-instated Note and Deed of Trust to the legal counsel for Bank of America as Trustee; and shall deliver certified copies of the re-instated Note and Deed of Trust to the legal counsel for Michael D. Rudnick and Ann K. Smith Rudnick.

e. Upon completion of the foregoing, and upon receipt by legal counsel for the Rudnicks, in good funds, of the amount specified in the Stipulation Regarding Settlement, the Parties shall promptly execute the Loan Modification Agreement (ECF No. 162-1). The Loan Modification Agreement shall then be booked by Defendants and recorded with the Clerk and Recorder of the City and County of Denver, and the Plaintiffs shall tender any monthly payments due under the Loan Modification Agreement.

f. Upon compliance with the foregoing Orders, the parties shall promptly execute a stipulation for mutual dismissal and release of all claims against parties to this action, including the Public Trustee, and promptly file the same with this Court.

Dated this 22nd of December, 2011.

BY THE COURT:



William J. Martínez
United States District Judge

APPROVED AS TO FORM

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