

Brown v Nationstar Mtge., LLC
2014 NY Slip Op 32500(U)
September 29, 2014
Sup Ct, Wayne County
Docket Number: 75016/2012
Judge: Daniel G. Barrett
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At a Term of the Supreme
Court held in and for the
County of Wayne at the Hall of
Justice in the Village of Lyons,
New York on th 13th day of
August, 2014.

PRESENT: Honorable Daniel G. Barrett
Acting Supreme Court Justice

STATE OF NEW YORK
SUPREME COURT COUNTY OF WAYNE

WAYNE BROWN,

Petitioner

-VS-

NATIONSTAR MORTGAGE, LLC,

Respondent

DECISION
Index No. 75016

2012

The Plaintiff, Wayne Brown, initiated this proceeding by way of an Order to Show Cause seeking the following relief:

1. Staying the enforcement or execution of the Judgment of Foreclosure, staying the Petition for Removal after Foreclosure Sale set for a hearing on July 9, 2014 in Macedon town Court, and enjoining Nationstar from commencing further eviction proceedings against Brown, pending disposition of an action to be filed by Brown against Nationstar;

2. Declaring, nunc pro tunc, the Modification Agreement to be a legally binding contract and permitting Brown to pay the arrears dating back to February 1, 2014;
3. Vacating and relieving Brown from the Judgment of Foreclosure, rescinding the foreclosure sale to Nationstar, dismissing the Petition for Removal after Foreclosure Sale set for hearing on July 9, 2014 at Macedon Town Court, and permitting Brown to redeem the property by reinstating the terms of the legally binding Modification Agreement;
4. Awarding Brown attorney fees and costs for making this application and counsel provided an Affidavit of Services.

The Order to Show Cause directed Brown to serve this application on Nationstar Mortgage, LLC by serving its counsel, Lance Margollin, Esq. at The Margolin & Weinreb Law Group by regular mail, fax and by e-mail. This service was ordered to be completed by July 7, 2014.

The Order to Show Cause directed Nationstar Mortgage, LLC appear at a Special Term on July 8, 2014 at 1:15 P.M..

Wayne Brown and his counsel appeared before this Court on July 8, 2014, and there was no appearance on behalf of Nationstar Mortgage, LLC, or any communication with the Court regarding its non-appearance.

Mr. Brown's counsel has provided an Affidavit reflecting that service of the Order to Show Cause on Nationstar Mortgage, LLC was executed in conformance with the Order to Show Cause.

On this return date the Court executed an Order which required:

1. The parties appear on August 13, 2014, at 9:30 A.M. for further proceedings on this matter;
2. All eviction proceedings be stayed;
3. Petitioner shall served this Order by regular mail, fax and e-mail.

Petitioner's counsel provided an Affidavit showing compliance with the Order regarding service of the July 8, 2014, Order.

On August 13, 2014, Petitioner and his counsel appeared. There was no appearance by the Respondent or its counsel nor was the Court contacted by the Respondent regarding its non-appearance.

The Court has the unchallenged testimony of Petitioner, Wayne Brown, which indicates he never received notice of the foreclosure action. In December, 2013, Mr. Brown received notification from Respondent, Nationstar, that he was pre-approved for an offer that would lower his mortgage payment and help him avoid foreclosure. His monthly payment would be temporarily lowered to \$176.41 for a period of two years and that this plan would commence on February 1, 2014. This offer was contingent upon Mr. Brown signing before a Notary the provided Modification Agreement and returning it to the Respondent with an initial payment of \$1,891.14. By its terms the offer was to expire on December 31, 2013. On or about December 27, 2013, by Federal Express, Mr. Brown forwarded all signed and notarized documents and two postal money orders totaling \$1,891.14. Mr. Brown submitted proof that the Respondent received the signed documents and money orders on December 30, 2013.

Mr. Brown did not receive anything from the Respondent regarding these materials or the Modification Agreement. In March, Mr. Brown received a letter from The Margolin & Weinreb Law Group, LLP entitled "NINETY (90) DAY NOTICE TO QUIT WITH EXHIBITION OF DEED" along with a copy of the Referee's Deed. The Referee's Deed conveyed title to the subject property to the Respondent.

On or about April 12, 2014, Mr. Brown sent a letter to Respondent's attorney asking them to contact him to discuss a resolution of this matter. The Respondent nor its attorneys responded to this letter.

The Court finds that the Respondent submitted an offer of a loan modification and that Mr. Brown accepted this offer by signing the Loan Modification paperwork and returning it to the Respondent with the requested payment within the time limitations required by the Respondent.

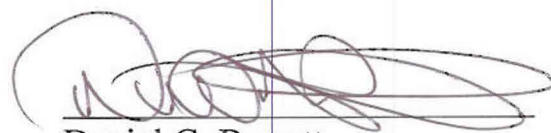
It is the Decision of this Court that:

1. That the Judgment of Foreclosure and Sale entered against Petitioner, Wayne Brown, be vacated and a stay is granted regarding any eviction proceedings;
2. The Respondent, Nationstar Mortgage, LLC, transfer titled of the subject property back to Mr. Wayne Brown at no expense to Mr. Wayne Brown withing sixty (60) days of the filing of this Order;
3. A hearing is granted on the issue of whether the Loan Modification Agreement is binding and/or enforceable against Nationstar Mortgage, LLC;

4. Petitioner, Wayne Brown, is awarded \$45.00 for costs and \$2,500.00 for attorney fees against the Respondent. In the event this amount is not paid by November 15, 2014, Petitioner may apply to this Court for a Judgment in this amount against the Respondent.

Counsel for Petitioner shall prepare an Order based on this Decision.

September 28,
Dated: ~~August 28~~, 2014
Lyons, New York



Daniel G. Barrett
Acting Supreme Court Justice

14 SEP 30 10:49

RECEIVED
WAYNE COUNTY
SUPREME AND COUNTY COURT