

**Board of Mgrs. of Strivers Gardens Condominium,
on Behalf of its Unit Owners v Moore**

2018 NY Slip Op 30564(U)

March 30, 2018

Supreme Court, New York County

Docket Number: 161402/2013

Judge: Debra A. James

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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. DEBRA A. JAMES

PART 59

Justice

-----X
THE BOARD OF MANAGERS OF STRIVERS GARDENS
CONDOMINIUM, ON BEHALF OF ITS UNIT OWNERS,

INDEX NO. 161402/2013

Plaintiff,

MOTION DATE 03/29/2018

- v -

MOTION SEQ. NO. 008

WANDA MOORE, BAC HOME LOAN SERVICING, LP,
CRIMINAL COURT OF THE CITY OF NEW YORK, JOHN DOE

Defendant.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 144, 145, 146, 147, 148, 149
were read on this application to/for

CLARIFY

ORDER

Upon the foregoing documents, it is ordered that the motion is granted only to the extent that the Order dated December 21, 2017 is clarified; and it is further

ORDERED that the application with respect to approval of a further adjournment of the closing is denied, without prejudice to move again upon complete papers and service of the moving papers upon the referee; and it is further

ORDERED that the prior decision dated December 21, 2017 (entered on January 2, 2018) is resettled and corrected as follows:

Upon the foregoing documents, it is ordered that to the extent that the motion of plaintiff seeks reargument, it is

denied as untimely (see Neff v Steven Schwarzapfel, PC, 254 AD2d 137 (1st Dept 1996)]; and it is further

ORDERED that to the extent that the motion of plaintiff seeks corrections to errors in the decision, the motion is granted pursuant to CPLR 5019(a); and it is further

ORDERD that the prior decision and order dated July 26, 2017 (entered on August 14, 2017, is resettled and corrected as follows.

In BAC Home Loan Servicing v Moore, Index No. 110848/2009 (Supreme Court, New York County) by Order dated August 2, 2016, which this court judicially notices upon the request of both parties, Kenny, J. states in pertinent part, "ORDERED that plaintiff's motion to restore the case to the trial calendar is granted..ORDERED that the application for summary judgment is denied for movant's failure to set forth a prima facie entitlement to such relief and given the plethora of factual disputes between the parties, and it is further ORDERED that the cross motion to dismiss is denied, as lacking merit".

Defendant is incorrect that the purchaser at the foreclosure sale must pay off the mortgage lien. However, such purchaser does take ownership of the Condominium Unit subject to the mortgage lien, payment of which has priority over the judgment for the common charges upon foreclosure of the lender's first mortgage. See Bankers Trust Company v Board of Managers

of the Park 900 Condominium, 81 NY2d 1033 (1993). Defendant remains the debtor under the note, and in fact, defendant herein is co-defendant with plaintiff at bar, which purchased the Condominium Unit at the foreclosure sale, in BAC Home Loan Servicing v Moore, supra, in which mortgagee BAC Home Loan Servicing seeks to collect on the note and foreclose on such mortgage. Upon consummation of the sale to the LLC or its assignee, such LLC or assignee, may be joined by either defendant BAC Home Loan Servicing or defendant Wanda Moore, as co-defendants in such mortgage foreclosure action. See 1-2 Bergman on New York Mortgage Foreclosure 2.30 (2017).

This court concurs with plaintiff that in its prior order, this court misapplied Golden City Bank v Hawk Properties Corp., 260 AD2d 281 (1st Dept 1997), as such opinion relates to a deficiency judgment against the debtor, which plaintiff does not seek here. In any event, the value of the unit as a function of the bid and the mortgage lien (whose sum totals approximately \$451,000) constitutes a reasonable market value, using defendant's figure of \$520,000 as a baseline. See State Realty Mortgage Co. v Villaume, 121 AD 793 (1st Dept 1907).

DECISION

The court concurs with the moving assignee that he has standing in this action. See Board of Managers of Regents Park Gardens Condo v Chavez, 136 AD3d 953, 953-954 (2d Dept 2016).

However, contrary to the movant's argument, the statement in the Order dated December 21, 2017 that the LLC and/or its assignee is/are subject to joinder in the pending foreclosure action is an accurate observation. Such observation did not constitute a sua sponte directive or any indication that this court has the power to order joinder of parties in an action over which such judge is not presiding, or that such judge attempted to exercise such power. Such observation was no more than a further explanation of the status of the mortgage lien upon the sale of the Unit subject to such lien.¹

With respect to movant's application to extend the time to close beyond the 90 days specified in the judgment of

¹On oral argument, plaintiff's counsel stated that the herein action has been discontinued against Bac Home Loan Servicing, LP. However, the caption has not been amended, and a review of the court file herein shows that Bac Home Loan Servicing, LP remains a defendant in the herein action. Though a Stipulation of Discontinuance dated May 15, 2014 was filed with the court, such discontinuance was signed only by the attorneys for the plaintiff herein and BAC Home Loan Servicing, and not by defendant Wanda Moore, the other answering defendant at bar. Such Stipulation of Discontinuance was required to signed by all parties, since the time for joinder of issue had run, defendant Moore having served her answer on January 8, 2013. As a court order was required for such discontinuance under CPLR 3217(b), such Stipulation of Discontinuance is a nullity.

foreclosure and sale, the moving papers are incomplete and were not served upon the referee. Movant does not append a copy of the referee's terms of sale, which presumably comport with the judgment of foreclosure, but would require that such referee receive authorization from the court to extend the closing date beyond 90 days, under the terms and conditions of the memorandum of sale. See NYCTL 1966-1 Trust and Bank of New York v EM-ESS Petroleum Corp, 57 AD3d 304, 306 (1st Dept 2008).

Movant may move again for an approval of a further extension of the closing upon a copy of the entire Memorandum of Sale, including all terms and conditions, and service of such motion upon all appearing parties and upon the referee.

3/30/2018
DATE

Debra A. James
DEBRA A. JAMES, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	DO NOT POST	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE