

NYCTL 2016-A Trust v Eckford-Greenpoint LLC

2020 NY Slip Op 30425(U)

February 3, 2020

Supreme Court, Kings County

Docket Number: 504384/2017

Judge: Noach Dear

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FRP-1, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 3rd day of February 2020.

PRESENT:

HON. NOACH DEAR,

J.S.C.

Index No.: 504384/2017

NYCTL 2016-A TRUST,

MS 7, 9, 10

Plaintiff,

DECISION AND ORDER

-against-

ECKFORD-GREENPOINT LLC, et al.,

Defendants,
_____ x

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion:

Papers	Numbered
Moving Papers and Affidavits Annexed (MS-7)	<u>1</u>
Plaintiff's Opp to MS-7	<u>2</u>
Motion to Reargue/Renew (MS-9)	<u>3</u>
Plaintiff's Opp to MS-9	<u>4</u>
Cross-Motion (MS-10)	<u>5</u>
Reply	<u>6</u>

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KINGS COUNTY CLERK
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Defendant Eckford-Greenpoint, LLC, moves (MS-9) to renew and reargue its prior motion to vacate the JFS and the foreclosure sale and for leave to file a late answer. Defendant also moves (MS-7) separately by order to show cause to set aside the foreclosure sale and vacate the JFS. Plaintiff opposes both motions. Non-party Eric Pang, the purchaser at the foreclosure auction, cross-moves (MS-10) to intervene in the action to oppose Defendant's motions.

As an initial matter, the non-party purchaser's motion (MS-10) to intervene in the action is hereby granted pursuant to CPLR 1012(a). The Court will thus consider the purchaser's opposition to Defendant's motions.

Defendant's motion seeking reargument is untimely. CPLR § 2221(d) provides that a motion for leave to reargue "shall be identified specifically as such; shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion . . . and shall be made within thirty days after service of a copy of the order determining the prior motion." As Defendant moved to reargue more than 30 days after service of this Court's July 10, 2019 order, its motion seeking reargument is untimely.¹

Pursuant to CPLR § 2221(e), a motion for leave to renew "shall be identified specifically as such shall be based upon new facts not offered on the prior motion . . . and shall contain reasonable justification for the failure to present such facts on the prior motion." The determination of a motion for leave to renew "is addressed to the sound discretion of the Supreme Court." *In re Swingearn*, 59 A.D.3d 556, 557 (2d Dep't 2009). In support of its renewal motion, Defendant provides proof of funds showing that it has the ability to pay the underlying tax debt immediately. However, Defendant does not proffer a reason for its failure to present this evidence at the time of the prior motion. In any event, Defendant's time to redeem expired with the foreclosure sale. It is well-established that a foreclosure sale extinguishes the equity of redemption whether or not a deed has actually been delivered to the purchaser.

Deutsche Bank Co. of California, N.A. v. DePalo, 38 A.D.3d 490 (2d Dep't 2007).

In addition, Defendant contends it is entitled to renewal based on evidence that the

¹ The Notice of Entry of this Court's July 10, 2019 order was e-filed on NYSCEF on July 19, 2019.

summons and complaint were “returned to Albany because the property is a construction site.”² Even if Defendant could not have provided such evidence at the time of the prior motion, it would not have changed the outcome of this Court’s decision. As the Court noted, Defendant did not address the merits of the foreclosure action and “[i]n the absence of a potentially meritorious defense, vacatur under either CPLR 5015[a][1] and/or 317 would be inappropriate.”

In light of the foregoing, Defendant’s motion to reargue and renew (MS-9) is denied.

Next, Defendant argues that the foreclosure sale should be set aside because the notice of sale contained a defect that prejudiced a substantial right of Defendant. Specifically, Defendant contends that because the notice was published in The Home Reporter – a weekly newspaper published in Bay Ridge, Brooklyn – the sale was not well-publicized to permit bidders located near the property to participate in the bidding process. Defendant argues that the Home Reporter is published in Bay Ridge, which has a population of 80,000 and is “not circulated to reach all the people of Brooklyn,” which is populated by over 2.5 million people.

Contrary to Defendant’s contention, RPAPL 231(6) applies herein. RPAPL 231(6) permits the Court to set aside a sale for failure to comply with the provisions of section 231 only “within one year after the sale, but not thereafter.” Defendant contends that the one-year limit should not apply because Defendant seeks to set aside a sale due to a jurisdictional defect and not merely pursuant to RPAPL 231. However, the Court already addressed Defendant’s jurisdictional argument. Insofar as Defendant seeks to set aside the sale for a defect in the notice of sale, RPAPL 231(6) applies. As the sale occurred on May 31, 2018, Defendant untimely seeks this relief.

Nevertheless, this Court notes that RPAPL 231 permits publication in a weekly

² Defendant does not actually provide this evidence but states it will do so “upon receipt.”

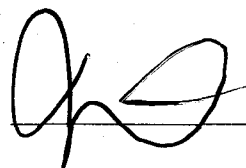
newspaper in the city of New York. RPAPL 231(2)(a) provides that a notice of sale shall be published:

...in a newspaper published in the county in which the property is located . . . by publishing notice of the sale in such a daily, semi-weekly or tri-weekly paper, except that where such real property is located in a county within the city of New York such publication shall be in a daily newspaper published within such county, or in a weekly paper published in a city or in such incorporated village.

As the notice of sale in this case was published in a weekly newspaper (The Home Reporter), publication was proper. Defendant's argument further fails in light of Second Department precedent holding that the size and circulation of the newspaper is irrelevant where the newspaper is published in the county where the property is located, as it is here. *Guardian Fed. Sav. & Loan Assn v. Horse-Hawk Holding Corp.*, 72 AD2d 737 (2d Dep't 1979).

In light of the foregoing, Defendant's motions (MS-7 and MS-9) are denied in their entirety and the purchaser's cross-motion (MS-10) is granted. The Court hereby extends the time for Plaintiff and the purchaser to close title until ninety days following entry of this order.

ENTER:



Hon. Noach Dear, J.S.C.