

1711 President St. LLC v Newton

2020 NY Slip Op 31749(U)

June 4, 2020

Supreme Court, Kings County

Docket Number: 502137/19

Judge: Edgar G. Walker

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This opinion is uncorrected and not selected for official publication.

At an IAS Part 90 of the Supreme Court of the State of New York, held in and for the County of Kings, on the 4th day of June, 2020.

PRESENT: HON: EDGAR G. WALKER
JUSTICE, SUPREME COURT

-----X
1711 PRESIDENT ST. LLC, Plaintiff

Index No.:502137/19

- against -

JUDGMENT OF PARTITION AND SALE

ANGELA MASON NEWTON a/k/a
ANGELA NEWTON a/k/a ANGELA MASON,
Defendant.

-----X

UPON the Summons and Verified Complaint and Notice of Pendency, containing all the particulars required to be stated therein, having been duly filed in this action in the Office of the Clerk of the County of Kings on January 30, 2019, and which have not been amended to add new parties or to embrace real property not described in the original complaint, and this action having been commenced in the County where the real property sought to be sold is located; and

UPON the Order of Reference herein of the Hon. Edgar G. Walker, J.S.C., dated June 19, 2019, *inter alia*, declaring Defendant, Angela Mason Newton ("Newton") in default of the action; declaring her liable to Plaintiff for Plaintiff's costs, additional allowance, and disbursements; and duly referring the action to Gregory T. Cerchione, Esq., *inter alia*, to hear and report on "the respective interests of the Plaintiff and Defendant in and to the Premises, as previously defined; to ascertain whether there is any creditor, not a party, who has a lien on the undivided share or interest of any party in the Premises;

and whether the Premises may be sold in parcels or as a whole unit"; and

UPON reading the Report of Referee, Gregory T. Cerchione, Esq. dated November 25, 2019, and filed with the office of the Kings County Clerk on December 5, 2019 (the "Referee's Report"), whereby it appears, *inter alia*, that this action is brought to enforce partition and sale of real property located at 1711 President Street, Brooklyn, New York 11213, and more particularly described as Block 1403, Lot 72 on the land tax map of the City and State of New York, County of Kings (the "Premises), and which Report sets forth the ownership interests of each of the parties in and to the Premises, said parties being the only owners thereof; makes certain recommendations as to the priority and allocation of payments to creditors and the parties out of the proceeds of any prospective sale of the Premises; and reports that the Premises cannot be partitioned without great prejudice to the parties, and must, instead, be sold as a single unit, and

UPON reading and filing Plaintiff's Notice of Motion to confirm the Referee's Report and seeking entry of a Judgment of Partition and Sale herein, dated December 5, 2019, the Affirmation of Michael T. Sucher in support thereof, affirmed on December 5, 2019, and other supporting papers; and no opposition papers having been filed,

NOW, on Motion of MICHAEL T. SUCHER, ESQ., the attorney for the Plaintiff, 1711 PRESIDENT ST. LLC., on default of Defendant, Angela Mason Newton, it is:

ORDERED, that the motion is granted; and it is further

ORDERED, ADJUDGED AND DECREED, that the said Referee's Report of Referee, GREGORY T. CERCHIONE, ESQ., dated November 25, 2019

and entered on December 5, 2019, be, and the same is hereby, to the extent provided for herein, ratified and confirmed; and it is further

ORDERED, ADJUDGED AND DECREED, that 1711 PRESIDENT ST. LLC. is declared the owner of an undivided eighty (80%) percent fee ownership interest in the Premises; and it is further

ORDERED, ADJUDGED AND DECREED, that defaulting Defendant, ANGELA MASON NEWTON, is declared the owner of a undivided twenty (20%) percent fee ownership interest in the Premises; and it is further

ORDERED, ADJUDGED AND DECREED, that the Premises be sold, in one parcel, at public auction in Room 224 of Kings County Supreme Court, 360 Adams Street, Brooklyn, New York 11201, on a Thursday afternoon at 2:30 P.M., by and under the direction of Gregory T. Cerchione, Esq. whose address is 150 Broadway, FL23, New York, NY 10038, and whose telephone number is 212-285-3800, who is hereby appointed Referee for that purpose, and that the said Referee shall set the date of sale and give public notice of the time and place of sale in accordance with RPAPL §231 in Brooklyn Eagle, and it is further

ORDERED, ADJUDGED AND DECREED that said Referee shall accept at such sale the highest bid offered by a 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 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 that the

first successful bidder fails to immediately pay the ten percent deposit as provided herein or fails to execute the Terms of Sale immediately following the bidding upon the Premises, the Premises 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 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 forty-five days may be stipulated by Plaintiff, with the Referee's consent, up to ninety days from the date of sale, but any adjournment beyond ninety days may be set 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 Judgment in his/her own name as Referee in a bank of his choice within the City of New York, and it is further

ORDERED, ADJUDGED AND DECREED, that in the event Plaintiff is the purchaser at the closing of title, the Referee shall accept the balance of the Plaintiff's fractional ownership share, as ordered, adjudged and decreed herein, if any, toward the balance of the purchase price to be paid; and it is further

ORDERED, ADJUDGED AND DECREED that said Referee on receiving the proceeds of such sale shall, with the following priority and allocation between the Plaintiff and the Defendant, forthwith pay therefrom directly from the gross sale proceeds:

FIRST: To Plaintiff, the expenses of the sale, including the cost of advertising as shown on the bills presented and certified by said Referee to be correct, copies of which shall be annexed to the Report of Sale. The Referee shall not be held responsible for the payment of penalties or fees pursuant to this appointment. The Purchaser(s) shall hold the Referee harmless from any such penalties or fees accessed;

SECOND: Reimbursement of \$146,837.77 to Plaintiff, representing 20% of proportional expenses it paid 100% of through October 16, 2019;

THIRD: Reimbursement to Plaintiff for twenty percent (20%) of any additional amounts that are expended by or on Plaintiff's behalf after October 16, 2019, for the costs, improvement, maintenance and the taxes of the Premises, if suitable written proof of such payments are produced to the Referee at the closing of title;

FOURTH: 91.64% (100% - 8.36%) of the then balance due on the tax lien recorded at CRFN 2013000371678;

FIFTH: 61.17% (100% - 38.83%) of the then balance due on the tax lien recorded at CRFN 2016000292410;

SIXTH: Pursuant to Real Property Actions and Proceedings Law § 1354, in accordance with their priority according to law, taxes, assessments, sewer rents, water rates and any charges placed upon the property by a city agency which have priority over the foreclosed mortgage, which are liens on the premises at the time of sale with such interest or penalties which may have lawfully accrued thereon to the

date of payment; except as to ECB and DOB charges, fines and other penalties, as set forth hereafter

and that the remaining proceeds be split into an eighty percent (80%) pool representing Plaintiff's tentative share of the resulting proceed ("Plaintiff's Fund"), and a twenty percent (20%) pool representing Defendant, Angela Mason Newton's tentative share of the resulting proceeds ("Defendant's Fund"); and that said Referee pay the following sums:

(From the Defendant's Fund)

SEVENTH: To Plaintiff, the sum of \$ 1,190.68 , to recompense it for its payment to publish a Notice of Lienors to Present Claim, and the costs to obtain a supplemental title report, with interest thereon from the date hereof;

EIGHTH: To Plaintiff, the sum of \$ 1,759.00 as and for its costs, disbursements and as-of-right additional allowances in this action, as reflected in its bill of costs, with interest thereon from the date hereof;

NINTH: all open DOB and ECB fines, penalties and other charges;

TENTH: Reimbursement to Plaintiff for all DOB and ECB fines, penalties and other charges that are paid by or on Plaintiff's behalf after October 16, 2019, if suitable written proof of such payments are produced to the Referee at the closing of title;

ELEVENTH: 8.36% of the then balance due on the tax lien recorded at CRFN 2013000371678;

TWELFTH: 38.83% of the then balance due on the tax lien recorded at CRFN 2016000292410;

THIRTEENTH: Reimbursement of \$64,887.15 to Plaintiff, representing 100% of the charges it paid prior to October 15, 2019, that are found to be the Defendant's sole responsibility;

FOURTEENTH: any judgment lien or other lien that stands against the name of Defendant, Newton - except in the event Defendant, Newton is the auction sale purchaser, in which case she is given the option of taking title subject to such judgment and other personal liens; and

FIFTEENTH: The balance of Defendant's Fund remaining to be distributed to Defendant, Newton; and that said Referee pay the following sums:

(From the Plaintiff's Fund)

SIXTEENTH: Any judgment lien or other lien that stands against the name of Plaintiff, or its predecessors in interest - except in the event Plaintiff is the auction sale purchaser, in which case it is given the option of taking title subject to such judgment and other personal liens; and

SEVENTEENTH: The balance of the Plaintiff's Fund to be distributed to Plaintiff; and it is further

ORDERED, ADJUDGED AND DECREED, that if such Referee intends to apply for further allowance for his fee, an application shall be made to the Court therefor upon due notice to those parties entitled thereto; and it is further

ORDERED, ADJUDGED AND DECREED, that said Referee take the receipt(s) for the amounts paid as heretofore directed in item Marked "FIRST", and file it with his Report of Sale; and it is further

ORDERED, ADJUDGED AND DECREED, that the purchaser or purchasers at such sale be let into possession on production of the Referee's deed or deeds; and it is further

ORDERED, ADJUDGED AND DECREED, that each and all of the parties in this action and all persons claiming under them, be and they are hereby forever barred and foreclosed of all right, claim, lien, title and interest in said Premises and each and every part thereof; except to the extent any party herein becomes the successful auction sale bidder for the Premises, and is put into title thereafter by the Referee, and it is further

ORDERED, ADJUDGED AND DECREED, that said Premises is to be sold in one parcel in "as is" physical order and condition on the day of sale, subject to any state of facts that an inspection of the Premises would disclose, any state of facts that an accurate survey of the premises would show, any covenants, restrictions, declarations, reservations, easements, right of way and public utility agreements of record, any building and zoning ordinances of the municipality in which the Premises is located and possible violations of same, any rights of tenants or persons in possession of the Premises, prior liens of record, if any, except those liens addressed in section 981 of the Real Property Actions and Proceedings law, and any equity of redemption of the United States of America to redeem the Premises within 120 days from the date of sale. Risk of loss shall not pass to purchaser until closing of title, and it is further


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(c) of the Chief Judge, and if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall notify the Appointing Judge forthwith; and it is further

ORDERED, that a copy of this Judgment, with Notice of its Entry, shall be served upon the designated Referee, the co-owner of the Premises, Defendant, Angela Mason Newton, any tenants named in this action and any other party entitled to notice within twenty days after the date Plaintiff is able to obtain a copy of this judgment, as entered by the Clerk of the County of Kings; and it is further

ORDERED, that the Plaintiff shall serve a copy of the Notice of Sale upon the co-owner of the Premises, Defendant, Angela Mason Newton, at both her last known address and the property address (affidavit of such service shall be presented to the Foreclosure Clerk on or before the auction sale) and upon the Foreclosure Department at least ten (10) days prior to the scheduled sale.

ENTER: 

J.S.C.