

**Halada v Citibank, N.A.**

2023 NY Slip Op 33231(U)

September 14, 2023

Supreme Court, New York County

Docket Number: Index No. 653196/2023

Judge: Suzanne J. Adams

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SUZANNE J. ADAMS PART 39TR

Justice

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JOZEF HALADA, DANA DANOVA,
Plaintiff,

- v -

CITIBANK, N.A., CENLAR, FSB, ADAM PLOTCH, BATRA
PLOTCH, 399 EAST 72ND APARTMENT OWNERS,
INC., XYZ CORP I, XYZ CORP II, JOHN DOE, JANE DOE,

Defendant.

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INDEX NO. 653196/2023
MOTION DATE N/A
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 15, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31

were read on this motion to/for INJUNCTION/RESTRAINING ORDER

Upon the foregoing documents, it is ordered that plaintiff's motion by order to show cause for a preliminary injunction is granted. Plaintiffs in this action purchased 832 shares of stock in defendant 399 East 72nd Street Apartment Owners, Inc. in 1998, and have lived in the co-operative apartment associated with said shares in the building at 399 East 72nd Street since that time. In May 2004 plaintiffs pledged the shares as collateral for a home equity line of credit ("HELOC") secured by a financing statement in favor of non-party CitiMortgage, Inc. Plaintiffs maintain that they made all monthly payments on the HELOC until April 2020, at the onset of the pandemic, but was able to resume payments in early 2021. At that point, plaintiffs allege that they experienced difficulty in making payments via transfer from their Citibank checking account. They believed the issue was resolved in September 2021 when they began making payments directly to defendant Cenlar FSB, the mortgage servicer. However, in July 2022 they were unable to access their account information on Cenlar's online portal, and therefore mailed their payment

instead. Weeks later the payment was returned and they were informed that the loan was in foreclosure and to contact the foreclosure attorneys. Plaintiffs state that despite their numerous calls to the foreclosure counsel, they were unable to reach anyone to substantively discuss the status of the HELOC. Meanwhile, the UCC financing statement was assigned to defendant Citibank N.A. on March 21, 2023. Plaintiffs further state that in June 2023 they were advised by the foreclosure counsel that their shares had been sold at a public auction on June 7, 2023, to defendants Adam Plotch and Batra Plotch. Plaintiffs then commenced this action a month later for a declaratory judgment that the sale of their shares is invalid, null, and void, and move by order to show cause to preliminarily enjoin defendants from closing on the sale and/or transferring plaintiffs' shares during the pendency of this action. Adam Plotch opposes the motion. Citibank N.A. and Cenlar FSB filed opposition subsequent to the July 19, 2023, oral argument of this motion before the court. Their opposition cites to the documents proffered by plaintiffs on this motion: a 90-day notice of foreclosure from Cenlar dated April 15, 2022, and a notice of sale at public auction dated March 21, 2023.

Entitlement to a preliminary injunction under CPLR § 6301 is established by a showing of: “(1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the provisional relief is withheld; and (3) a balance of equities tipping in the moving party’s favor.” *Doe v. Axelrod*, 73 N.Y.2d 748, 750 (1988). The purpose of a preliminary injunction is to maintain the *status quo* pending a trial. *See Terrell v. Terrell*, 279 A.D.2d 301, 304 (1<sup>st</sup> Dep’t 2001); *Sau Thi Ma v. Xuan T. Lien*, 198 A.D.2d 186, 187 (1<sup>st</sup> Dep’t 1993). The ultimate relief sought by plaintiffs’ herein is the voiding of the aforementioned foreclosure sale of their. “A court may, in the exercise of its equitable powers, set aside a foreclosure sale where there is evidence of fraud, collusion, mistake, or misconduct. [citations omitted] In order to provide a basis for setting aside

a sale, the evidence of fraud, collusion, mistake, or misconduct must cast suspicion on the fairness of the sale.” *Wells Fargo Bank, N.A. v. Pickett*, 187 A.D.3d 965, 966 (2<sup>nd</sup> Dep’t 2020). Furthermore, courts will decline to overturn a foreclosure sale based on allegations that the sale price was inadequate, “except in the narrow circumstance where the price alone is so inadequate as to shock the court’s conscience. *DeRosa v. Chase Manhattan Mtge. Corp.*, 10 A.D.3d 317, 322 (1<sup>st</sup> Dep’t 2004). “[] Foreclosure sales at prices below 10% of value have consistently been held unconscionably low” in New York. *Polish Natl. Alliance of Brooklyn v. White Eagle Hall Co.*, 98 A.D.2d 400, 408 (2<sup>nd</sup> Dep’t 1983).

The evidence before the court supports the granting of the requested preliminary injunction. There is a likelihood of plaintiffs’ success on the merits of their claims. According to the Notice of Sale, the estimated value of the premises attached to plaintiffs’ shares is \$2,101,000.00, yet the purchase price of the shares at auction was \$54,800.00, which is less than 3% of their value. As such, this price “shocks the conscience of the court” and may be valid grounds for an ultimate finding that the foreclosure sale should be deemed void. In addition, Citibank N.A. and Cenlar do not address plaintiffs’ contentions that they made payments on the HELOC subsequent to the date of the 90-day notice, were unable to access Cenlar’s online portal to make payments, and generally seemed unable to get anyone to address their concerns regarding the status of the HELOC. These contentions raise the question of whether there was a mistake on the part of the lender in considering or determining plaintiffs’ debt to be delinquent or otherwise deserving of foreclosure. The prospect of irreparable injury to plaintiffs is readily apparent, as they and their children are at risk of losing their home of over two decades. The balance of the equities lies with plaintiffs for the same reason. None of the defendants have quite the same personal stake in the outcome of this action.

Accordingly, it is hereby

ORDERED that defendants, including their agents or assigns, are enjoined during the pendency of this action from closing on the sale of and/or transfer of plaintiffs' 832 shares of stock and associated proprietary lease in the defendant 399 East 72<sup>nd</sup> Street Apartment Owners, Inc., and from taking any action with respect to said shares and proprietary lease that is adverse to the interest of plaintiffs herein; and it is further

ORDERED that the undertaking is fixed in the sum of \$ 1,000.00 conditioned that plaintiffs, if it is finally determined that they were not entitled to an injunction, will pay to the defendants all damages and costs which may be sustained by reason of this injunction; and it is further

ORDERED that within 35 days of the date of this order, the parties to this action shall submit to the Part Clerk of Part 39 an agreed upon Preliminary Conference Order for the judge's review and signature, as per the Part Rules.

This constitutes the decision and order of the court.



<u>9/14/2023</u>			<u>SUZANNE J. ADAMS, J.S.C.</u>
<b>DATE</b>			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE