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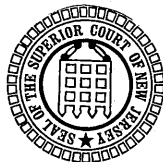
MAR 16 2018

SUPERIOR COURT OF NEW JERSEY

Barry P. Sarkisian, P.J.Ch.

HUDSON VICINAGE

CHAMBERS OF
BARRY P. SARKISIAN
PRESIDING JUDGE
CHANCERY-GENERAL EQUITY



Brennan Courthouse
583 Newark Avenue
Jersey City, New Jersey 07306

NOT FOR PUBLICATION WITHOUT THE
WRITTEN APPROVAL OF THE COMMITTEE ON OPINIONS

LETTER OPINION

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Thomas Kelly, Pro Se Defendant
201 Queensberry Court
Pittsburgh, Pennsylvania 15237

Re: U.S. Bank National Association v. Thomas Kelly, et al
Docket No. F-1292-16
Plaintiff's Motion to Waive the Redemption Period of the United States
Motion Returnable March 16, 2018
Date of Decision: March 16, 2018

Introduction

Presently before the Court is a motion filed by Plaintiff, U.S. Bank National Association, as Trustee under the Pooling and Servicing Agreement dated as of February 1, 2007, GSAMP Trust 2007-HE1, Mortgage Pass-Through Certificates, Series 2007-HE1 ("Plaintiff") in a foreclosure action in which Plaintiff seeks an order from the Court extinguishing the statutory right of defendant, the United States, as the junior lien-holder title to the subject property, to redeem said property for a period of one-year after that property was purchased by Plaintiff at a judicial sale on September 28, 2017. Although United States' one-year period of redemption is set forth in 28 U.S.C. 2410, Plaintiff contends that the Court should extinguish the United States' right to redeem given that the United States is a non-answering defendant to Plaintiff's foreclosure complaint and has not filed opposition to the present motion. For the reasons set forth herein, the Court denies Plaintiff's motion given that a court of equity will not allow a remedy that is contrary to law.

Facts

Defendant, Thomas Kelly, took out a mortgage-backed loan from Plaintiff's predecessor on November 22, 2006. That mortgage was recorded on January 10, 2007 and related to the property located at 689 Luis Munoz Marin Boulevard in Jersey City, New Jersey ("the Property").

Plaintiff filed their Amended Complaint in Mortgage Foreclosure on September 9, 2016, naming Thomas Kelly, Zephyr Lofts Condominium Association, Inc., and the United States as defendants together with several fictitious parties. The United States was named as a defendant due to the Department of Justice Notice of Lien for Fine and/or Institution Imposed pursuant to the Anti-Terrorism and Effective Death Penalty Act of 1996 in the amount of \$94,867.08. This lien was entered on December 15, 2009 and recorded in the Hudson County Register on January 5, 2010. Thus, the United States, as a defendant in this Mortgage Foreclosure action, was served with process in the Southern District of New York, the district where the subject lien arose, as well as at the Attorney General's office in the District of New Jersey and in at the Department of Justice in Washington D.C. The United States did not file an Answer, contesting or otherwise.

Final Judgment was entered in favor of Plaintiff on May 10, 2017 in the amount of \$834,114.78. The property went to Sheriff's sale of September 28, 2017. Plaintiffs bid on the property and bought it back for the sum of \$345,000.

Plaintiff now brings this motion to extinguish the United States' statutorily mandated redemption period for purpose of marketing the property for private sale. This motion was served upon the United States at the aforementioned Federal offices and is uncontested.

After reviewing Plaintiff's motion, the Court found that the motion lacked a brief explaining the legal authority by which the Court might grant the relief requested therein. Accordingly, the Court adjourned the return date from March 2, 2018 to March 16, 2018 to give Plaintiff an opportunity to submit such a brief. Plaintiff's brief, submitted on March 6, 2018 sets forth the statutory code providing the one-year period of redemption for the United States, but notes that Plaintiff did not find any legal authority addressing the Court's ability to waive that right. Instead, Plaintiff relies on the equitable power of the Court to waive that statutorily mandated period of redemption.

Discussion

The United States was named as a defendant in this mortgage foreclosure action as a subordinate lienholder in accordance with R. 4:64. However, the United States, as a lien holder in a foreclosure action, is subject to different rules than a private party or State-entity lien holder. More specifically, 28 U.S.C. 2410 provides the procedures for naming the United States as a defendant in a Mortgage Foreclosure action. Pursuant to 28 U.S.C. 2410(a),

[T]he United States may be named a party in any civil action or suit in any district court, or in any State court having jurisdiction of the subject matter - -

- (1) to quiet title to,
- (2) to foreclose a mortgage or other lien upon,
- (3) to partition,
- (4) to condemn, or
- (5) of interpleader or in the nature of interpleader with respect to, real or personal property on which the United States has or claims a mortgage or other lien.

Subsection (b) of the aforementioned statute sets forth the requirement that the complaint or pleading filed in an action under subsection (a) "shall set forth with particularity the nature of the interest or lien of the United States."

Here, Plaintiff's complaint names the United States as a defendant in its mortgage foreclosure action and attaches the Notice of Lien filed by the United States Department of Justice as an exhibit to the Amended Complaint in accordance with the requirements set forth in 28 U.S.C. 2410(b).

However, Plaintiff, in filing this action feels that it is somehow exempt from proceeding in accordance with the requirements set forth in subsection (c) of this statute. 28 U.S.C. 2410(c) provides that in

an action to foreclose a mortgage or other lien, naming the United States as a party under this section, must seek judicial sale. A sale to satisfy a lien inferior to one of the United States shall be made subject to and without disturbing the lien of the United States, unless the United States consents that the property may be sold free of its lien and the proceeds divided as the parties may be entitled. Where a sale of real estate is made to satisfy a lien prior to that of the United States, the United States shall have one year from the date of sale within which to redeem . . .

The judicial sale of the Property here was done to satisfy Plaintiff's mortgage-lien which was recorded on January 10, 2007, approximately three (3) years before the United States' lien was recorded on February 18, 2010. Thus, the United States as the holder of a lien, which was recorded subsequent to Plaintiff's, has a statutorily mandated period of one (1) year from the date of the September 28, 2017 sale in which it may redeem – a period which has not yet expired.

Equity follows the law and does not supersede it. Its mission is to soften the rigor of the law and provide a remedy where, without the interference of a court of equity, the person aggrieved would be remediless.

Glaser v. Achtel-Stetter's Rest., 106 N.J. Eq. 150, 153 (1930).

Here, the Court will not use its powers of equity to supersede or even soften United States' right to redeem set forth in 28 U.S.C. 2410(c). The maxim that equity follows the law provides that the Court "is bound to regard the rights of the parties as established by law unless a countervailing equity calls for relief." Camden Trust Co. v. Handle, 132 N.J. Eq. 97, 108 (1942).

Plaintiff's interest in marketing the Property and selling it prior to the one-year redemption period's expiration does not provide a "countervailing equity" to the United States' statutorily mandated right to redeem the Property. The Court will not circumvent this statutory right just because the United States did not provide opposition to this motion, and did not answer or otherwise make a motion in response to the amended complaint.

Conclusion

For the reasons set forth herein, the Court hereby **denies** Plaintiff's motion for an order waiving the redemption period of the United States.

SO ORDERED,

A handwritten signature in black ink, appearing to read 'Barry P. Sarkisian', is written over a horizontal line.

Hon. Barry P. Sarkisian, P.J.Ch.

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