

ORIGINAL

SHORT FORM ORDER

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HON. JEFFREY D. LEBOWITZ
Justice

IAS PART 5

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HSBC BANK USA., NATIONAL ASSOCIATION
AS TRUSTEE FOR NAAC 2007-2
3476 Stateview Boulevard
Ft. Mill, SC 29715,

Plaintiffs,

Index No.: 30697/07

Motion Date:
January 20, 2010

- against-

SUNEEL RAMPERSAD, COUNTRYWIDE HOME
LOANS, NEW YORK CITY ENVIRONMENTAL
CONTROL BOARD, NEW YORK CITY TRANSIT
ADJUDICATION BUREAU, PEOPLE OF THE
STATE OF NEW YORK, UNITED STATES OF
AMERICA ACTING THROUGH IRS,

JOHN DOE (Said name being fictitious, it being
the intention of Plaintiff to designate any and all
occupants of premises being foreclosed herein,
and any parties, corporations, or entities, if any,
having or claiming an interest or lien upon the
mortgaged premises),

Defendants.

Cal. No.: 21
Seq. No.: 4

1 2010 FEB -2 A 11:53
QUEENS COUNTY
CLERKS OFFICE
FILED

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The following papers numbered 1 to 8 read on this Order to Show Cause by defendant to vacate the sale of the subject premises and strike the Referee's deed.

	<u>Papers Numbered</u>
Order to Show Cause - Affidavits - Exhibits	1 - 5
Affirmation in Opposition - Exhibits	5 - 7
Reply	8

Upon the foregoing papers and in the interest of justice and judicial economy, it is ordered that this Order to Show Cause by defendant is decided as follows:

The owner of the equity of redemption has the right to redeem at any time before an actual sale under a Judgment of Foreclosure. (*Deutsche Bank Co. Of California, N.A. v DePalo*, 38 AD3d 490, 490 [2007]; *Bank of New York v Ortiz*, 30 AD3d 551, 551 [2006].) The right to redeem is extinguished by the foreclosure sale regardless of whether a deed has been delivered to the purchaser at the sale. (*Bank of New York v Ortiz*, 30 AD3d at 551.) A court, however, has the discretion to set aside a foreclosure sale where there is evidence of fraud, collusion, mistake, or misconduct. (*Cicorelli v Hickey's Carting, Inc.*, 66 AD3d 626, 887 NYS2d 176, 2009 NY Slip Op 07219 [Oct. 6, 2009]; *Maloney v Talbot*, 55 AD3d 568, 569 [2008]; *Mortgage Elec. Registration Sys., Inc. v Schotter*, 50 AD3d 983, 984 [2008].)

In the case at bar, the subject property was sold on June 5, 2009. The court appointed referee, Catherine Glover, conveyed the deed to the buyer HSBC BANK USA, but it has not yet been recorded. Defendant RAMPERSAD has provided sufficient evidence to this court that he was in good faith negotiations for loss mitigation up to the sale and for several months thereafter. Thus, the court holds that the sale of the property must be vacated, due to the mistake on the part of the Bank regarding the continued negotiations. The defendant may then continue loss mitigation since once a sale is vacated in a foreclosure action, it is as though the sale never took place. *See, e.g., Hamilton v. Hittleman*, 224 A.D. 390 (1928).

Accordingly, this Order to Show Cause by defendant is granted to the extent that the sale of the subject property to HSBC BANK USA is hereby vacated. Defendant's application to vacate the Judgment of Foreclosure is denied.

Date: January 27, 2010



JEFFREY D. LEBOWITZ, J.S.C.

QUEENS COUNTY
CLERKS OFFICE
FILED

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ATTORNEY AFFIRMATION OF SERVICE

State of New York :

County of Queens :

2/22/10

I, Brian McCaffrey, affirm to be true under the penalties of perjury, that I am an attorney duly admitted to practice law in the Courts of the State of New York, and that I am not a party to this action, and that on the ~~5th~~ day of January 2010, I served the annexed Notice of Entry on the party noticed herein below, address designated by said attorney for that purpose in the following manner:

By mailing same in a sealed envelope, with postage paid thereon, in an official depository of the U.S. Postal Service within the State of New York, addressed to the last known addressee(s) as follows:

Dated: February 23, 2010



Brian McCaffrey, Esq.

To:

Law Office of Steven J. Baum, Esq.
900 Merchants Concourse ste. 412
Westbury, N.Y. 11590

Law Office of Steven J. Baum
P.O. Box 1291
Buffalo, N.Y. 14240-1291

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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HSBC BANK USA, NATIONAL ASSOCIATION
AS TRUSTEE FOR NAAC 2007-2
3476 Stateview Boulevard
Ft. Mill, SC 29715

Plaintiff,

-against-


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BUREAU, PEOPLE OF THE STATE OF NEW
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ACTING THROUGH THE IRS, JOHN DOE
(Said name being fictitious, it being
The intention of Plaintiff to designate any and all
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And any parties, corporations, or entities, if any,
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mortgaged premises.)

Index No. 30697/07

NOTICE OF ENTRY

PLEASE TAKE NOTICE that the within is a true copy of a Short Form Order that was
entered in this action in the office of the County Clerk of Queens on February 2nd 2010

Dated: Feb. 22nd 2010



Brian McCaffrey, Esq.
73-26 263rd St.
Glen Oaks, N.Y. 11004
(516) 445-4447

To: Law Office of Steven J. Baum, Esq.
900 Merchants Concourse ste. 412
Westbury, N.Y. 11590

Law Office of Steven J. Baum
P.O. Box 1291
Buffalo, N.Y. 14240-1291

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