

ORIGINAL

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DENIS J. BUTLER IAS Part 12
Justice

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U.S. BANK TRUST, N.A., AS TRUSTEE FOR
LSF9 MASTER PARTICIPATION TRUST,

Index
Number: 713441/2016

Plaintiff,

-against-

Motion Date:
December 17, 2019

FELIX A. GOMEZ; NEW YORK CITY PARKING
VIOLATIONS BUREAU; NEW YORK CITY TRANSIT
ADJUDICATION BUREAU, FLEET NATIONAL
BANK; NEW YORK CITY ENVIRONMENTAL
CONTROL BOARD; NEW YORK STATE DEPARTMENT
OF TAXATION AND FINANCE; ARIEL GOMEZ

Motion Seq. No.: 008

Defendant(s).

FILED
JAN 27 2020
COUNTY CLERK
QUEENS COUNTY

The following papers were read on this motion by defendant Feliz A. Gomez for an order, pursuant to CPLR 5015 (a) (1) and (3), vacating the judgment of foreclosure and sale; permitting defendant Gomez to interpose a late answer and setting the matter down for a hearing on the allegations regarding, inter alia, the note and/or setting aside the foreclosure sale and compelling plaintiff to accept the certified checks in the amount necessary to satisfy the mortgage; and cross-motion by the proposed intervenor/third-party purchaser Kehilas Bais Yisroel for an order, pursuant to CPLR 1012 or 1013 and 1018, granting leave to intervene.

Papers
Numbered

Notice of Motion, Affirmation, Affidavit,
Exhibits.....E136-144
Affirmation In Opposition, Affidavit, Exhibits...E170-186
Notice of Cross-Motion, Affirmation, Exhibits.....E220-229

Upon the foregoing papers, it is ordered that this motion and cross-motion are determined as follows:

In this action to foreclose upon a residential mortgage, defendant Gomez seeks, inter alia, to vacate the judgment of foreclosure and sale. It is uncontroverted that plaintiff commenced this action on November 8, 2016, due to defendant Gomez's default under the mortgage loan on December 14, 2013, and that the foreclosure sale did not occur until October 11, 2019. Counsel for defendant Gomez fails to address the specific procedural history of this action, while merely arguing that "so many foreclosures" are being "pushed through so quickly to sale."

Pursuant to CPLR 5015 (a) (1), in order to vacate a default in appearing or answering, a defendant must provide a reasonable excuse for the default and demonstrate the existence of a potentially meritorious defense (see *US Bank, N.A. v Samuel*, 138 AD3d 1105, 1106 [2016]; *Deutsche Bank Natl. Trust Co. v Gutierrez*, 102 AD3d 825, 825 [2013]; *U.S. Bank N.A. v Slavinski*, 78 AD3d 1167, 1168 [2010]). Here, defendant Gomez's ignorance or misunderstanding of the law does not amount to a reasonable excuse (see *Dorrer v Berry*, 37 AD3d 519, 520 [2d Dept 2007]). Any dissatisfaction by defendant Gomez with respect to his representation by prior counsel is also not a reasonable excuse. Moreover, defendant Gomez has not demonstrated that he has a potentially meritorious defense.

Nor is there any evidence that the default was the result of fraud, misrepresentation, or other misconduct by an adverse party that prevented defendant Gomez from fully and fairly litigating this matter and that would permit the court to vacate the judgment and set aside the foreclosure sale, pursuant to CPLR 5015 (a) (3) (see *Oppenheimer v Westcott*, 47 NY2d 595 [1979]; *Guardian Loan Co. v Early*, 47 NY2d 515, 521 [1979]; *Wells Fargo Bank, N.A. v Carney*, 50 AD3d 287 [1st Dept 2008]; *Bank of New York v Sheik*, 279 AD2d 440, 441 [2001]; *Chemical Bank v Vazquez*, 234 AD2d 253 [2d Dept 1996]; *Crossland Mtge. Corp. v Frankel*, 192 AD2d 571, 572 [1993]).

Additionally, a mortgagor or other owner of the equity of redemption has a right to redeem by tendering the full sum due at any time before the foreclosure sale (see *NYCTL 1999-1 Tr. v 573 Jackson Ave. Realty Corp.*, 13 NY3d 573, 579 [2009]; *Mackenna v Fidelity Trust Co. of Buffalo*, 184 NY 411, 416-417 [1906]; *United Capital Corp. v 183 Lorraine St. Assocs.*, 251 AD2d 400, 400 [2d Dept 1998]). "Generally, once the sale takes place, however, the right to redeem is 'extinguished, as a matter of law'" (*Norwest Mortg., Inc. v Brown*, 35 AD3d 682, 683 [2d Dept 2006], quoting *United Capital Corp.*, 251 AD2d at 544), and redemption is not permitted after a foreclosure sale regardless of whether the deed has been delivered to the sale purchaser (see *NYCTL 1996-1 Tr. v Moore*, 51 AD3d 885, 886 [2d Dept 2008]; *GMAC Mortg. Corp. v Tuck*, 299 AD2d 315, 316 [2d Dept 2002]). Here, defendant Gomez failed to

exercise his right of redemption prior to the actual foreclosure sale of the property.

Accordingly, defendant Gomez's motion is denied in its entirety.

Turning to the cross-motion, CPLR 1014 mandates that an application for leave to intervene "shall be accompanied by the proposed pleading setting forth the claim or defense for which intervention is sought". Proposed intervenor's submission fails to include the proposed pleadings, as required by statute. Accordingly, the cross-motion is denied in its entirety.

This constitutes the decision and order of the court.

Dated: January 22, 2020



Denis J. Butler, J.S.C.

