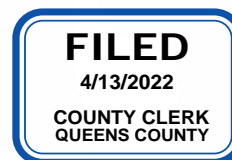


Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable ALLAN B. WEISS IAS PART 2
Justice



U.S. ROF III LEGAL TITLE TRUST 2015-1 BY
U.S. BANK NATIONAL ASSOCIATION AS
LEGAL TITLE TRUSTEE,

Index No. 701716/15

Motion Date: 2/2/22

Plaintiff,

Motion Seq. No. 3

-against-

SITTIHANNA DELACERNA a/k/a SITTIAANNA
DELACERNA, et al.,

Defendants.

The papers numbered EF Document Numbers 96-135, & 149-151, found on NYSCEF, were read on the motion by the plaintiff for a Judgment of Foreclosure and Sale, to amend the caption again, and other relief, and the defendant Sittihanna Delacerna's cross-motion for a stay and other relief.

As an initial matter, the Court directs the Clerk to change the marking of the motion and cross-motion from "Fully submitted, no opposition" to "Fully submitted."

The plaintiff's motion for a Judgment of Foreclosure and Sale is granted. The defendant makes no substantive argument against the proposed Judgment other than arguments (1) concerning RPAPL section 1304 discussed in this decision and in the accompanying decision of even date on Motion Sequence Number 4 and (2) for the imposition of a stay pending appeal.

Since the Court has reviewed the defendant's various arguments and finds them to be without any merit, the Court has signed the accompanying long form order and Judgment of even date.

Defendant Sittihanna Delacerna's cross-motion for a stay and other relief argues that the order of the Court (Purificacion, J.) [EF Doc. No. 126] is incorrect based on a recent change in the law by the Appellate Division, Second Judicial Department, concerning the notice required by RPAPL section 1304. The Court finds that the defendant's arguments lack merit. As discussed more fully in the accompanying decision of this Court on Motion Sequence Number 4, in *Citimortgage v. Dente*, 200 A.D.3d 1025 (2021), the Second Department, not deciding anything that represented a departure from existing law, stated that the 90-day notice required under RPAPL section 1304 had to be mailed under separate cover and not together with any other required notice. Plaintiff complied with RPAPL section 1304 and with the separate mailing of all required notices, contrary to defendant's arguments. See, EF Doc. Nos. 128 & 131.

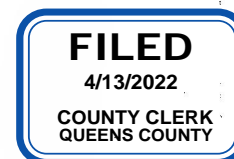
Defendant also seeks a stay of the action so that defendant can pursue her appeal. See, EF Doc. No. 92. CPLR 2201 provides that "[e]xcept where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just." A court has broad discretion to grant a stay in order to avoid the risk of inconsistent adjudications, application of proof, and potential waste of judicial resources. See, *Matter of Hersh*, 198 A.D.3d 776, 778 (2nd Dept. 2021).

In the Court's discretion, a stay pending appeal in this action is not warranted since such a stay would prejudice the plaintiff where the defendant, since 2012, has been in default of a substantial loan obligation. The Court denies the cross-motion in all respects.

See also this Court's order of even date on Motion Sequence Number 4.

Dated: April 2, 2022
D#64

.....
J.S.C.



At Part 2 of the Supreme Court
held in and for the County of Queens
at the Courthouse thereof located at
25-10 Court Square, Long Island
City, New York 11101 on this 12
day of April 2022

PRESENT: **HON. ALLAN B. WEISS**
HON. _____, J.S.C.

HON. ALLAN B. WEISS

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

U.S. ROF III LEGAL TITLE TRUST 2015-1 BY U.S.
BANK NATIONAL ASSOCIATION AS LEGAL TITLE
TRUSTEE,

Plaintiff,

-against-

SITTIHANNA DELACERNA A/K/A SITTIHANNA
DELACERNA A/K/A SITTIHANNA M. DELACERNA
A/K/A SITTIHANNA DELACERNA A/K/A
SITTIHANNA MOHAMMAD DELACERNA;
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS,
INC. ACTING SOLELY AS NOMINEE FOR MORTGAGE
LENDERS NETWORK USA, INC.; JPMORGAN CHASE
BANK, N.A.; CITY OF NEW YORK ENVIRONMENTAL
CONTROL BOARD,

Defendants.

Index No. 701716/2015
HON. ALLAN B. WEISS

MOTION SEQ. NO. 3

**JUDGMENT OF
FORECLOSURE AND
SALE**

Mortgaged Premises:
139-48 87th Avenue
Jamaica, NY 11435
Block 9700, Lot 11

Mortgage Servicer:
Shellpoint Mortgage
Servicing

Mortgage Servicer
Phone #:
(800) 365-7107

On the Summons, Verified Complaint, and Notice of Pendency of Action duly filed in this action on February 24, 2015, the successive Notice of Pendency of Action duly filed in this action on March 7, 2019, the Order Granting Summary Judgment, Default Judgment, and Appointing Referee to Compute ("Order of Reference") dated December 4, 2019 and entered on December 17, 2019, and all proceedings thereon, and on reading and filing the Affirmations of Jackie Halpern Weinstein, Esq., counsel for Plaintiff, dated March 18, 2021, from which it

appears that each of the defendants herein have been duly served with the Summons and Verified Complaint in this action, and stating that more than the legally required number of days had elapsed since said defendants were so served and/or appeared; and that none of the defendants had served any answer to said Verified Complaint, and are in default, per Order of the Court, except Defendant SITTIHANNA DELACERNA A/K/A SITTIAANNA DELCERNA A/K/A SITTIHANNA M. DELACERNA A/K/A SITTAHANNA DELACERNA A/K/A SITTIHANNA MOHAMMAD DELACERNA, who interposed an Answer in this action, which Answer was stricken, per Order of the Court; and that the Verified Complaint herein and Notice of Pendency of Action containing all the particulars required to be stated therein were duly filed in the Office of the Clerk of the County of Queens on February 24, 2015, and have not been amended to add new parties or to embrace real property not described in the original Verified Complaint, except that this Court, by Short Form Order dated January 8, 2018, ordered that the caption of this action be amended to substitute U.S. ROF III Legal Title Trust 2015-1 by U.S. Bank National Association as Legal Title Trustee in the place and stead of U.S. Bank National Association, not in its individual capacity, but solely as Trustee for the RMAC Trust, Series 2013-IT, and by striking "John Doe #1" through "John Doe #12", and that a Referee having been duly appointed to compute the amount due to the Plaintiff upon the note and mortgage set forth in the Verified Complaint and examine and report whether the mortgaged premises can be sold in parcels,

AND, on reading the report of RICHARD M. GUTIERREZ, ESQ., the Referee named in said Order of Reference (the "Report"), by which Report dated January 5, 2021, it appears that the sum of \$693,146.48 was due as of October 31, 2020, exclusive of additional fees and advances made or to be made to protect the lien of mortgage, if any, and that the mortgaged premises should be sold in one parcel,

NOW, upon proof of due notice of this application upon all parties who had not waived the same,

ON MOTION of Adam Leitman Bailey, P.C., attorneys for the Plaintiff, it is

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

ORDERED, ADJUDGED, AND DECREED, that 1900 CAPITAL TRUST III, BY U.S. BANK TRUST NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS CERTIFICATE TRUSTEE is to be substituted as plaintiff in the action in the place and stead of U.S. ROF III LEGAL TITLE TRUST 2015-1 BY U.S. BANK NATIONAL ASSOCIATION AS LEGAL TITLE TRUSTEE, and that the caption be amended to reflect the substitution; and it is further

ORDERED, ADJUDGED, AND DECREED, that the said Report of RICHARD M. GUTIERREZ, ESQ., dated January 5, 2021, be, and the same is hereby to the extent provided for herein, ratified and confirmed; and it is further

ORDERED, ADJUDGED, AND DECREED, that the premises known as and located at 139-48 87th Avenue, Jamaica, NY 11435, Block 9700, Lot 11 (the "Mortgaged Premises"), or such part thereof as may be sufficient to discharge the mortgage debt, the expenses of the sale, and the costs of this action as provided by the Real Property Actions and Proceedings Law be sold, in one parcel, at public auction at 88-11 Sutphen Blvd Jamaica N.Y.

_____, by and under the direction of RICHARD M. GUTIERREZ, ESQ., who is hereby appointed Referee for that purpose, 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 an official publication, to wit: Newsday; 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 the Terms of Sale for the purchase of the Mortgaged 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 subject property, the property 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, if any, within forty-five days after such sale, unless otherwise agreed to by all parties. The Referee shall transfer title only to the successful bidder at the auction or an assignee of same; and it is further

ORDERED, ADJUDGED, AND DECREED that the Referee deposit all funds received pursuant to this Order in his or her own name as Referee in Referee's I.O.D.A. account maintained for legal clients at an FDIC-insured bank of the Referee's choice; and it is further

ORDERED, ADJUDGED, AND DECREED that said Referee on receiving the proceeds of such sale shall forthwith pay therefrom:

FIRST: The statutory fees and commissions of said Referee pursuant to CPLR § 8003(b) that shall not exceed \$850.00 unless the sale price (the amount of the accepted bid) exceeds \$50,000. In the event the sale price exceeds fifty thousand dollars and additional compensation (including commissions) in excess of \$850 is sought pursuant to CPLR § 8003(b), and if no

surplus monies are produced by the sale, the parties may present a stipulation, signed by the Referee and all parties appearing, agreeing to a stated sum, to be so-ordered by the Court. Where surplus monies will be available following distribution of sums as provided herein, or where the parties are unable to agree to the Referee's proper compensation under CPLR § 8003(b), application shall be made to this Court on notice to all parties known to be entitled to claim against any surplus monies, including the defaulting owner of the equity of redemption. Such application shall be promptly submitted to the Court within five days of the transfer of the deed and prior to filing the Report of Sale. The five day period for payment of surplus money into Court as set forth in RPAPL § 1354(4), and the thirty day period set forth in RPAPL § 1355 for the filing of the Report of Sale shall be deemed extended pending the decision of the Court regarding such application.

N In the event a scheduled sale is cancelled or postponed, Plaintiff shall compensate the Referee in the sum of ³⁵⁰~~\$200.00~~ for each adjournment or cancellation unless the Referee has requested the delay. Such compensation may be recouped from the proceeds of sale as a cost to Plaintiff. This Order shall constitute the necessary prior authorization for compensation as set forth herein.

No compensation in excess of \$850, including compensation authorized pursuant to CPLR § 8003(a) for computation of the sum due to Plaintiff, exclusive of compensation for adjournments, if any, may be accepted by the Referee without Court approval and compliance with the filing provisions of Section 36.4 of the Rules of the Chief Judge.

SECOND: The expenses of sale and the advertising expenses as shown on the bills presented and certified by said Referee to be correct, duplicate copies of which shall be annexed to the report of sale.

THIRD: 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 Mortgaged Premises at the time of sale with such interest or penalties which may have lawfully accrued thereon to the date of payment.

FOURTH: Said Referee shall then pay to the Plaintiff or its attorney the sum of \$1,590.00 for costs and disbursements in this action to be taxed by the Clerk and inserted herein, with interest from the date hereof, and also the sum of \$693,146.48, the said amount so reported due as aforesaid, together with interest thereon pursuant to the terms of the Note from October 31, 2020, the date the interest was calculated to in said Report, plus interest at the rate in the Note and Mortgage to the date of entry of this Order, and thereafter at the statutory post-judgment rate to the date of transfer of title, or so much thereof as the purchase money of the Mortgaged Premises will pay of the same, together with ~~\$11,400.00~~ ^{— 0 —} hereby awarded to the Plaintiff as additional reasonable legal fees, together with any advances as provided for in the Note and Mortgage which Plaintiff may have made for taxes, insurance, principal and interest, and any other charges to maintain the Mortgaged Premises pending consummation of this foreclosure sale not previously included in the computation, upon presentation to the Referee of receipts for said expenditures, all together with interest thereon pursuant to the Note and Mortgage as above provided. Copies of such receipts shall be annexed to the Referee's Report of Sale; and it is further

ORDERED, ADJUDGED, AND DECREED that in case the Plaintiff be the purchaser of said Mortgaged Premises at said sale, said Referee shall not require the Plaintiff to pay in cash the entire amount bid at said sale, but shall execute and deliver only to the Plaintiff or Plaintiff's

assignee a deed of the Mortgaged Premises sold upon the payment to said Referee of the sum awarded to him under the above provisions marked "FIRST", "SECOND", and "THIRD", if such expenses were paid by the Referee, or in lieu of the payment of said last mentioned amounts, upon filing with said Referee receipts of the proper municipal authorities showing payment thereof. The balance of the amount bid, after deducting therefrom the aforementioned payments to the Referee for compensation and expenses, taxes, assessments, sewer rents, water rates, and priority liens of a city agency, shall be allowed to the Plaintiff and applied by said Referee upon the amounts due to the Plaintiff as specified in item marked "FOURTH". If upon so applying the balance of the amount bid, there shall be a surplus over and above the said amounts due to the Plaintiff, the Plaintiff shall pay to the said Referee, upon delivery to Plaintiff of said Referee's deed, the amount of such surplus [which shall be applied by the Referee, upon motion made pursuant to RPAPL § 1351(3) and proof satisfactory to the Referee of the sums due thereon, to any subordinate mortgage duly recorded against the property, pursuant to RPAPL § 1354(3), which payment shall be reported in the Referee's Report of Sale.] Any surplus remaining after all payments as herein provided shall be deposited into Court in accordance with RPAPL § 1354(4), and the Referee shall immediately give notice of such surplus to the owner of the Mortgaged Premises as identified by Plaintiff at the time of the sale; and it is further

ORDERED, ADJUDGED, AND DECREED that said Referee take the receipt of the Plaintiff or Plaintiff's attorney for the amounts paid as hereinbefore directed in item marked "FOURTH", and file it with his Report of Sale, that he deposit the surplus monies, if any, with the County Clerk within five days after the same shall be received unless such period be deemed extended by the filing of an application for additional compensation as set forth herein, to the credit of this action, to be withdrawn only upon order of the Court, signed by a Justice of the

Court; that said Referee make his Report of such Sale under oath showing the disposition of the proceeds of the sale, accompanied by the vouchers of the persons to whom payment was made, and file it with the County Clerk after completing the sale and executing the proper conveyance to the purchaser or within thirty days of the decision of the court with respect to any application for additional compensation; and it is further

ORDERED, ADJUDGED, AND DECREED, that if the proceeds of such sale be insufficient to pay the amount reported due to the Plaintiff with interest and costs as aforesaid, the Plaintiff may recover of the Defendant SITTIHANNA DELACERNA A/K/A SITTIHANNA DELCERNA A/K/A SITTIHANNA M. DELACERNA A/K/A SITTAHANNA DELACERNA A/K/A SITTIHANNA MOHAMMAD DELACERNA the whole deficiency or so much thereof as the Court may determine to be just and equitable of the residue of the mortgaged debt remaining unsatisfied after the sale of the Mortgaged Premises and the application of the proceeds thereof, provided a motion for a deficiency judgment shall be made, and the amount thereof is determined and awarded by an order of this Court as provided for in said action; 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 defendant(s) in this action, and all persons claiming under any of them after the filing of such Notice of Pendency of this action, be and they are hereby forever barred and foreclosed of all right, claim, lien, title, interest, and equity of redemption in the said Mortgaged Premises and each and every part thereof; and it is further

ORDERED, ADJUDGED, AND DECREED, that said Mortgaged Premises are 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 Mortgaged 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 Mortgaged Premises is located and possible violations of same, any rights of tenants or persons in possession of the subject premises, prior liens of record, if any, except those liens addressed in section 1354 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 Entry shall be served upon the designated Referee, the owner of the equity of redemption as of the date of this Order, any tenants named in this action, and any other party entitled to notice no less than thirty days prior to sale.

ENTER:



HON. ALLAN B. WEISS

J.S.C.

4/12/22