

SCAN

SHORT FORM ORDER

Present: SUPREME COURT - STATE OF NEW YORK

HON. JOHN W. BURKE

Justice

-----X
BANK OF NEW YORK, AS TRUSTEE,

Plaintiff,

-against-

SYLVIA GERSMAN, ETC.,

Defendant.

-----X
SYLVIA GERSMAN,

Plaintiff,

-against-

THE BANK OF NEW YORK, SOUTHERN STAR
MORTGAGE CORP. and DRUCKMAN, RAPHAN &
SINEL, ESQS.,

Defendants.

TRIAL/I.A.S. PART 3
NASSAU COUNTY

INDEX NO. 1209/01
[ACTION NO. 1]

MOTION DATE: 6/21/02
MOTION NO.: 3 & 4

INDEX NO. 13643/01
X X X
[ACTION NO. 2]

MOTION DATE: 6/21/02
MOTION NO. 1 & 2

-----X
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Defendant/Respondent..... 14 - 15

Upon the foregoing papers, it is ordered that this motion by defendant Sylvia Gersman in Action No. 1 pursuant to CPLR §3211(a)(7) to dismiss the complaint for failure to state a cause of action as a result of plaintiff's lack of standing and to direct the Nassau County Clerk to cancel the Notice of Pendency in accordance with CPLR §6514(a) and to grant defendant "appropriate monetary relief" in accordance with CPLR §8303(a); separate motion by plaintiff in Action No. 1 for renewal of its previous motion pursuant to CPLR §2221 (for consolidation of the actions and for summary judgment dismissing the answer), which motion was denied by order of the undersigned dated April 5, 2002 and for an order appointing a Referee to compute the amount due plaintiff and to amend the caption; separate motion by defendant Southern Star in Action No. 2 pursuant to CPLR §3211 to dismiss the action on the ground that Southern Star Mortgage Corp. is an improper party and for sanctions and attorneys' fees pursuant to CPLR §8303(a); and separate motion by plaintiff Gersman in Action No. 2 to strike the defendants' answers and for summary judgment in favor of plaintiff

Gersman in Action No. 2 and against the defendants for the relief demanded in the complaint on the ground that there is no defense to the complaint, are disposed of as hereinafter provided.

Action No. 1 is a mortgage foreclosure action against Sylvia Gersman. Action No. 2 is an action by Sylvia Gersman for abuse of process and for "breach of good faith and fair dealing" against all of the defendants in said action.

Plaintiff's motion in Action No. 1 for renewal of its previous motion pursuant to CPLR §2221 (which motion was denied by order of the undersigned dated April 5, 2002) is disposed of as shown in the separate Long Form Order of even date and annexed hereto for the reasons stated in the motion to renew.

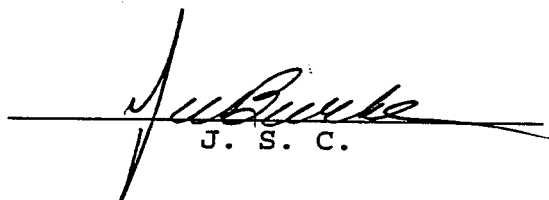
Defendant Gersman's motion in Action No. 1 by her non-attorney son is denied by reason of his lack of standing, the lack of an affidavit by Sylvia Gersman and for the reasons noted in plaintiff's motion to renew.

Defendant Southern Star's motion for summary judgment in Action No. 2 in its favor on the ground that the plaintiff Sylvia Gersman failed to state a cause of action and because Southern Star is an improper party and for sanctions pursuant to CPLR §8303-a is granted to the extent that Action No. 2 is dismissed as against it and is denied as to sanctions and attorneys' fees. Sylvia Gersman delivered the mortgage in question to Southern Star on February 14, 2000 and Southern Star assigned said mortgage to plaintiff Bank of New York on May 8, 2001. The mortgage is being foreclosed by The Bank of New York.

The motion by plaintiff Gersman in Action No. 2 to strike the defendants' answers and for summary judgment against said defendants is denied and Action No. 2 is dismissed.

Plaintiff in Action No. 1 shall serve a copy of this order upon the attorneys for all parties to each action within 10 days of the date hereof.

Dated: AUG 26 2002


J. S. C.

ENTERED

AUG 29 2002

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**

At an IAS Motion Part 2 of the
Supreme Court of the State of New
York, held in and for the County
of Nassau at the Courthouse
thereof, 100 Supreme Court Drive,
Mineola, New York 11501 on the
26th day of AUGUST, 2002.

P R E S E N T :

HON. JOHN W. BURKE,

JUSTICE.

-----X
BANK OF NEW YORK, AS TRUSTEE,

Action No. 1
Index No. 001209/01

Plaintiff(s),

-against-

ORDER GRANTING
MOTION FOR LEAVE TO
RENEW PRIOR MOTION
AND GRANTING RELIEF
ON SAID MOTION

SYLVIA GERSMAN, , "JOHN DOE 1
to JOHN DOE 25", said names
being fictitious, the persons
or parties intended being the
persons, parties, corporations
or entities, if any, having or
claiming an interest in or
lien upon the mortgaged
premises described in the
complaint,

Defendants.

-----X

AND

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
SYLVIA GERSMAN,

Plaintiff,

Action No. 2
Index No. 16343/01

-against-

THE BANK OF NEW YORK, SOUTHERN STAR
MORTGAGE CORP. and DRUCKMAN, RAPHAN
& SINEL, ESQS.,

Defendants.

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Upon the Notice of Motion dated June 6, 2002 for an order permitting renewal of the previous motion which was denied and, upon granting renewal, granting Plaintiff's motion for consolidation and summary judgment dismissing the Answer of Defendant; amending the caption; and appointing a Referee to compute sums due to Plaintiff; and the court having considered the previous motion, affidavits, and all the pleadings and proceedings heretofore had in this action; and the matter having been submitted to this court and due deliberation having been made thereon,

NOW, on motion of DRUCKMAN, RAPHAN, & SINEL, ESQS. N/K/A DRUCKMAN & SINEL, attorneys for the plaintiff, it is;

ORDERED, that the instant motion for renewal is granted and it is further

ORDERED, that Action No. 1 and Action No. 2 are
JOINED FOR TRIAL
~~consolidated~~ and it is further

ORDERED, that Summary Judgment is hereby granted to

Jul 12
J.S.C.

plaintiff, and the Answer and Counterclaims of defendant Sylvia Gersman be and the same hereby is dismissed, and the appearance of such defendant be limited to a notice of appearance and waiver of service of all papers and of notice of all proceedings in said action, except copy of Referee's Oath and Report of Amount due, Copy of Judgment of Foreclosure and Sale, Notice of Sale, and a copy of Referee's report of sale and notice to obtain surplus monies; and it is further

ORDERED, that Norman Gersman be substituted in and for the place of defendant "JOHN DOE ONE"; and it is further

ORDERED, that the defendants, "JOHN DOE TWO" through and including "JOHN DOE TWENTY-FIVE" be deleted from the caption of this action; and it is further

ORDERED, that the correct caption of this action shall appear as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----x
BANK OF NEW YORK, AS TRUSTEE,

Plaintiff,

Index No.001209/01

-against-

SYLVIA GERSMAN, Norman
Gersman,

Defendant(s).

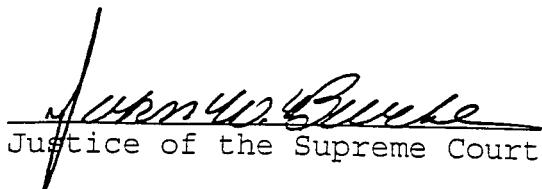
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and, it is further;

ORDERED, that this action be referred to WILLIAM A. BOCCIO, ESQ. of 22 JERICHO TPKE. MINEOLA, NY 11501, New York, as Referee to ascertain and compute the amount due to plaintiff for principal and interest on the note or bond and mortgage set forth in the Complaint for taxes, assessments, water rates and/or fire insurance premiums, and late charges, to examine and report whether the mortgaged premises can be sold in parcels and that immediately upon the coming in of the report of said Referee, and without further notice, plaintiff may apply for the usual Judgment of Foreclosure and Sale, and for the relief demanded in the Complaint besides costs and extra allowances provided by law, and it is further;

ORDERED, that if there be any infant or absentee defendants the Referee shall also take proof of the facts and circumstances stated in the complaint, and examine the plaintiff(s) or plaintiff's agent under oath, as to any payments which have been made.

E N T E R :


Justice of the Supreme Court