

SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: Hon. Edward G. McCabe,
Supreme Court Justice

FORECLOSURE PART
NASSAU COUNTY

LASALLE BANK NATIONAL, ETC.,

INDEX NO. 13484/08

Plaintiff,

MOTION SEQ. NO.: 1

vs.

FRANK M. LUSCAVAGE, et al.,

Defendants.

X

The following papers were read on this application:

Amended Affirmation.....1
Affirmation In Opposition.....2
Affidavit of Service.....3

Motion by Rosalie Thomas, the former owner of the subject property for an order dismissing the complaint and granting judgment on her cross-claims is disposed of as indicated.

In October of 2006 Rosalie Thomas transferred the property, 7 Donald Court, Elmont, NY to defendant Frank Luscavage. In July of 2008, plaintiff instituted the action to foreclose premised on Luscavage's default. Ms. Thomas, in an answer served in December of 2008 contends in conclusory terms that she was "swindled out of her home" by defendants. Ms. Thomas does not allege plaintiff or the original lender were involved in any fraudulent activities. Her counterclaim seeks damages and legal fees for "failing to comply with federal law."

Plaintiff quite correctly contends movant's answer was not timely being served some five months after service without leave of court. It does not however appear plaintiff rejected the answer and the court will consider it timely served as to plaintiff.

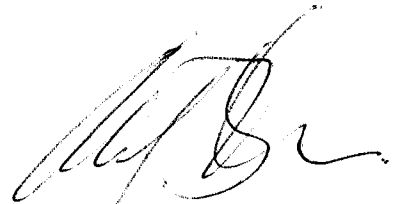
With respect to the issue of jurisdiction, Rosalie Thomas was served by personal delivery on July 30, 2008 as a person residing at the property. Her conclusory denials of service are insufficient to overcome the prima facie proof of valid service provided by the defendant of service (**Sando Realty Corp. vs. Avis**, 209 A.D. 2d 682). With respect to defendant's counterclaim upon which she seeks judgment based on a failure to serve a reply, it is clear that the counterclaim as pleaded does not state a course of action against plaintiff and does not require a reply by plaintiff. In this regard, it should be noted that at the present time Rosalie Thomas does not own the subject property and her defenses based on the requirements for foreclosure are inapplicable to the action against her.

The primary issue of this matter are the cross-claims against the defendants and the present manner in which such claims are alleged. Defendant cannot be said to have overburdened the court with the amount of factual information provided. Other than make reference to being "swindled" "defrauded" and "conspired against", there is no indication as to which unnamed defendant did what. It is clear Rosalie Thomas is attempting to allege a "rescue scam" perpetrated by defendant Luscavage and others. Unfortunately, she has not properly done so in her answer. Moreover, she has made no claims that plaintiff and/or its assignor were in anyway connected with any allegedly fraudulent activities.

Under the circumstances, the court will deny the request for judgment on the cross-claims and dismiss such claims without prejudice, to the bringing of a plenary action to set aside the deed of October 2006 and/or damages against the persons defendant contends defrauded her of the premises.

ENTER:

Dated: June 8, 2009
Mineola, NY



HON. EDWARD G. McCABE
Supreme Court Justice

ENTERED
JUN 12 2009
NASSAU COUNTY
COUNTY CLERK'S OFFICE