

SCAN

**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK**

**Present:**

**HON. THOMAS P. PHELAN,**

**Justice.**

TRIAL/IAS PART 2  
NASSAU COUNTY  
Index No. 004154/11

\_\_\_\_\_  
JP Morgan Chase Bank, National Association,

Plaintiff,

-against-

ORIGINAL MOTION DATE: 09/12/11  
SUBMISSION DATE: 11/28/11  
MOTION SEQUENCE #1

Christopher Woodson a/k/a Christopher K. Woodson;  
Carol Woodson a/k/a Carol Maynard; JPMorgan Chase  
Bank, National Association successor in interest to  
Washington mutual Bank, FA; Long Island Home Ltd.  
D/B/A South Oaks Hospitl; New York State Department  
of Taxation and Finance; Citibank South Dakota, NA and  
"JOHN DOE #1" through "JOHN DOE #10", the last  
ten names being fictitious and unknown to the Plaintiff,  
the person or parties intended being the person or  
parties, if any, having or claiming an interest in or  
lien upon the mortgaged premises described in the  
complaint,

Defendants.

\_\_\_\_\_  
The following papers read on this motion:

Notice of Motion.....	1
Answering Papers.....	2, 3
Reply.....	4
Memorandum of Law.....	5

In this action to foreclose a first mortgage on residential premises, defendant, Christopher Woodson a/k/a Christopher K. Woodson ("Woodson"), interposed an answer with affirmative defenses, cross-claims against defendant, Carol Woodson a/k/a Carol Maynard ("Maynard"), and counterclaims. The Eighth Affirmative Defense alleges that, upon information and belief, plaintiff failed to comply with the notice requirements of CPLR 3408 evidencing compliance with the notice of the

availability of a foreclosure settlement conference requirement.

Defendant Woodson now moves for summary judgment on his claims seeking, *inter alia*, a declaratory judgment.

The standards for summary judgment are well settled. A court may grant summary judgment where there is no genuine issue of a material fact, and the moving party is, therefore, entitled to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). Thus, when faced with a summary judgment motion, a court's task is not to weigh the evidence or to make the ultimate determination as to the truth of the matter; its task is to determine whether or not there exists a genuine issue for trial (*Miller v Journal-News*, 211 AD2d 626 [2d Dept. 1995]).

The burden on the party moving for summary judgment is to demonstrate a *prima facie* entitlement to judgment as a matter of law by tendering sufficient evidence to demonstrate the absence of any material issue of fact (*Ayotte v Gervasio*, 81 NY2d 1062 [1993]). If this initial burden has not been met, the motion must be denied without regard to the sufficiency of opposing papers (*Id.*; *Alvarez v. Prospect Hosp.*, 68 NY2d 320 [1986]).

According to the record defendants Woodson and Maynard were married on May 6, 1989. Title to the premises, which is the subject of this action, was conveyed to "Christopher Woodson & Carol Woodson, his wife" by deed dated June 18, 1992. The marriage was dissolved by Judgment of Divorce entered on June 10, 2003. "[A]n absolute divorce terminates a tenancy by the entirety" and "the parties become tenants in common" (*Kahn v. Kahn*, 43 NY2d 203, 207 [1977]).

The mortgage sought to be foreclosed herein was made by Carol Woodson and Christopher Woodson to Washington Mutual Bank, FA, on June 3, 2004, to secure the sum of \$185,000.00. Defendant Woodson alleges that defendant Maynard thereafter fraudulently obtained a \$160,000.00 second mortgage from plaintiff.

Defendant Woodson's argument that there is no limitation on the interest in the property being mortgaged is unavailing. Clearly one cannot mortgage or convey a greater interest than one owns. Defendant Maynard cannot unilaterally encumber defendant Woodson's interest in the premises.

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demonstrate his prima facie entitlement to judgment as a matter of law (*see Ayotte v Gervasio, supra*). The initial burden not having been met, the motion must be denied without regard to the sufficiency of opposing papers (*Id.*; *Alvarez v. Prospect Hosp.*, 68 NY2d 320 [1986]).

Moreover, the court finds that defendant Woodson's application for summary judgment is premature. This matter shall be reassigned to the Foreclosure Part in order that the appropriate foreclosure settlement conferences may be conducted.

This decision constitutes the order of the court.

January 27, 2012  
Date

HON THOMAS P. PHELAN

THOMAS P. PHELAN, J.S.C.

**Attorneys/Parties of Record:**

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**ENTERED**  
JAN 31 2012  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE