

SUAN

**SHORT FORM ORDER
SUPREME COURT - STATE OF NEW YORK**

Present:

HON. F. DANA WINSLOW,

Justice

BONNIE P. JOSEPHS,

**TRIAL/IAS, PART 6
NASSAU COUNTY**

Plaintiff,

-against-

**MOTION SEQ. NO.: 006
MOTION DATE: 1/30/09**

**BERNARD B. ROBERTS, CLEOFOSTER B. ROBERTS,
ROSEMARY J. ROBERTS, DON ROBERTS, BARBARA
MOORE, ACCREDITED HOME LENDERS, INC.,
KIRD AZEMAR, CHRISTOPHER LUGG, CHARLES C.
LIECHTUNG, U.S. CAPITAL FUNDING CORP., WALLY
DUVAL, DWIGHT GARDINER, DEUTSCHE BANK
NATIONAL TRUST COMPANY, "JOHN DOE" AND
"JANE DOE" said names being fictitious, it being the
intention of Plaintiff to designate any and all occupants
of premise subject to this action, jointly and severally,**

INDEX NO.: 9480/06

Defendants.

The following papers having been read on the motion (numbered 1-2):

Order to Show Cause on Motion for Commission for Non Party Witness.....	1
Affidavit of Service.....	2

Unopposed motion by the plaintiff Bonnie P. Josephs, Esq., for an order pursuant to CPLR §3108, 3111 and 3120 for the issuance of an open commission to Thomas M. Green, Esq., 800 Performance Place, 109 North Main Street, Dayton, Ohio 45402-1290, a notary public or another officer authorized to administer oaths in the State of Ohio, as Commissioner to subpoena "General Electric Money Bank," a non-party witness, to give an oral deposition and to produce certain documents and directing that the transcript of such deposition and

copies of the documents so produced and identified by General Electric Money Bank, be introduced in evidence at the trial of this action is determined as hereinafter set forth.

In the within action, the plaintiff, Bonnie P. Josephs, Esq. is appearing *pro se*. She is attempting to collect a judgment against defendant Rosemary J. Roberts who was serving a prison sentence for her conviction on her guilty plea of embezzling more than \$1,200,000.00 from the plaintiff. Defendant Rosemary Roberts confessed judgment in favor of plaintiff in the sum of \$1,200,000.00. Plaintiff also has a money judgment in the sum of \$2,500,000.00 against defendant Rosemary Roberts arising out of the embezzlement. The asset that the plaintiff seeks to recover against is real property known as 838 Eastfield Road, Westbury, N.Y. 11590 (Section 11; Block 402; Lot 51; Town of North Hempstead) (the subject property). Defendant Bernard B. Roberts a/k/a Cleofoster Roberts is the husband of defendant Rosemary J. Roberts. Defendant Don Roberts is the son of defendants Bernard B. and Rosemary J. Roberts. Plaintiff alleges that the "Roberts defendants" conspired, aided, and abetted each other in contriving and effecting the embezzlement. Plaintiff alleges that the "Roberts defendants," defendant Moore and other named defendants engaged "in fraudulent transfers" of the subject property resulting in defendant Barbara Moore being the present title holder of the subject property. In short, plaintiff contends the only reason that title was put in the name of the defendant Moore is to prevent the plaintiff from satisfying her money judgments against the subject property.

In the complaint, the plaintiff alleges a byzantine series of deed transfers of the subject property, "straw man" transactions involving the subject property, and mortgages being put on the subject property with the intent to wrongfully prevent

the plaintiff from satisfying the money judgment. Plaintiff's ultimate goal is for an order to vacate, set aside and declare "as fraudulent transactions the deeds and mortgages of the property given and received by the defendants herein."

The plaintiff asserts the Roberts defendants divested themselves of the subject premises and title was transferred from the Roberts defendants to Lugg and Azemar and finally to Moore without consideration.

Referring to Exhibit B "Affidavit in Connection with No Consideration Transfer," plaintiff states that Lugg and Azemar are related to each other. However, the Affidavit makes no mention of Lugg but rather states that Azemar was the grantor and Moore the grantee, with no consideration being paid since they were "relatives." The Affidavit refers to a deed dated "12/13/03, 8/7/03" in a "Liber Reel 11719 p. 265 11770 at p. 703."

Plaintiff refers to a HUD-1 Settlement Statement (Exhibit C). However, only a copy of page 2 is submitted to the Court. Plaintiff claims Moore admitted she was paid \$28,172.02 "at the closing of the 'sale' and 'mortgage' transactions" generated by defendant Azemar when Moore took title to the subject premises from Azemar in July 2005. Plaintiff does not submit a copy of a transcript from the deposition showing where Moore made these statements. There is no indication from page 2 of the HUD-1 Settlement Statement that the transaction involved a refinance, rather than a sale. Plaintiff has submitted a copy of a mortgage dated July 19, 2005, made by Moore in the principal sum of \$498,750.00. There is no copy of a recorded deed from Azemar to Moore.

The plaintiff contends that at her deposition, Moore's attorney stated that Moore "did not file tax returns" yet produces a Form 1099-2003 showing Moore received \$77,000 in 2003 and a 1099-2004 showing Moore received \$82,000 in

2004. Plaintiff states that Moore testified she worked for DKA Consulting, the company that issued copies of the 1099-2003 and 1099-2004. These are serious allegations, and if substantiated may warrant the matter being referred to the Internal Revenue Service for an inquiry.

Plaintiff states that Moore “disclosed” in August 2007 that she applied for and obtained from HSBC Bank what appears to be a second mortgage in the approximate amount of \$500,000 on the subject property. Exhibit J is a copy of a document purporting to be a Note (unsigned) made by Moore to HSBC Mortgage Corporation (USA) in the sum of \$417,000.00 with interest at the rate of 6.625%. A Notice of Right to Cancel is also submitted to the Court as part of Exhibit J. There is no proof that the transaction with HSBC was ever consummated.

The Court will now address a mortgage purportedly made by Barbara Moore, Curtis Moore, and Victoria Ramos dated November 25, 2007 to General Electric Money Bank in the principal amount of \$36,175.75 on the subject property. Plaintiff contends General Electric Money Bank has an address for service of process in Dayton, Ohio and offices for the transaction of business in Connecticut. She requests this Court to issue an “open commission” so that she can subpoena General Electric Money Bank in Ohio to attend a deposition there and to disclose documents concerning their transaction regarding the subject premises with defendant Moore and her brother Curtis Moore. The General Electric Mortgage is dated November 25, 2007, but according to the “Transaction History Report” submitted by plaintiff (Exhibit N) it was recorded January 24, 2008. In a prior short form order dated December 11, 2007, involving the within action, J. McCormack stated “[i]t may be advisable for Ms. Josephs to consult a real estate attorney and/or a representative at her title company to assist her in

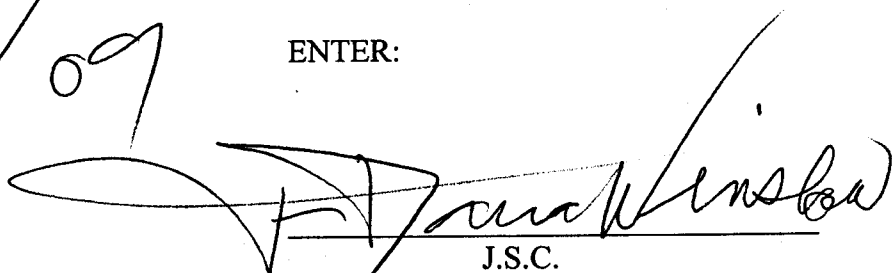
taking the necessary steps to extinguish the rights of redemption of all those who may have a subordinate interest in the property and to vest complete title in the purchaser at the judicial sale.” Plaintiff has been admonished that only with an updated title search and abstract of title for the subject property and a reference to recorded deeds, mortgages, assignments, or liens can a determination be made regarding plaintiff’s interest in the subject property. Nevertheless, should plaintiff wish to pursue the circumstances surrounding the General Electric Money Bank mortgage with an “open commission” she may do so. The relief requested in the order to show cause dated January 21, 2009 is **granted** except that any documents received as a result of the “open commission” may only be admitted into evidence at the discretion of the Justice presiding at the trial of this action. Plaintiff shall submit to the Court on notice a copy of a proposed order for an “open commission.”

This constitutes the Order of the Court.

Dated:

3/29/09

ENTER:


J.S.C.

ENTERED
APR 14 2009
NASSAU COUNTY
COUNTY CLERK'S OFFICE