

Supreme Court of the State of New York
IAS Part 43- County of Suffolk

PRESENT:

HON. ARTHUR G. PITTS

JUSTICE OF THE SUPREME COURT

WELLS FARGO HOME MORTGAGE, INC.
 F/K/A NORTHWEST MORTGAGE, INC.
 3476 Stateview Blvd.
 Ft. Mill, SC 29715,

Plaintiff,

-against-

GEORGETTE MURSKO, et al.,

Defendant.

ORIG. RETURN DATE: 10/24/05

FINAL SUBMIT DATE: 12/15/05

MOTION SEQ. NO.: 003-MOT-D

PLTF'S/PET'S ATTY:

STEVE J. BAUM, P.C.
 P.O. Box 1291
 Buffalo, New York 14240-1291

DEFT'S/RESP'S ATTY:

JEFFREY A. SEIGEL, ESQ.
 1757-50 Veterans Hwy.
 Islandia, New York 11749

FARRELL FRITZ, ESQ.

1320 EAB Plaza
 Uniondale, New York 11556

Upon the following papers numbered 1 to 35 read on this motion vacate order/judgement
 Notice of Motion/OSC and supporting papers 1-11; Notice of Cross-Motion and supporting papers _____;
 Affirmation/affidavit in opposition and supporting papers 12-35; Affirmation/affidavit in reply and supporting papers
 _____ Other _____; ~~(and after hearing counsel in support of and opposed to the motion)~~ it is,

ORDERED that the defendant Georgette Mursko's motion for an order joining Secured Capital Funding LLC ("Secured Capital") as a party herein, vacating the judgment and sale entered by this Court on June 18, 2004 and setting aside the referee deed transferring the subject property to Secured Capital is determined as follows:

The matter at bar is one sounding in foreclosure. Defendant Georgette Mursko was personally served with the summons and complaint on November 13, 2003. She failed to appear and on her default a judgment of foreclosure and sale was entered by this Court on June 18, 2004. The subject property was sold at public auction by Court appointed referee Jean M. Hazelton, Esq. on January 6, 2005 to Secured Capital. Secured Capital has intervened in this action pursuant to a stipulation executed by all parties in November, 2005. Title closed on April 18, 2005 and a referee's deed was delivered to the purchaser. Defendant Mursko remains in possession of the subject property and in July, 2005 Secured Capital commenced a summary proceeding in Sixth District Court, Suffolk County seeking possession. By order dated September 16, 2005 the Hon. G. Ann Spellman, J.D.C. appointed Linda S. Morrison, Esq. as guardian ad litem for Mursko.

In support of the instant motion defendant Mursko avers that she suffers from severe mental illness having been diagnosed with bipolar disorder and schizoaffective disorder. She had numerous hospitalizations from 2000 through 2005. Based upon her mental illness, Judge Spellman appointed a guardian ad litem to represent her in the afore-stated summary proceeding. Defendant’s counsel submits that vacatur of the judgment of foreclosure and sale and the referee’s deed is warranted because a hearing determining whether the defendant was capable of protecting her rights due to her illness was not conducted and as such, whether a guardian ad litem should have been appointed on her behalf.

The appointment of a guardian ad litem is required in every case where the defendant is an adult incapable of adequately protecting his rights before a default judgment may be entered against him. (CPLR 1202; 1203) No jurisdiction is acquired with respect to an adult where a plaintiff has notice that the defendant in the action is under mental disability and fails to bring that fact to the Court’s attention and permit the Court to determine whether a guardian ad litem should be appointed. (see *Oneida National Bank and Trust Company v. Unczur*, 37 A.D.2d 480, 326 N.Y.S.2d 458 [4th Dept. 1971]) Accordingly, pursuant to the foregoing, a hearing is directed to be held before this Court at 9:30 am on the 13th day of April, 2006 at the Arthur M. Cromarty Court Complex, 210 Center Drive, Riverhead, New York for the limited purpose to determine whether the plaintiff had notice of defendant’s mental condition prior to instituting the within foreclosure action.

This shall constitute the decision and order.

So ordered.

Dated: Riverhead, New York
February 27, 2006


J.S.C.

CHECK ONE: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION ☐ DO NOT SCAN