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Deeds / Heirship

A deed executed by purported distributees of the Estate of Annie Blango conveyed property owned by the decedent to a corporation which re-conveyed the property to an LLC, the Appellant in this case. The Administrator of the Estate sought a ruling that title to the property was held by the Estate and an Order setting aside the deeds. The Surrogate’s Court granted the petition, directing the City Register to strike the deeds from the public record. The Appellate Division, Second Department, reversed the lower court’s ruling, stating that “[w]hen the decedent died intestate, title to the subject property automatically vested in her distributees as tenants in common...Thus, to the extent that the [grantors in the deed to the corporation] were actually the decedent’s distributees and the deeds were property executed by them, the deeds would validly convey those distributees’ interests in the property. The deeds, therefore, should not have been set aside”.

The Appellate Division remitted the matter to the Surrogate’s Court to determine whether title was vested in the decedent’s estate and whether the grantors in the deed to the corporation were, in fact, the decedent’s distributees, those facts not having been conclusively established at trial.

Matter of Blango, 2018 NY Slip Op 07721, decided November 14, 2018.

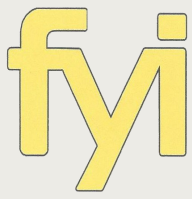


Mortgages / Abandoned Residential Property

The so-called “zombie property remediation act of 2016” includes RPAPL Section 1308 (“Inspecting, securing and maintaining vacant and abandoned residential real property”), requiring a mortgage loan servicer authorized to accept payments on a first lien mortgage loan on a one-to-four family residential property to secure and maintain the property when the loan is delinquent and the servicer has a reasonable basis to believe that the property is “vacant and abandoned”. A civil penalty of up to \$500 per day for each day that a violation of a requirement of Section 1308 by a mortgagee or its agent persists may be issued by a hearing officer or by a court of competent jurisdiction. The Civil Court, Albany County, imposed on a foreclosing mortgage assignee fines totaling \$63,000 under RPAPL Section 1308 for the “failure to take reasonable and necessary steps to maintain real property”.

The Defendant-mortgagee claimed that it was not subject to those fines under subsection j(4) of 12 U.S.C.A. Section 4617 (“Authority over critically undercapitalized regulated entities”) of the federal Housing and Recovery Act of 2008 (“HERA”). That Section provides that “[t]he [Federal Housing Finance Agency] shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate, or recording tax or any recording or filing fees when due”. The Defendant asserted that the exemption applied in this case because the exemption also applies to the Federal Home Loan Mortgage Corporation (“Freddie Mac”) which is an “investor” in the subject property.

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Mortgage Foreclosures / Deceased Mortgagor

The Defendant-mortgagor died in 2009; a mortgage foreclosure was commenced in 2016. No representative was substituted for the decedent in the foreclosure. The foreclosing Plaintiff's motion to vacate the foreclosure sale, the Order of Reference and the notice of pendency was granted by the Supreme Court, Queens County, which also vacated all prior Orders issued in the foreclosure. However, the Court denied the Plaintiff's motion for leave to file a Supplemental Summons and Amended Complaint.

According to the Court, "before [the Court] can obtain jurisdiction in this case, an application must first be made [by the Plaintiff] in Surrogate's Court to have an heir appointed administrator for the estate of the deceased mortgagor...Alternatively, an application can be made in Surrogate Court to have the Public Administrator or someone else appointed as the representative of...[the] estate".

The Plaintiff asserted that neither the deceased nor her estate was a necessary party because the Plaintiff had waived its right to seek a deficiency judgment. However, "the plaintiff has failed to establish that the deceased mortgagor made an absolute conveyance of all her interest in the mortgaged premises, including her equity of redemption, to another person or entity".

The Court did not dismiss the complaint for lack of jurisdiction because substitution for the decedent was possible. All proceedings were stayed. *Wells Fargo Bank, NA v. Ramdin, 2018 NY Slip Op 28412, decided December 21, 2018.*



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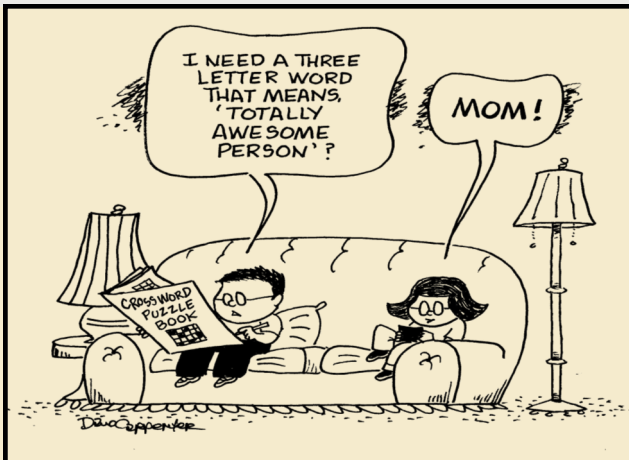
"Mortgages / Abandoned Residential Property" Continued from Page 1

The Civil Court denied the Defendant's motion to vacate the Decision and Order imposing the fines. According to the Court,

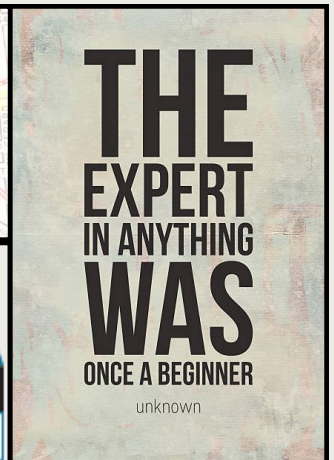
"...Freddie Mac's status as an 'investor' in the subject property does not confer upon defendant the 'entity specific' protection provided by HERA to qualifying federal entities. The federal entities entitled to the protection of the Section 4617(j)(4) exemption are the FHFA, Freddie Mac, and Fannie Mae...[T]his Court finds that the plain language of the HERA exemption at issue does not apply to defendant, and defendant is not exempt from the imposition of the subject fine based on the fact that defendant transacts business on behalf of Freddie Mac".

City of Albany v. Bayview Loan Servicing Center, LLC, 2019 NY Slip Op 29000, decided January 3, 2019.

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