

**Nationstar Mtge. LLC v Russ**

2024 NY Slip Op 32267(U)

July 1, 2024

Supreme Court, Kings County

Docket Number: Index No. 503097/2012

Judge: Derefim B. Neckles

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FRP-2 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, 11201 on the 1<sup>st</sup> day of July, 2024.

P R E S E N T:

HON. DEREKIM B. NECKLES,  
Acting Justice.

-----X  
Nationstar Mortgage LLC,

Plaintiff,

- against -

Index No. 503097/2012

Steven Russ, as Administrator for the Estate of and Individually as heir to the estate of Edith Guillen a/k/a Edith L. Guillen a/k/a Edith Dingle a/k/a Edith Dingle-Guillen, Shawn Guillen as heir to the Estate of Edith Guillen a/k/a Edith L. Guillen a/k/a Edith Dingle a/k/a Edith Dingle-Guillen, Gerri Elisa Robinson as heir to the Estate of Edith Guillen a/k/a Edith L. Guillen a/k/a Edith Dingle a/k/a Edith Dingle-Guillen, Criminal Court of the City of New York, RAB Performance Recoveries, LLC, New York City Environmental Control Board, New York City Parking Violations Bureau, New York City Transit Adjudication Bureau, United States of America, New York State Department of Taxation and Finance,

Defendants.

-----X  
The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Affidavits (Affirmations) Annexed  
Opposition to Motion to Intervene

173, 174, 175  
176, 177

Upon the foregoing papers in this proceeding for an order granting intervention based on the foreclosure of the subject property at 124 Berriman Street, Brooklyn, NY 11208 (Property), non-party 21 Queens LLC moves (in motion seq. five) for an order granting leave to intervene herein, and upon granting such leave, either pursuant to CPLR

5015(a)(4), vacating the judgment of foreclosure and sale of this court, vacating each and every order entered herein, vacated the auction sale which occurred on July 13, 2023, vacating any deed which have issued from the referee in execution of the void judgment of foreclosure and sale, and dismissing the action.

### *Background*

The instant matter involves a foreclosure action initiated by Nationstar Mortgage LLC ("Plaintiff") against the defendants, including Steven Russ as Administrator for the Estate of Edith Guillen, and other heirs to the estate. The property in question is located at 124 Berriman Street, Brooklyn, New York 11208.

On December 4, 2018, this Court granted Plaintiff's unopposed application for Judgment of Foreclosure and Sale.

Following the entry of the judgment, the property was sold at a foreclosure auction on July 13, 2023. Shazad Hossain and Sajjad Hossain were the successful bidders at the sale, and the referee's deed was recorded on November 2, 2023. The referee's report of sale was filed with the Court on October 26, 2023.

Prior to the foreclosure sale, on May 20, 2021, 21 Queens LLC was formed, allegedly by members of Edith Guillen's family. On July 11, 2023, just two days before the foreclosure sale, the property was conveyed by a deed from Edith Guillen's heirs to 21 Queens LLC for the price of \$54,000, significantly below the appraised value of \$550,000 and the Zillow estimate of \$607,700. This conveyance appears to have been a strategic

move by the heirs to create a corporate entity, 21 Queens LLC, which now seeks to intervene in this concluded foreclosure action.

21 Queens LLC has made multiple attempts to intervene in the foreclosure proceedings. On four occasions, 21 Queens LLC filed post-sale applications seeking to intervene, vacate the foreclosure sale, and dismiss the action or alternatively, to serve a late answer. The first application, presented on July 13, 2023, was denied by the Court because the application did not comply with UCR 202.7(f). The second application, also filed on July 13, 2023, was returnable on September 12, 2023, but was marked off the calendar due to the non-appearance of 21 Queens LLC. The third application, presented on July 28, 2023, was denied by the Court again because it failed to present new arguments or evidence. The current application, the fourth attempt (Mot. Seq. #5), is now before this Court.

### Discussion

21 Queens LLC seeks to intervene as of right under CPLR 1012(a)(3), claiming a real and substantial interest in the outcome due to its ownership of the Property. CPLR 1012 (a) (3) provides that a party may intervene as of right “when the action involves the disposition or distribution of, or the title or a claim for damages for injury to, property and the person may be affected adversely.” CPLR 1013 provides that a court has discretion to permit a person to intervene “when the person’s claim or defense and the main action have a common question of law or fact” and, in exercising its discretion, “the court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party.” A Party may be entitled to intervene in an action, if it

established that the representation of its interest by the parties would be inadequate, that the action involved the disposition of title to real property, and that it would be bound and adversely affected by a judgment of foreclosure and sale (*see* CPLR 1012 [a] [2], [3]). ABM Res. Corp. v. Doraben, Inc., 89 A.D.3d 773, 774, 933 N.Y.S.2d 296 (2011).

Here, the proposed intervenor-defendant has failed to establish it has an interest in the property that would warrant intervention in this proceeding because 21 Queens LLC does not dispute that it took title to the Property subject to the foreclosure, despite the existence of a five-year-old Judgment of Foreclosure and Sale, at a drastically discounted price. Common-law principles dictate that a purchaser of real property is bound by the consequences of a lawsuit of which they have actual knowledge, as held in Da Silva v Musso, 76 NY2d 436, 439 [1990]. (See DeMaio v Capozello, 124 AD3d 823, 824 [2015], and Serota v Power House Realty Corp., 274 AD2d 427, 427 [2000]).

Furthermore, members of 21 Queens LLC, including Shawn Guillen and Gerri Elisa Robinson, were already served with the Supplemental Summons and Amended Complaint on July 2, 2016, yet did not answer or appear, nor did they move to vacate their default. Instead, they moved to intervene as members of 21 Queens LLC. However, this motion, filed more than four years after service upon its members of the entry of Judgment of Foreclosure and Sale, is deemed untimely under CPLR 1012(a)(3).

Moreover, all other orders to show cause filed on behalf of 21 Queens LLC are identical in substance and contain verbatim arguments, all of which contain a legally insufficient claim that 21 Queens, a corporate entity created by Borrower's heirs (who have

defaulted in this foreclosure), is entitled to intervene in this concluded foreclosure.

In considering the matter of whether the foreclosure judgment and subsequent sale should be vacated on the grounds of a purported lack of jurisdiction, it is firmly established that the court retains discretion to vacate a judgment in instances where there exists evidence of a jurisdictional defect. CPLR 5015(a)(4) is invoked precisely for addressing situations where a court's judgment is rendered without proper jurisdiction over the involved parties. In the present case, a critical element pertains to the transfer of the Property to 21 Queens LLC prior to the foreclosure sale. The transfer, officially recorded on July 28, 2023, effectively vested title to the Property in 21 Queens. However, notably, 21 Queens was not formally named as a party in the foreclosure action, thereby resulting in its interests not being represented or adjudicated in the proceedings leading up to the foreclosure sale. Notwithstanding, the failure to include 21 Queens as a party does not ipso facto constitute a jurisdictional defect, given that 21 Queens LLC, inclusive of individuals such as Shawn Guillen and Gerri Elisa Robinson, were duly served with the Supplemental Summons and Amended Complaint on July 2, 2016. Despite such service, they neither answered nor appeared, nor did they move to vacate their default.

The record before the court does not warrant intervention by the proposed intervenor-defendant, given the members of the LLC are already named defendants in this action.

Accordingly, it is

**ORDERED** that proposed intervenor-defendant's motion (mot. seq. five) is denied in its entirety.

This constitutes the decision and order of the court.

E N T E R,



HON. DEREKIM B. NECKLES  
A. J. S. C.

**HON. DEREKIM B. NECKLES**  
**A.J.S.C.**