

To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
PRESENT: HON. WILLIAM J. GIACOMO, J.S.C.**

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US BANK TRUST, N.A., AS TRUSTEE FOR LSF8
MASTER PARTICIPATION TRUST,

Plaintiff,

Index No. 61809/13

– against –

DECISION & ORDER

STEVE A. THOMPSON A/K/A STEVE THOMPSON,
JP MORGAN CHASE BANK, N.A., BONDY & SCHLOSS,
LLP., JANET SMITH, AIDA FLORES,

Defendants.
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The following papers were considered on defendant, Steve A. Thompson's, motion to stay the foreclosure sale scheduled in this matter.

PAPERS CONSIDERED

1. Order to Show Cause/Affidavit of Steve A. Thompson a/k/a Steve Thompson/Affidavit of Aida Flores/Affirmation of Patrick Binakis, Esq./Exhibits A-B
2. Affirmation In Opposition of Margaret J. Cascino, Esq./Exhibits A-I

In this residential mortgage foreclosure action the defendant, Steve A. Thompson, moves to stay the sale on the basis that he submitted a timely loss mitigation application more than 37 days before the foreclosure sale scheduled for February 27, 2020 and the plaintiff failed to comply with 12 CFR §1024.41(c) in reviewing that application.

DISCUSSION

It is well settled that a party seeking a preliminary injunction must establish by clear and convincing evidence the following: 1) the likelihood of ultimate success on the merits; 2) the prospect of irreparable injury if the injunction is not issued and 3) a balance of the equities in the movant's favor (CPLR 6301; *Doe v Axelrod*, 73 N.Y.2d 748 [1988]). The decision to grant or deny a preliminary injunction lies within the sound discretion of the Supreme Court (*Zoller v HSBC Mortg. Corp.* 135 A.D.3d 932 [2d Dept. 2016]).

The sole basis of defendant's motion is that plaintiff allegedly failed to review and approve or deny Thompson's request for a loan modification which defendant claims was submitted more than 37 days prior to the foreclosure sale scheduled for February 27, 2020. Upon filing of this Order to Show Cause this Court exercised its discretion and temporarily stayed the sale pending its review of the papers.

12 CFR §1024.41(c) provides that if a servicer receives a complete loss mitigation application more than 37 days before a foreclosure sale, then within 30 days of receiving a borrower's loss mitigation application, a servicer shall evaluate the borrower for all loss mitigation options available to the borrower and provide notice in writing stating the servicer's determination. This requirement is effective only after a complete loss mitigation package is submitted for review.

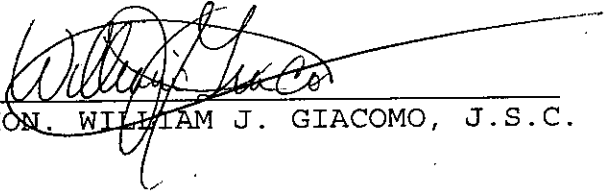
Here, the defendant has not established that the servicer had a complete loss mitigation application more than 37 days prior to the scheduled foreclosure sale as required. Moreover, plaintiff's papers in opposition to the motion

establish that the defendant has actually been offered 7 prior trial modifications since August 2014 none of which have been complied with nor acceptable to the defendant. Further, in July, 2019 plaintiff offered defendant a cash for keys with a vacate date of October 15, 2019, which offer was rejected by the defendant. Thereafter, even after that offer was rejected, plaintiff offered the defendant a 7th trial modification, which also was not acceptable to the defendant.

In this case defendant has not established his entitlement to a continued stay of the sale nor that he is entitled to a preliminary injunction. The papers disclose that plaintiff has tried on numerous occasions to accommodate defendant's requests for a loan modification, but none of them have been acceptable.

Accordingly, the defendant's application is **DENIED**. All stays are lifted. No further applications in this case may be made without prior Court approval.

Dated: White Plains, New York
March 10, 2020


HON. WILLIAM J. GIACOMO, J.S.C.