

ORIGINAL

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. TIMOTHY J. DUFFICY
Justice

PART 35

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LEVANTA GLOBAL INC.,

Plaintiff,

Index No.: 701856/16

Mot. Date: 5/19/16

-against-

Mot. Cal. No. 101

Mot. Seq. 1

B&B FORECLOSURE BUSTERS, INC.
ET AL,

Defendants.

FILED
JUL 29 2016
COUNTY CLERK
QUEENS COUNTY

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The following papers numbered 1 to 10 read on this motion by plaintiff for an order seeking to cancel and rescind the transactions recorded against seven properties by the defendant entities, based upon violations of Real Property Law §265-a, the Home Equity Theft Prevention Act.

	<u>PAPERS NUMBERED</u>
Order To Show Cause (signed).....	EF 5
Affirmation-Exhibits.....	EF 3
Affidavits of Service.....	EF 12
Affirmation in Partial Opposition.....	EF 9-11
Reply Affirmation.....	EF 13

Upon the foregoing papers, it is ordered that the motion is denied.

Plaintiff is the agent of seven homeowners of residential properties that were involved in transactions with individuals and companies which ultimately resulted in transfers of the properties to the defendant entities in exchange for promises of foreclosure assistance. Apparently, these transfers involved schemes to defraud the homeowners of their property. The owner of one of the defendant corporations was indicted in 2014 in

connection with a scheme to defraud mortgage lending institutions (see <https://www.fbi.gov/newyork/press-releases/2014/four-arrested-for-defrauding-mortgage-lending-institutions>).

The instant application seeks cancel and rescind the transactions recorded against the properties by the defendant entities, based upon violations of Real Property Law § 265-a, the Home Equity Theft Prevention Act.

By its terms, Real Property Law § 265-a applies to homeowners and purchasers of some or all of the interest in their homes where homeowners are in default of their mortgages, or where the property is already in foreclosure. The Legislature found that these circumstances render such owners vulnerable to aggressive "equity purchasers" who might, *inter alia*, induce a homeowner to sell for a fraction of fair market value through the use of unreasonable commercial practices, including misrepresentation and deceit. (Real Property Law § 265-a (1) [a].) The statute was enacted "to provide a homeowner with information necessary to make an informed and intelligent decision regarding the sale or transfer of his or her home to an equity purchaser" and, among other things, to "ensure, foster and encourage fair dealing in the sale and purchase of homes in foreclosure or default" and generally "preserve and protect home equity for the homeowners of this state." Real Property Law § 265-a [1] [d].)

The contracts of sale in this case were "[c]overed contracts" under this statute because they were incident to the sale of a residence in foreclosure (Real Property Law § 265-a [2] [c]). The transactions lacked consideration, were the product of false and misleading practices, failed to provide a "cooling off" period, or a "reconveyance arrangement". The movant has provided a copy of a plea agreement between the United States Attorney for the Eastern District of New York and defendant Barthelmy Adjavehoude covering the activities involving the subject properties.

It thus appears that the protections of the statute were applicable, and a number of requirements under that statute would be triggered, which clearly were not followed. Because these mandates were not met, the owners are entitled to rescind within two years of the transaction. Section 8(a) of the statute provides that "[a]ny transaction involving residential real property in foreclosure or, where applicable, default which is in material violation of subdivision three, four, six, seven or eleven of this section is voidable and the

transaction may be rescinded by the equity seller within two years of the date of the recording of the conveyance of the residential real property in foreclosure or, where applicable, default.”

The transaction involving Koli and the property at 173-31 103rd Street, Jamaica, New York, was recorded on March 10, 2008, some eight years ago. Similarly, the deed transaction of the property at 114-52 169th Street, Jamaica, New York, was recorded on September 7, 2007. The transaction at 110-38 117th Street, Jamaica, New York was recorded on November 14, 2007. The transaction at 155-18 113th Avenue, Jamaica, New York, was recorded on August 15, 2008. The plaintiff failed to provide a transaction date for the property at 181-20 93rd Avenue, Jamaica, New York. The transaction at 137-31 170th Street, Jamaica, New York was recorded on June 1, 2015, and the transaction at 118-01 192nd Street, Saint Albans, New York, was recorded on April 9, 2013. Therefore, all but the deed for 137-31 170th Street, Jamaica, New York, were recorded more than two years ago, and are not eligible for rescission under the statute. There is no explanation provided by the plaintiff for the delay. The Court further notes that the plaintiff did not provide proof that a statutorily-prescribed notice was served or filed within two years upon the equity buyers and with the county clerk (RPL §265-a[8][b]) as mandated by the statute. The Court, in its research, has found no authority to relax the strictures of the statute, nor has the plaintiff furnished any reasons for anything other than literal compliance.

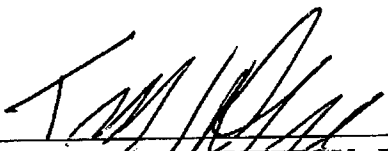
As to the plaintiff’s polemic regarding Nationstar, the assignor of the original mortgage on the property at 118-01 192nd Street, St. Albans, New York, it is without merit. That mortgage was given by Ferguson on July 3, 2008, almost five years prior to the “covered contract.” The statute provides, in subsection 14, that “[t]his section shall not apply to a prior lien holder where the lien was properly recorded prior to the execution of any covered contract by both the equity seller and the equity purchaser nor shall any provision of this section be deemed to impair any equity or other available rights of any such prior lien holder.” As a pre-existing lienholder, the bank’s remedies remain intact. Since the Court has been advised that the property has been returned to Ferguson, there is nothing preventing the lienholder from prosecuting its foreclosure action. Any deficiencies in the documentation or process should be raised in the foreclosure proceeding.

Accordingly, it is hereby,

ORDERED, that motion by plaintiff for an order seeking to cancel and rescind the transactions recorded against seven properties by the defendant entities, based upon violations of Real Property Law §265-a, the Home Equity Theft Prevention Act is denied.

The foregoing constitutes the decision and order of this Court.

Dated: July 25, 2016



TIMOTHY J. DUFFICY, J.S.C.

FILED
JUL 29 2016
COUNTY CLERK
QUEENS COUNTY