

STATE OF VERMONT

SUPERIOR COURT
Windsor Unit

CIVIL DIVISION
Docket No. 142-4-18 Wrcv

Bar Harbor Bank & Trust vs. Vermont Country Corporation, et al.

ENTRY REGARDING MOTION

Count 1, Foreclosure (142-4-18 Wrcv)

Count 2, Foreclosure (142-4-18 Wrcv)

Title: Request to Set Redemption Period at Thirty Days (Motion 10)
Filer: Plaintiff Bar Harbor Bank & Trust
Attorney: Elizabeth A. Glynn, Esq.
Filed Date: September 13, 2018

Defendant Marjorie M. Battaglia, pro se, filed a response to Plaintiff's request on 9/17/18.

Plaintiff has brought an action to foreclose a mortgage on property located at 3699 Woodstock Road, White River Junction, Vermont ("subject property"). In July 2018, Plaintiff moved for summary judgment. The motion was granted on September 18, 2018. Now, Plaintiff, through counsel, requests that the Court set the redemption date in the foreclosure at thirty (30) days from the date of issuance of the Judgment Order and Decree of Foreclosure, pursuant to 12 V.S.A. § 4946(c), asserting that the subject property is not "farmland" or a "dwelling house" under 12 V.S.A. § 4931.

In response, Defendant Marjorie Battaglia ("Defendant") asserts that she is the renter in the apartment located at the subject property, that Vermont Country Corporation is the landlord, and that she has a minimum of 90 days from writ of possession to vacate the premises, referencing federal law protecting tenants in foreclosure. Additionally, she asserts that she cannot afford the attorney's fees because she is indigent, she has lived and worked "in this store 9 years and 1 month mostly without help as [she is] widowed," and that she "will have more than 6 months to vacate the property as that is the amount of time required to earn the attorneys fees." She requests "more time to vacate" and attaches to her response a "Thirty Year Lease" to the Battaglia Family, as signed by herself for the Vermont Country Corporation, as well as for the Battaglia Family.

Plaintiff opposes Defendant's request for more time to vacate the property, arguing that the Protecting Tenants in Foreclosure Act does not apply to her or her family members because they are not "bona fide tenants." Plaintiff reiterates that the redemption period should be set

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at 30 days and contends that Defendant's ability or inability to pay the judgment and attorney's fees is not relevant to whether Plaintiff is entitled to the amount.

Subdivision (b) of section 4946 of Title 12 of the Vermont Statutes Annotated sets the time for redemption with respect to farmland or dwelling house as follows:

If a decree is made foreclosing the right of redemption by judicial sale with respect to farmland or a dwelling house that is occupied by the owner as his or her principal residence at the time the plaintiff applies for entry of judgment, the time of redemption shall be established by the court and shall be six months from the date of the decree, unless a shorter time is ordered by the court. The court shall fix the period of redemption taking into consideration whether there is value in the mortgaged property in excess of the mortgage debt and debt owed to junior lienholders, any assessed but unpaid property taxes, the condition of the mortgaged property, and any other equities. No sale of a dwelling house when occupied by the owner as his or her principal residence at the time the plaintiff applies for entry of judgment may take place within seven months of service of the foreclosure complaint, unless the court orders a shortened redemption period pursuant to this section or the plaintiff and the mortgagor mutually agree to a shorter period after commencement of the action to foreclose the mortgage.

12 V.S.A. § 4946(b). Subdivision (c), in turn, sets the time for redemption for "other property," as follows:

Time for redemption; other property. If a decree is made foreclosing the right of redemption by judicial sale with respect to any property other than farmland or a dwelling house that is occupied by the owner as his or her principal residence at the time the plaintiff applies for entry of judgment, the redemption period shall be eliminated or reduced by the court to no more than 30 days.

12 V.S.A. § 4946(c). Further, section 4931 defines "dwelling House" as "a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives, other than a time-share in a unit, each of which is used or intended to be used as a residence . . ." 12 V.S.A. § 4931(2).

Here, the Court finds the applicability or inapplicability of the Protecting Tenants in Foreclosure Act to be inconsequential. Plaintiff acknowledges that the subject property "is a commercial property, with a residential apartment attached." It is undisputed that Defendant is an occupant of that apartment. As such, the Court concludes that the apartment is a "residential structure," containing at least one "family housing unit," thereby falling within the definition of a "dwelling house." In addition, because it is undisputed that Vermont Country Corporation owns the mortgage deed for the subject property, and Defendant, in turn, owns Vermont

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Country Corporation, the Court similarly concludes that the dwelling house is occupied by the owner as her principal residence.

Significantly, a decree foreclosing the right of redemption by judicial sale with respect to the subject property inextricably forecloses the right of redemption with respect to the apartment as well. Accordingly, the Court interprets section 4946(b) as encompassing the subject property. To interpret subdivision (c) as the appropriate provision would mean that the redemption period would be reduced to no more than 30 days, despite the fact that the property being foreclosed on includes a dwelling wherein the owner resides. The Court will not presume that the Legislature intended "such absurd or irrational consequences." *Vermont Dev. Credit Corp. v. Kitchel*, 149 Vt. 421, 424 (1988) (citing *In re Judy Ann's Inc.*, 143 Vt. 228, 232 (1983)).

For the foregoing reasons, Plaintiff's request to set the redemption period at 30 days is denied.¹



Michael Kainen
Superior Court Judge

Notifications:

Elizabeth A. Glynn (ERN 1594), Attorney for Plaintiff Bar Harbor Bank & Trust
Defendant Vermont Country Corporation
Party Dismissed from Case Beth H. Kelly
Party Dismissed from Case Vested Interests of New
Defendant Mark A. Benetatos
Party Dismissed from Case John J Kelly
Defendant Marjorie M. Battaglia
Party Dismissed from Case Bradford Oil Company, Inc.

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¹ To the extent Defendant opposes Plaintiff's Motion for Attorney's Fees, that motion is not currently before the Court. As such, the Court declines to address Defendant's opposition here.