

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JANICE A. TAYLOR  
Justice

IAS Part 15

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CARVER FEDERAL SAVINGS BANK,  
Plaintiff(s),

Index No.: 7209/12

Motion Date: 10/8/19

Motion Cal. No.: 4, 5

Motion Seq. No: 4, 5

- and -

PAULETTE F. FORDE a/k/a PAULETTE FORDE,  
COMMISSIONER OF SOCIAL SERVICES OF THE CITY  
OF NEW YORK SOCIAL SERVICES DISTRICT,

Defendant(s).  
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FILED  
JAN X 2 2020  
COUNTY CLERK  
QUEENS COUNTY

The following papers numbered 1 - 24 read on this motion by defendant Paulette F. Forde a/k/a Paulette Forde for an order vacating the Judgment of Foreclosure and Sale and vacating the sale of the subject property; and a motion by non-party 305 Jefferson LLC for an order granting leave to intervene.

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Upon the foregoing papers it is **ORDERED** that the motions are considered together and decided as follows:

This is an action for foreclosure of the property located at 219-08 138<sup>th</sup> Road, Springfield Gardens, New York. This action was commenced on April 4, 2012. Plaintiff also filed a notice of pendency with the commencement of this action and a successive notice of pendency on April 7, 2015. By order dated February 18, 2013, this court appointed Sara Zeejah, Esq. as referee in this action. By order dated May 20, 2015, this court appointed Rhonda K. Lowe, as substitute referee.

On February 1, 2018, this court issued a Judgment of

Foreclosure and Sale. A copy of this judgment with notice of entry was served on defendant Paulette F. Forde a/k/a Paulette Forde ("Forde") on March 20, 2018. On June 8, 2018, the subject property was sold to non-party 305 Jefferson LLC for the amount of \$600,000.00.

Defendant Forde now moves, pursuant to CPLR §5015, to vacate the Judgment of Foreclosure and Sale and vacate the sale. Plaintiff filed its affidavit reflecting service, pursuant to CPLR §308(1), on defendant Varma on April 10, 2012. The filed affidavit of service constitutes *prima facie* evidence of proper service pursuant to CPLR §308(2) (*Scarano v Scarano*, 63 AD3d 716 [2nd Dept, 2009]). To warrant a traverse hearing when the affidavit of service contains the elements of proper service, the rebutting affidavit must specifically contradict something contained in the process server's affidavit (*Simonds v Grobman*, 277 AD2d 369 [2d Dept; 2000]). Although defendant Forde asserts that she was not served with the pleadings, she does not sufficiently refute the affidavit of service. The movant does not state that she didn't live at the service address on April 10, 2012, that her regular routine would have required her to be away from home at 7:06 a.m on the date of service or that her physical appearance was vastly different than the description given by the process server. In fact, the only fact that defendant Forde refutes in the affidavit of service is to assert that, on the date of service, her hair was gray and not black. Thus, defendant Forde has failed to bring forth sufficient proof to warrant vacatur of the Judgment of Foreclosure and Sale and vacatur of the sale. Accordingly, defendant Paulette's application is denied in its entirety.

The application by non-party 305 Jefferson LLC ("305 Jefferson") is also denied. Although it is clear that, as the successful purchaser at the foreclosure sale, 305 Jefferson has a real estate interest in property. However, as this court has now denied defendant Forde's application, her property rights remain extinguished and the sale remains valid. Thus, non-party 305 Jefferson's has no standing to answer or assert counterclaims in the underlying foreclosure action. For all of the foregoing reasons, the application of non-party 305 Jefferson is also denied in its entirety.

Dated: December 19, 2019

  
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 JANICE A. TAYLOR, J.S.C.

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