



FORECLOSURE SALE AND EMERGENCY REPAIR CHARGES



KINGS COUNTY, NY:

**White Oak Projects, LLC, v. Upreal Washington, LLC, 224 A.D.3d 718 (2d Dept. 2024).
Decided February 7, 2024.**

This is an appeal taken by a successful bidder at a mortgage foreclosure sale. The appellant, after failing to close, sought an order to vacate the foreclosure sale and to direct the referee to return the down payment, on the ground that the terms of sale executed by the referee improperly required appellant to pay certain emergency repair charges that, it alleges were payable from the proceeds of the sale pursuant to the judgment of foreclosure.

The judgment of foreclosure provided that pursuant to RPAPL 1354, the referee was to pay from the proceeds of the sale “taxes, assessments, sewer rents, water rates and any charges placed upon the property by a city agency which have priority over the foreclosed Notes and Mortgages, which are liens on the premises at the time of sale with such interest or penalties which may have lawfully accrued thereon to the date of payment.” This language is common in most judgments of foreclosure. The lower court denied appellant’s motion.

The Appellate Division, Second Department affirmed the lower court’s order holding that:

“A referee lacks the authority to alter the terms of a judgment of foreclosure” (Citations omitted). Here, the emergency repair charges were not liens against the property at the time of the sale, and contrary to the appellant’s contention, the referee was not permitted to pay them out of the proceeds of the sale. Accordingly, the Supreme Court providently exercised its discretion in denying that branch of the appellant’s motion which was to vacate the foreclosure sale and direct the referee to return the down payment.

Major takeaways – The terms of sale at a mortgage foreclosure sale may not vary or contradict a judgment of foreclosure. If there is a contradiction, the judgment of foreclosure controls. Moreover, emergency repair charges which are not liens against the property at the time of the foreclosure sale should not be paid out of proceeds.



224 A.D.3d 718, 205 N.Y.S.3d 146, 2024 N.Y. Slip Op. 00648

****1** White Oak Projects, LLC, Respondent,
v
Upreal Washington, LLC, et al., Defendants.
658 Washington 123, LLC, Nonparty Appellant.

Supreme Court, Appellate Division, Second
Department, New York
2021-04154, 524175/18
February 7, 2024

CITE TITLE AS: White Oak Projects, LLC v Upreal Wash., LLC

HEADNOTE

Mortgages Foreclosure

Authority of Referee—Emergency Repair Charges Not Liens against Property at Time of Sale and Referee Not Permitted to Pay Them out of Proceeds of Sale

Altman Schochet LLP, New York, NY (Irena Shternfeld of counsel), for nonparty appellant.
Seyfarth Shaw LLP, New York, NY (Jerry A. Montag of counsel), for respondent.

In an action to foreclose several mortgages, nonparty 658 Washington 123, LLC, appeals from an order of the Supreme Court, Kings County (Lawrence Knipel, J.), dated May 4, 2021. The order, insofar as appealed from, denied that branch of the motion of nonparty 658 Washington 123, LLC, which was to vacate a foreclosure sale of the subject property and direct the referee to return a down payment to that nonparty.

Ordered that the order is affirmed insofar as appealed from, with costs.

In December 2018, the plaintiff commenced this action to foreclose several mortgages on a mixed-use building, and the Supreme Court issued a judgment of foreclosure and sale dated December 17, 2019. The judgment of foreclosure and sale provided that pursuant to [RPAPL 1354](#), the referee was to pay ***719** from the proceeds of the sale “taxes, assessments, sewer rents, water rates and any charges placed upon the property by a city agency which have priority over the foreclosed Notes and Mortgages, which are liens on the premises at the time of sale with such interest or penalties which may have lawfully accrued thereon to the date of payment.” On January 30, 2020, a referee held a foreclosure sale of the subject property. Nonparty 658 Washington 123, LLC (hereinafter the appellant), was the successful bidder and tendered the sum of \$160,000 as a down payment for the purchase of the property.

In April 2021, after the appellant failed to close, the appellant moved, inter alia, to vacate the foreclosure sale and direct the referee to return the down payment, on the ground that the terms of sale executed by the referee at the time of the sale improperly required the appellant to pay certain emergency repair charges that, pursuant to the judgment of foreclosure and sale, were payable from the proceeds of the sale. The Supreme Court denied that branch of the appellant’s motion. We affirm.

“A referee lacks the authority to alter the terms of a judgment of foreclosure” (*Cicorelli v Hickey’s Carting, Inc.*, 66 AD3d 626, 627 [2009]; see *Paragon Fed. Credit Union v Skarla*, 186 AD3d 840, 842 [2020]). Here, the emergency repair charges were not liens against the property at the time of the sale, and contrary to the appellant’s contention, the referee was not permitted to pay them out ****2** of the proceeds of the sale. Accordingly, the Supreme Court providently exercised its discretion in denying that branch of the appellant’s motion which was to vacate the foreclosure sale and direct the referee to return the down payment.

The appellant’s remaining contentions are without merit. Maltese, J.P., Christopher, Wooten and Love, JJ., concur.

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Filings (3)

Title	PDF	Court	Date	Type
1. Reply Brief for Non-Party Appellant WHITE OAK PROJECTS, LLC, Plaintiff-Respondent, v. UPREAL WASHINGTON LLC, Boaz Gilad, Structural Engineering Technologies P.C., Cardella Trucking Co. Inc. and New York City Department of Buildings, Defendants; 658 Washington 123 LLC, Non-Party Appellant. 2022 WL 22287643	—	N.Y.A.D. 2 Dept.	Feb. 14, 2022	Brief
2. Brief for Plaintiff-Respondent WHITE OAK PROJECTS, LLC, Plaintiff-Respondent, v. UPREAL WASHINGTON LLC, Boaz Gilad, Structural Engineering Technologies P.C., Cardella Trucking Co. Inc. and New York City Department of Buildings, Defendants; 658 Washington 123 LLC, Non-Party Appellant. 2022 WL 22287609	—	N.Y.A.D. 2 Dept.	Jan. 24, 2022	Brief
3. Brief for Non-Party Appellant WHITE OAK PROJECTS, LLC, Plaintiff-Respondent, v. UPREAL WASHINGTON LLC, Boaz Gilad, Structural Engineering Technologies P.C., Cardella Trucking Co. Inc. and New York City Department of Buildings, Defendants; 658 Washington 123 LLC, Non-Party Appellant. 2021 WL 12181019	—	N.Y.A.D. 2 Dept.	Dec. 23, 2021	Brief

Negative Treatment

There are no Negative Treatment results for this citation.

History

There are no History results for this citation.