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Franklin Credit Mgt. Corp. v. Theresa Striano Revocable Trust

Supreme Court of New York, Appellate Division, First Department

July 11, 2017, Decided ; July 11, 2017, Entered

4441N, 380345/12

Reporter

152 A.D.3d 428 *; 58 N.Y.S.3d 364 **; 2017 N.Y. App. Div. LEXIS 5457 ***; 2017 NY Slip Op 05575 ****; 2017 WL 2945312 without costs, and the motions granted.

[**1]** Franklin Credit Management Corporation, Plaintiff, v Theresa Striano Revocable Trust, Respondent. 5 Boro Group Enterprises, LLC, Nonparty Appellant.

Core Terms

motions, mortgage foreclosure action, defendant's right, consolidated, extinguished

Headnotes/Summary

Headnotes

Mortgages—Foreclosure—Strict Foreclosure—Failure to File Notice of Intention to Redeem Mortgage on Property Sold

Counsel: **[***1]** Law Office of Daniel H. Richland, PLLC, Lindenhurst (Daniel H. Richland of counsel), for appellant.

Judges: Concur—Friedman, J.P., Renwick, Andrias, Moskowitz, Gesmer, JJ.

Opinion

[*428] **[**365]** Order, Supreme Court, Bronx County (Sharon A.M. Aarons, J.), entered August 3, 2015, which denied 5 Boro Group Enterprises, LLC's (5 Boro's) motions to, among other things, permanently enjoin the Receiver, his agents and employees **[*429]** from entering the subject premises, collecting rents or interfering with the possessory rights of 5 Boro (as successor in interest to plaintiff), without prejudice to seeking the same relief in a consolidated mortgage foreclosure action, unanimously reversed, on the law,

By judgment of Supreme Court, Bronx County (Mark Friedlander, J.), entered March 8, 2013 in the underlying strict foreclosure action commenced by plaintiff, defendant's rights and interests were extinguished by its failure to file a notice of its intention to redeem the mortgage on the property sold to plaintiff, and plaintiff was deemed to hold the property free and clear from any and all such liens, encumbrances or interest (see [RPAPL 1352](#); [Bass v D. Ragno Realty Corp.](#), [111 AD3d 863](#), [864-865](#), [976 NYS2d 118 \[2d Dept 2013\]](#)). Given that the Receiver at issue was appointed in the consolidated **[***2]** mortgage foreclosure action, that defendant's rights in that action are now extinguished by the judgment entered March 8, 2013, and that the Receiver is subject to the control of the court (see [Matter of Kane \[Freedman—Tenenbaum\]](#), [75 NY2d 511](#), [515](#), [553 NE2d 1005](#), [554 NYS2d 457 \[1990\]](#)), the motion court should have granted 5 Boro's motions. Concur—Friedman, J.P., Renwick, Andrias, Moskowitz and Gesmer, JJ.

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