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Court Voids Foreclosure, Resale of 'Conservatively' Sold Condo



By Daniel Wise

In a problem-plagued foreclosure, a Suffolk County Supreme Court justice has undone the forced sale of a home in a gated community in Commack at a price that was "conservatively" less than one half of its minimal value of \$750,000.

The ruling from Justice Peter Fox Cohalan (See Profile) in *Hamlet Golf and Country Club Homeowners Association v. Prager*, 25425/05, restores the ownership of the 3,600-square-foot home to its owner, Robin K. Prager, whose husband, David, died while the foreclosure action was pending.

Justice Cohalan invoked the equity powers of the court to set aside the foreclosure sale because the 170-home gated community, known as the Hamlet, pressed forward with the foreclosure action for unpaid common charges even as it accepted two payments - one was subsequently returned - totaling \$7,600 from Ms. Prager before the apartment was sold at auction on Sept. 22, 2006.

Justice Cohalan noted in his opinion that the apartment, which was "conservatively" worth between \$750,000 and \$1 million, had been sold for \$326,000 and ultimately acquired for that amount by a company owned by the lawyer for the Hamlet, Stanley J. Somer of Somer & Heller in Commack.

Mr. Somer's dual roles as the Hamlet's attorney and "the ultimate buyer" of the Pragers' condominium," Justice Cohalan

observed, was a factor "complicating this process."

Mr. Somer, through a representative, declined to comment.

The Hamlet initiated a foreclosure action in October 2005, claiming that the Pragers had fallen behind in the payment of their common charges by \$2,155. By the time a court-appointed referee computed the couple's arrearage the following June, the amount had grown to \$7,156.

But, Justice Cohalan wrote, the Hamlet pressed forward with the foreclosure even though Ms. Prager made an initial payment against the arrearage of \$3,500 on April 4, 2006, just a week after her husband had died of cancer.

The Hamlet accepted the payment but did not advise the referee supervising the foreclosure about it, and the referee did not take it into account when he set the arrearage at more than \$7,000 when he issued his report two months later.

Ms. Prager made a second payment of \$4,100 on Sept. 11, 2006, 11 days before the apartment was sold at auction.

Justice Cohalan noted that the second payment was credited against the arrearage but subsequently returned to Ms. Prager. According to Ms. Prager's attorney, John Ward of Sahn Ward & Baker in Uniondale, the

\$4,100 was returned to her nearly two weeks after the sale by a check dated Oct. 5, 2006. Ms. Prager refused to accept the check, he added.

In setting aside the sale, Justice Cohalan concluded that the Hamlet's continuation of the foreclosure action while accepting payments from Ms. Prager showed "bad faith and 'oppressive or unconscionable conduct' by the mortgagee" entitling her to equitable relief.

Justice Cohalan wrote that he was "troubled" that the Hamlet, which "contains million-dollar homes" had moved forward with a foreclosure it had started over an arrearage in common charges, which he described separately in the opinion as being "only \$2,154.85."

With the foreclosure sale having been set aside, Ms. Prager now has the right to avoid the forced sale of her home by paying any amounts outstanding, said her attorney, Mr. Ward.

In a foreclosure action, Mr. Ward explained, the drop-dead moment beyond which home owners can no longer redeem their properties is when the gavel falls at a foreclosure auction.

Mr. Ward said he is confident that Ms. Prager can pay any amount that remains outstanding on her home.