

Must the Foreclosure Sale Be Held Within 90 Days?

By Bruce J. Bergman | September 04, 2024

Yes, but there appear to be enough reasonable exceptions. What, though, is this really about?

When a foreclosing lender or servicer schedules a foreclosure sale there are obvious reasons why that plaintiff would wish to conduct the sale as soon as possible. It should be seen as highly unusual that the foreclosing plaintiff would seek to delay bringing the action to a conclusion which would otherwise yield (it is hoped) the mortgage proceeds or title to the property, to then be sold to generate those proceeds.

Nonetheless, New York State mandarins believed that foreclosure sales were being delayed. Accordingly, they amended the sale statute [RPAPL §1351(1)] back on December 20, 2016 to mandate that the foreclosure judgment contain a direction that the sale of the property had to be made within 90 days of the signing of the judgment.

This was an immediate problem because a signed judgment is not available to the plaintiff until it is entered, and entry can sometimes be delayed for inordinate periods of time. While some courts recognize the need to measure the 90 days from the actual entry date, not all do. Then there can be time issues with the referee's availability to schedule a sale date. Thus, time could sometimes run short for the plaintiff to comply with the 90 day requirement merely by virtue of circumstances it cannot control.

Still further is the problem of borrowers affirmatively delaying the process either with orders to show cause or bankruptcy filings. Although it would seem apparent that such obfuscation would cause little trouble, a recent case (and it is not the first) confirms that borrowers are perfectly willing to litigate this point even through the appeals process. [*Bank of New York Mellon v. Ramsamooj*, 219 A.D.3d 1402, 196 N.Y.S.3d 148 (2d Dept. 2023)]

The main saving grace emerging from this case was the appellate court's citation of another statute (CPLR § 2004) which provides that except where it may be otherwise prescribed by law, a court may extend a time fixed by any statute, rule or order for doing any act upon such terms as may be just, and upon good cause shown, even if the application is made after expiration of the time fixed.

Further, the court noted then that in exercising discretion to grant an extension of time, the court can consider such factors as the length of delay, the reason or excuse for the delay and any prejudice to the opponent of the motion.

Applying all that to this case—where the 90-day period was exceeded for the very reason that the borrower filed for bankruptcy and stayed that sale – leads to a salutary conclusion. The borrower suffered no prejudice by the 90-day sale period not being achieved. Therefore, when the foreclosing plaintiff moved to extend the 90 days, the trial court was correct in allowing it and that was affirmed on the appeal.

The foreclosing plaintiff appropriately prevailed—but the ultimate mischief of the unfortunate statute requiring the 90 days in the first place was that the plaintiff suffered the cost of litigation both in the trial court and on appeal, as well as the accrual of interest over the lengthy delay incurred. All this because the legislature concluded that foreclosing lenders chose to volitionally delay foreclosure sales.

Just another day in the Wild West arena of New York foreclosures.

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