Why Do Courts Continue on Their Own To Dismiss Foreclosures?

Such court actions are called "sua sponte" and there can be no definitive answer as to why such orders continue to issue. As a refresher, this unfortunate event in mortgage foreclosure actions is dismissal of the case, or the compelling of some other measure by the court, on its own, without a motion having been made for that relief. This seems like some emotional response, and why it occurs is puzzling indeed, because the underlying principles are well-known and well-accepted.[7]

The power of a court to dismiss a complaint sua sponte is to be used sparingly and even then only when extraordinary circumstances exist to warrant dismissal. And due process is denied to a party if not given the opportunity to respond to a court's intent to dismiss the case or compel some other action. In short, in the absence of the truly extraordinary, this should never happen.

But it has, many times, and continues to be seen, as a new case reminds.[8] What happened in this matter, which is perhaps typical of sua sponte invocations, is that a plaintiff commenced a foreclosure and the borrower defaulted in appearance. An order was entered granting plaintiff's motion for a default judgment against the defendant and an order of reference.[9] Ultimately (actually almost two years thereafter), the trial court required a status conference, at which time it directed the foreclosing plaintiff to "file an application for a judgment of foreclosure and sale by June 7, 2017."[10] When the plaintiff failed to do so, the court sua sponte directed dismissal of the complaint and cancellation of the notice of pendency![11]

The plaintiff moved to vacate the dismissal order but the trial court denied that effort, which led to an appeal – eliciting the expenditure of unfortunate time and expense for the foreclosing plaintiff.[12] The Appellate Division reversed, which is typically the invariable result. The ruling was the usual: a court's power to dismiss an action sua sponte is to be used sparingly and "only when extraordinary circumstances exist to warrant dismissal."[13] As noted, this is standard and commonplace.

As to specifics, the Appellate Division held that the plaintiff's failure to move for the judgment of foreclosure and sale, as directed by the status conference order, was simply not a sufficient ground to allow sua sponte dismissal of the complaint and cancellation of the lis pendens.[14]

So in the end the plaintiff prevailed, but, of course, as noted, at the cost of much unnecessary time and expense. Despite regular reversals time after time of sua sponte dismissals of foreclosures, such cases nonetheless arise. It seems apparent that this corner of frustration will continue to be imposed upon foreclosing plaintiffs in the future.

Endnotes

1. *HSBC Bank USA, NA v. Schneider*, 216 A.D.3d 1148, 191 N.Y.S.3d 68 (2d Dep't, 2023).
2. *Id.*
3. *Bank of America v. Kessler*, 39 N.Y.3d 317, 186 N.Y.S.3d 385 (2023).
4. *HSBC Bank USA, NA*, 216 A.D.3d 1148.
5. *Id.*
6. *Id.*
7. For an in-depth review of this subject, see 1 Bergman on New York Mortgage Foreclosures, LexisNexis/Matthew Bender (Rev. 2023) § 2.32.
8. *Deutsche Bank Trust Company Americas v. Martinez*, 214 A.D.3d 704, 185 N.Y.S.3d 232 (2d Dep't, 2023).
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.* at 705.
13. *Id.*
14. *Id.*