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<b>HSBC Bank, USA v Gashi</b>
2013 NY Slip Op 50399(U)
Decided on March 26, 2013
Supreme Court, Dutchess County
Pagones, J.
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Decided on March 26, 2013

**Supreme Court, Dutchess County**

<b>HSBC Bank, USA, Plaintiff,</b>
<b>against</b>
<b>Nazmi Gashi, et al., Defendants</b>

2820/2012

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NAZMI GASHI

Defendant, Pro Se

James D. Pagones, J.

A further settlement conference in the above-captioned foreclosure action is scheduled for April 5, 2013 at 11:30 a.m., before Court Attorney Referee Juliana Maugeri at the Dutchess County Supreme Court, 10 Market Street, 1st floor, Poughkeepsie, New York. Adjournments are only granted with leave of the Court. The homeowner Nazmi Gashi has appeared at each and every one of the six settlement conferences with his cousin, who has been assisting him in the mediation process.

At the first settlement conference on August 20, 2012, the homeowner believed that American Servicing Company (ASC) took over as the servicer of the loan in place of Greenpoint. However, plaintiff's local counsel stated that Wells Fargo was the servicer.

By letter dated August 22, 2012, plaintiff's counsel advised the homeowner that the servicer was in fact ACS. However, at the last conference, plaintiff's local counsel again stated that the servicer for loan was Wells Fargo.

In addition to this confusion, prior to the next conference, plaintiff's counsel advised the homeowner that the modification application packet was complete. However, at the next conference on November 19, 2012, local counsel advised the homeowner that the packet was not complete. Local counsel then reviewed the application packet in detail with the homeowner and his cousin and advised them what specific documents or information were missing. The borrower promptly complied and submitted the missing information. However, at the next conference on January 7, 2013, plaintiff again requested further documents.

On February 25, 2013, local counsel advised the borrower that the file was complete; that [\*2] plaintiff had completed BPO of the premises; that no further documents were missing; and that the file was under review.

Prior to the latest conference, the borrower again spoke with the law firm and was advised that nothing further was needed. However, at the latest March 21 conference, local counsel came to court with a laundry list of documents which plaintiff claimed were still required to complete the packet. The homeowner expressed his increasing frustration at the fact that he has promptly sent plaintiff all requested documents in a timely manner after each

conference.

The purpose of these settlement conferences is for the parties to try to resolve the matter without litigation which "would have the immediate salutary effect of restoring the homeowner to his home" (*Aames Funding Corp. v Dudley*, NYLJ, Dec 7, 2009, at 42, col 3 [Sup Ct, Kings County, Kramer, J.]), thereby avoiding "[d]elays in the foreclosure context [which would] inevitably leave viable properties in a virtually ownerless limbo state and create the potential for a landscape filled with vacant, decaying edifices which could well invite further foreclosures and decreasing property values" (*Mtge. Electronic Registration Sys. Inc., v Lizima*, 15 Misc 3d 1118[A] [Sup. Ct, Kings County 2007]; *see also* CPLR 3408 [a] [purpose of mandatory conference to hold settlement discussions pertaining to respective rights of the parties including a determination whether the parties can reach mutually agreeable resolution to help homeowner avoid losing his or her home]).

CPLR 3408(f) requires that "[b]oth the plaintiff and defendant shall negotiate in good faith." The Uniform Rules of the Trial Court impose an affirmative obligation upon the court to ensure that the primary statutory goal of keeping homeowners in their homes (*see* CPLR R3408[a]) and the concomitant obligation to "ensure that each party fulfills [the] obligation to negotiate in good faith" (22 NYCRR 202.12-a[c][4]) are met. Toward that end, this court has the power, upon a finding of bad faith, to impose a equitable remedy commensurate with plaintiff's conduct. Based on the record to date, plaintiff's unnecessary and dilatory tactics have had the inexorable effect of plunging this homeowner deeper and deeper into arrears, raising the very real probability that he will never be able to extricate himself from this debt and work out an affordable loan modification. This homeowner has appeared at every conference and has provided every document plaintiff has requested in a timely manner. Plaintiff's piecemeal requests at each conference only serve to unnecessarily delay the modification application process while racking up interest, fees, and penalties to plaintiff's benefit and the homeowner's detriment. Moreover, there was no explanation offered at the last conference as to the diametrically opposed updates that the borrower and local counsel had received, especially in light of the update at the prior conference that all documents had been received, and the file was under review.

In order to avoid a hearing on whether plaintiff is negotiating with this borrower in good faith, based on the foregoing, it is hereby

ORDERED that plaintiff is barred from collecting any interest incurred from February 25, 2013, until further order of the court; and it is further

ORDERED that any unpaid late fees are waived; and it is further

ORDERED that any loan modification fees are to be either waived or refunded to the homeowner; and it is further;

ORDERED that any attorneys' fees claimed to have been incurred from the date of the [\*3] default until the date of this order are not to be included in the calculation of the homeowner's modified mortgage payment or otherwise imposed on the homeowner's, but, rather, any request for attorneys fees is hereby severed and must be submitted to the court for a separate, independent review as to their reasonableness; and it is further

ORDERED that a bank representative fully familiar with the file and with full authority to settle the matter must appear at the next settlement conference and at all future settlement conferences until the case is released from the settlement part or until further order of the court; and it is further

ORDERED that local counsel may not appear at this conference or at any future settlement conferences until the case is released from the settlement part or until further order of the court; and it is further

ORDERED that the parties appear for a further conference in the Foreclosure Settlement Part on April 5, 2013 at 11:30 a.m.

Failure to comply with this order may result in sanctions.

Adjournments are granted only with leave of the court.

This constitutes the order of the court.

Dated:Poughkeepsie, New York

March 26, 2013

**ENTER**

**HON. JAMES D. PAGONES, A.J.S.C.**

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