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<b>U.S. Bank Natl. Assn. v McCrory</b>
2014 NY Slip Op 50911(U)
Decided on April 3, 2014
Supreme Court, Cortland County
Campbell, J.
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Decided on April 3, 2014

Supreme Court, Cortland County

**U.S. Bank National Association AS TRUSTEE FOR RASC  
2005-EMX4, Plaintiff,**

**against**

**Kristine H. McCrory, MICHAEL P. McCRORY, et al.,  
Defendant.**

13-539

Julie A. Campbell, J.

Plaintiff U.S. Bank National Association as Trustee for RASC 2005-EMX4 commenced this action for foreclosure.

In 2010 U.S. National Bank Association commenced a foreclosure action against these same defendants with respect to the same real property. That action was dismissed based on plaintiff's lack of good faith during the settlement process [see Order and Decision, Index No. 10-001; RJI No. 2010-0060-C, copy attached]. In the dismissal order

the court outlined a long succession of missteps by plaintiff taking place over a period of a year. The court found that plaintiff had made misrepresentations to the court and to the defendants; that plaintiff had reneged on modification offers after accepting defendants' good faith payments; that plaintiff repeatedly violated both the statute and this court's orders, and failed to provide documentation requested by the court. In short, the court found egregious behavior amounting to lack of good faith.

The order of dismissal contained the following provisions:

**ORDERED**, that in the event plaintiff commences a new action in [\*2]foreclosure with respect to Kristine McCrory and the premises at issue herein, no additional costs or attorney fees will be allowed, absent good cause shown, and it is further

**ORDERED**, that a copy of the Order and Judgment of Dismissal shall be attached to the original pleadings in any such subsequent action in foreclosure and shall be specifically referenced in the body thereof.

That order was never appealed and remains the law of the case.

On November 12, 2013, plaintiff commenced this foreclosure action against Kristine McCrory, *inter alia*. The prior order of this Court is not attached to that complaint. The body of the complaint does not make reference to that order. And the complaint seeks relief including additional interest, late charges, attorney's fees and costs.

On April 3, 2014, this Court held a conference on this action in accordance with CPLR 3408, which requires that plaintiff "appear in person or by counsel, and if appearing by counsel, such counsel shall be fully authorized to dispose of the case." Plaintiff did not appear in person but sent counsel who advised that he was not authorized to dispose of the case without consulting with plaintiff. Moreover, counsel for plaintiff claimed to be wholly uninformed of this Court's previous decision and order.

The Uniform Rules for Trial Courts also require that "only attorneys fully familiar with the action and authorized to make binding stipulations, or accompanied by a person empowered to act on behalf of the party represented, will be permitted to appear at a pretrial conference." [22 NYCRR 202.26 (e)].

In short, plaintiff continues to ignore the laws of this state, to flaunt the orders of this Court and to manipulate the legal system with an absence of good faith toward defendants, the court and, apparently, its own attorney.

As this Court noted in the previous Decision and Order:

A foreclosure action is equitable in nature and triggers the equitable powers of the court [*Notey v Darien Constr. Corp*, 41 NY2d 1055 (1977)]. Once equity is invoked, the court's power is as broad as equity and justice require [*Mortgage Elec. Registration Sys., Inc. V Horkan*, 68 AD3d 948 (Second Dept., 2009)]. "Moreover, as particular to foreclosure actions, this court has the power, and indeed the affirmative obligation under the New York Code of Rules and Regulations, to ensure that the parties are acting in good faith (*see* 22 NYCRR 212.12-a [c] [4]). In the wake of a national banking crisis resulting from years of wide-spread predatory lending practices ... New York enacted sweeping new legislation effective August 2008 in an effort to stave off the alarming surge of mortgage foreclosures upon homeowners." [*BAC Home Loans Servicing v Westervelt*, 29 Misc 3d 1224 (A) (Sup Ct, 2010)]. The court's role is to ensure (1) [\*3] that the primary statutory goal of keeping homeowners in their homes is met wherever feasible [see CPLR 3408 (a)]; and (2) to ensure the concomitant obligation of the parties to act in good faith [*BAC Home Loans Servicing v Westervelt, supra*].

For the reasons stated herein , and pursuant to Uniform Rule 202.26 (e), it is hereby

**ORDERED**, that the above matter is hereby dismissed, with prejudice.

This constitutes the Order and Judgment of the Court. The mailing of a copy of this Order and Judgment by this court shall not constitute notice of entry.

Dated: April 3, 2014 ENTER

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Hon. Julie A. Campbell

Acting J.S.C.

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