

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUFFOLK SUPERIOR COURT
DOCKET NO. 2184CV02950-~~BL-2~~ **BL-1**
(Salinger)

_____))
 RAYMOND C. GREEN, INC., as TRUSTEE OF))
 THE RAYMOND C. GREEN TRUST,))
))
 Plaintiff,))
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 v.))
 LOUIS DELPIDIO and NICHOLAS FIORILLO))
))
 Defendants,))
))
 And))
 GOTCAPITAL, LLC, et al))
))
 Reach & Apply Defendants.))
 _____))

2022 JUN 16 A 9:51
 SUFFOLK SUPERIOR COURT
 CLERK OF COURT OFFICE

EMERGENCY EX-PARTE MOTION TO ENJOIN FORECLOSURE SALE

The Defendant Nicholas Fiorillo, pro se and individually, respectfully request this court enjoin the foreclosure sale of a first mortgage granted on 3 Kales Way, Harwichport, MA (the "Property") scheduled for 2pm June 16th, 2022 and allow 60 days to complete sale/refinance of the property. Sufficient refinance revenue will be generated to pay defendants in full, together with all costs and expenses and the Plaintiff is therefore entitled to the benefit of the pending transaction. See **Snowden v. Chase Manhattan Corp. (Harwichport Sup. Crt. C.A.2003-0001)**, determined that a servicer's refusal to grant a requested postponement of a foreclosure sale where, at least in the opinion of the court, the borrower had provided sufficient proof that it had a ready, willing and able buyer or refinance prepared to pay the underlying encumbrance

was an unfair and deceptive practice in violation of Massachusetts' Consumer Protection Statute (Mass. G. L. Ch. 93A).

*The Property is a single-family residential dwelling which serves as the primary residence of Nicholas Fiorillo and his family and such property is also pledged as collateral to the Plaintiffs in this action . The Lender did not provide a Notice of Right to Cure, pursuant to G.L. c. 244, §35A. For purposes of §35A, "residential property" is limited to the principal residence of a person; provided further, that residential property shall not include an investment property or residence **other than a primary residence.**" DaSilva vs. Deutsche Bank Nat'l Tr. Co., D. Mass., No. CV 19-12392-NMG (May 8, 2020) (emphasis added)*

"Significantly, a mortgagee 'shall not accelerate the maturity of the unpaid balance of [the] mortgage ... until at least 90 days after the date a written notice [regarding the right to cure] is given by the mortgagee to the mortgagor,' G. L. c. 244, § 35A (b), at which point a mortgagee then can commence the foreclosure process by invoking the statutory power of sale." Bank of New York Mellon v. Morin, 96 Mass. App. Ct. 503, 506 (2019)

Here, no Right to Cure was ever sent and now since three different deficient rescheduled foreclosures have accord as the Defendants attempted to extort a settlement of upwards of \$73,500,000 in this caption cases not due or owing on the Family Home. It is fundamentally unfair for the Lender to proceed with a foreclosure by power of sale, absent providing Fiorillo the appropriate statutory notices. Fiorillo has is ready, willing and able to cure the default, but has been deprived of that 90-day period, absent notice. See Anderson v. Nationstar Mtge., LLC, 172 F. Supp. 3d 371, 377 (D. Mass. 2016) (plaintiff must still "allege that [he] sought or was willing to cure his default") Thus, the foreclosure cannot go forward, absent the notice being provided to Fiorillo. As Fiorillo is prepared to pay into court under protest or post bond, the amount due on such loan under protest with in 30 days of court direction, in exchange for a release of 1st mortgage position of Defendants Raymond Green et al. As the Plaintiffs request a jury trial on all claims and causes of action so alleged in the companion case filed yesterday entitled "Ocean Vactions Realty Trust v Raymond Green, et al., Judge

Krupp order all proceeds from such sale or refinance shall be paid into court under protest; Case 2184CV1329

In addition, the ongoing communications with the Defendants have been troublesome, with the threat of foreclosure looming and the plaintiffs \$5,500,000 cash investment at risk, the decedents are being forced into a unconscionable forbearance and settlement agreement on the eve of the auction date where they where "baited" into paying \$15,000 dollars to Defendants attorneys Nesgos and Reir, as a legal fees to draft the promised forbearance agreement, but at the last minute they where "switched" into paying back upwards of \$10,500,000 of other monies not due or owing on their family home . The Plaitiffs payoff amounted to in excess \$1.770,000, when the most recent mortgage statement from the defendant's mailed out on April 1st, 2022 less than \$1,450,000 as of May 3rd, 2022. The true payoff is actually less than \$250,000 outstanding as the Defendants have paid to Plainitffs 600,000 with a \$850,000 respectively where such payment credit was not posted. The last minute demand for repayment of upwards of \$10,500,000 dollars not due or owing from the Plaintiffs from unrelated loans that the defendants are adequately secured with mortgages in related actions in front of this court, in multi-million dollar luxury single family development projects located in the prestigious Hills of Weston Newton, Massachusetts. This payoff and demand to "pay up" upwards of \$10,500,000 in additional monies from what is clearly upwards of 1500% demand for usurious interest late fees, default interest, alleged collection fees and penalties not due or owing on the Plaintiffs Family home is criminal extortion .

The Plaintiffs are being extorted to pay off this unconscionable demand and a last minute demand for upwards of \$10,500,000 in cash payments not due or owing on their family home, or else the Plaintiffs would move to foreclose is clearly the continuation of a criminal conspiracy immediately protested and stated they would contact the Attorney Generals Office and the FBI to report all the defendants apparent Predatory Lending practices. The defendant's have provided over 5 different payoff amounts and now a forbearance agreement that includes \$10,500,000 in

usurious interest on unrelated development projects and pay off statements (exhibit 2), this time with a \$1,720,000 demand, almost a \$1,500,000 dollar difference from what is actual due on account on the their outstanding balance on the family home after credits that have not been accounted for. In Addition the defendants demanded the Plaintiff pay upwards of \$10,500,000 , grant an additional mortgage and assign their interest in two related additional self-storage properties owned by a corporate affiliate of the Plaintiffs where they are selling and receiving upwards of \$22,000,000 in net sales proceeds, putting the total demand and encumbrances toppling \$12,500,000 in additional real estate value to secure a loan with a face amount of only \$1,200,000 dollars and not credit the additional \$600,000 and the \$850,000 that was already paid to plaintiff from W-Lofts LLC and corporate affiliate of the Plaintiffs the refinance of an corporate affiliate of the Plaintiffs W-Lofts LLC, .

This further attempt by the Plaintiff and their attorneys, to extort monies and property with their predatory lending schemes where the Defendants have substantial financial means and assets, that the Plaintiffs are clearly looking to extort from the Fiorillo, that is not due or owing. It is glaringly apparent the lenders are more than adequately secured considering 3 Kales Way, the Family home of the Plaintiff's is worth approximately \$3,500,000. Only approximately \$250,000 was actually owed on the mortgage and the additional demand of a \$1,500,000 dollars was purely a usurious, unconscionable and an extortionate amount not actually due or owing.

Throughout the course of the lending relationship with the Plaintiffs and it's affiliated corporations, the defendants have been paid upwards of \$15,500,000 in profits, taking payment(s) in cash, wire transfers, checks and cashiers check and have not fully accounted for such payments and the Plaintiffs are current with said mortgage and have a balance of \$250,000 when all told. In looking at the last accounting provided by the defendant's (exhibit 3) dated the end of May this year, it states the loan in question is current through March 23, 2022. Many other payments have been made since June of 2021, but have not been accounted for. Numerous further requests for an accounting have been made since May 2021 but have never been provided (see exhibit 4). At this time, the Lender has yet to provide a true and accurate payoff of the outstanding mortgage and credit the Plaintiff's with the over \$1,450,000 dollars paid on such mortgage. The Lender, directly and through its counsel had indicated repeatedly

for months it would provide an accurate accounting, credit the \$1,450,000 and provide a payoff amount that would allow the stay of the foreclosure auction and allow sufficient time for a refinance. Only at the point of paying a \$15,000 extortionistic payment of legal fees and the signing the forbearance agreement and payment of an additional \$10,500,000 dollars not due or owing on the family home, would the Plaintiffs and their counsel provide a correct payoff figure, cancel the illegal foreclosure and allow Fiorillo the ability to simply refinance the outstanding amount due on such mortgage, or in the alternative pay in to court the disputed amount and allow the refinancing to accrue which the court has now order such proceeds be paid to the court.

WHEREFORE, the Defendants request this Honorable Court to

1. Enjoin the foreclosure sale of 3 Kales Way, Harwichport, MA;
2. Compel Lenders to produce a final accurate pay off good through July 30, 2022 and customary release and discharge of 1st Mortgage and allow either monies to be paid into court under protest and demand Defendants post bond to offset the against the \$50,000,000 in Defendants. Now Plaintiffs in the related action in quantifiable damages and previously paid monies be paid into court pending the full adjudication of this matter.
3. Enter said injunction for the duration in favor of said all the Defendants against said Lender(s) and their Attorneys now Defendants themselves ;
4. Prevent said Lender(s) from selling, conveying, transferring, assigning and/or exchanging the mortgage recorded in Harwichport Registry of Deeds currently encumbering 3 Kales Way, and all other property located at 190 Mount Vernon , 190 Mount Vernon Lot A , B , 39-41 Terrace Ave, 156 Grant Ave (all of Newton , MA) , 18 Mill Street Southbridge MA.

Respectfully Submitted,
The Trust,
by and through its Trustee,
Nicholas Fiorillo, trustee
and individually,

A handwritten signature in black ink, appearing to read 'Nicholas Fiorillo', written over a horizontal line.

Nicholas Fiorillo

Harwichport, MA, 01609
(508) 776 7219