IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW DIVISION

Beverly Bank & Trust Company, N.A., Plaintiff,	
ν.) Case No. 2023 CH 05065) consolidated with 2023 L 004422)))
Lake Lathrop Partners, LLC, etal. Defendants.	

This matter coming on defendant's, Lake Lathrop Partners, LLC's ("Lake Lathrop"), motion to reconsider a portion of the order appointing the receiver, the matter having been fully briefed and the court hearing oral arguments in open court, it is hereby ordered.

ORDER

Lake Lathrop disputes that the appointed receiver should be allowed to advertise and market the subject property (7601-7613 Lake Street, River Forest, IL - the "property") for sale. They argue that such power is not granted to a receiver under the Illinois Mortgage Foreclosure Act (the "Act"). Additionally, movant argues that the sale may only be performed pursuant to a judgment. See sections 15-1704(b) and 15-1507(a) of the Act, 735 ILCS 5/15-1704(b) and 735 ILCS 5/15-1507(a).

Lake Lathrop also argues that if they prevail on their counterclaims, the foreclosure action will necessarily be dismissed in its entirety. Lake Lathrop has alleged among other things that: the plaintiff breached the terms of the parties' underlying Construction Loan Agreement; violated the implied covenant of good faith and fair dealing by improperly issuing default notices; ignored proper applications for payment made by Lake Lathrop; and also seeks to compel the plaintiff's specific performance of its contractual obligations pursuant to the Construction Loan Agreement.

The plaintiff in response points to the broad powers that may be appointed to a receiver to "manage the mortgaged real estate as would a prudent person". 735 ILCS 5/15-1704(c). Beverly Bank & Trust Company, N.A. also refers to several Cook County Chancery foreclosure cases where similar orders appointing receivers were entered and where this power was granted, very nearly after the filing of the foreclosure action. Respondent also relies on an unpublished opinion from the First Appellate District for the proposition that a property subject to foreclosure proceedings may be sold and that sale approved by the court before judgment. See <code>Jastrzebski v. Farnik</code>, 2017 IL App (1st) 160434-U. In that case similar arguments were made: that the affirmative defenses might defeat the foreclosure and it was premature since no judgment had been entered. Additionally, Beverly Bank argues that this argument is just too late. Movant was represented when the order was entered and never objected to this power being included in the order. The receiver has already been working on marketing the property with a third party.

As this is an interlocutory order, attack of it is not subject to a deadline. Furthermore, respondent points to no authority otherwise. Therefore, the motion to reconsider is not untimely.

As for the cases cited to by the respondent, they are neither binding or persuasive under the facts here. First in the foreclosure cases cited to, none involved counterclaims, and in many, the complaints had not been answered. In one the order appointing the receiver was agreed. As for the Jastrzebski case, that foreclosure had been pending for almost 12 years and the receiver had been appointed for approximately 10 years when the court approved the sale. The record also reflected that the tenants in the property were in arrears on rent and the building was facing potential demolition for code violations.

"The appointing of a receiver is an exercise of equity jurisdiction and rests largely in the discretion of the appointing court, the object being to secure and preserve the property for the benefit of all concerned so that it might be subjected to such order as a court might render." People ex rel. Scott v. Pintozzi, 50 III. 2d 115, 123 (1971). The scope of a receiver's powers are set forth in section 15-1704(b) of the Act, which provides that the receiver "shall have full power and authority to operate, manage and conserve [the mortgaged real estate], and shall have all the usual powers of receivers in like cases." 735 ILCS 5/15-1704(b). Additionally, a receiver appointed under the Act "must manage the mortgaged real estate as would a prudent person, taking into account the effect of the receiver's management on the interest of the mortgagor." 735 ILCS 5/15-1704(c). The Foreclosure Act sets forth a number of specific duties that the receiver must undertake, as well as providing that the receiver "may take such other actions as may be reasonably necessary to conserve the mortgaged real estate and other property subject to the mortgage, or as otherwise authorized by the court." 735 ILCS 5/15-1704(c)(9).

Here after considering the arguments, the law and pleadings, the court agrees that the power to advertise and market the subject property (7601-7613 Lake Street, River Forest, IL - the "property") for sale is not one that is appropriate for the receiver in this case at this time. The motion is granted and paragraph 10 of the September 3, 2023 Order is stricken. The receiver no longer possesses this power effectively immediately.

The future dates shall stand.

ENTERED:

March 18, 2024

Judge Catherine A. Schneider

MAR 18 2024

Circuit Court-2180

Circuit Judge Catherine A. Schneider