

To commence the statutory period for appeals as of right under CPLR 5515[a], you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
IAS PART, PUTNAM COUNTY

Present: Hon. Francis A. Nicolai
Justice of the Supreme Court

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U.S. BANK NATIONAL ASSOCIATION AS
TRUSTEE UNDER POOLING AND SERVICING
AGREEMENT DATED AS OF MARCH 1, 2006
ASSET BACKED SECURITIES CORPORATION
HOME EQUITY LOAN TRUST, SERIES NC-2006-
HE2 ASSET BACKED PASS-THROUGH
CERTIFICATES, SERIES NC 2006-HE2,
Plaintiff,

-against-

LISA ANN PIA and XAVIER F. PIA,

Defendants.

DECISION AND
ORDER CONFIRMING
REPORT OF REFEREE
INDEX NO. 976/2007
Mot. F/S Date: 12/11/12

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LISA ANN PIA and XAVIER F. PIA,

Third-Party Plaintiffs,

-against-

GLM MORTGAGE COMPANY and GARY
MEGLINO,

Third-Party Defendants.

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Nicolai, J.:

In this action to foreclose on a mortgage, and upon the homeowners' counterclaim to rescind based upon Truth in Lending Act (hereinafter "TILA;" 15 USC §1601 *et seq*) violations, an Order was entered directing that "this matter shall be referred to the Foreclosure Settlement Conference Part for a Referee to hear and report on the sums due upon rescission, whether repayment by the Pias is feasible, and, if so, whether the parties are amenable to an appropriate restructuring of the Pias' repayment of principal, subject to the Bank's prior tender of all sums received and termination of the security interest in the residence." The Referee's Report, dated August 20, 2012, was filed with the Office of the Putnam County Clerk in accordance with CPLR §4320. The Referee made the following recommendations:

that the Court (1) sever and determine by separate Decision and Order defendants' application for an award of attorneys fees and costs, as well as any other applications, claims or issues that may be pending; (2) direct plaintiff to satisfy its

obligation under Step 2 forthwith by tendering back to defendants the sum of \$37,472.91, plus statutory interest, and terminating its security interest in the subject property, and; (3) direct that upon plaintiff's completion of its obligations under Step 2, defendants are to satisfy their obligation under Step 3 by tendering back to plaintiff the sum of \$37,472.91, followed by two hundred sixty seven monthly payments of \$733.00, and one final payment of \$566.09, said obligation to be secured by a new, interest free mortgage on the subject property.

The Referee also recommended that statutory interest due to Defendants run from October 19, 2011 instead of July 8, 2007. Defendants Lisa Ann and Xavier F. Pia now move to reject those portions of the Report: (1) reinstating Plaintiff's security interest in the premises; and (2) recommending July 8, 2007 as the date for statutory interest to commence, and to confirm the remainder. Plaintiff opposes that part of the application seeking to reject the specified parts of the Report.

In support of their motion, Defendants have submitted a Notice of Motion and Memorandum of Law in Support, Plaintiff has submitted an Affirmation in Opposition, and Defendants have submitted a Reply Memorandum of Law. The Court has also reviewed its prior Order and the Report of the Referee. Upon those documents, the Court now confirms the Report of the Referee.

Defendants first argue that the Referee's recommendation that Defendants' restructured obligation be secured by a new mortgage on the property contradicts this Court's Order. Specifically, Defendants point to language in the October 14, 2011 Order in which this Court stated that the subject rescission should follow the three-step statutory structure of TILA: (1) the debtor notifies the creditor that it is exercising rescission rights; (2) "the creditor tenders back all payments received from the debtor and terminates its security interest in the residence" and (3) the debtor tenders the loan proceeds to the creditor.

However, the Court referred the matter to the Referee to report on whether the debtors were financially able to repay the sums tendered pursuant to the loan. In other words, application of the three-step TILA process referenced by the Court, including the termination of Plaintiff's security interest in the residence, was contingent upon the Pias' ability to repay the loan proceeds already tendered. Since it is clear that full repayment is not an option, the Referee's recommendation to have the Pias repay the obligation, and obtain a new, restructured obligation to be secured by a new, interest free mortgage on the subject property, is a sound, equitable solution that does not contradict this Court's Order. The Referee's recommendation that interest run from October 14, 2011 rather than the earlier date is similarly sound and well-reasoned, and is accepted by this Court. Accordingly, based upon the foregoing, it is hereby

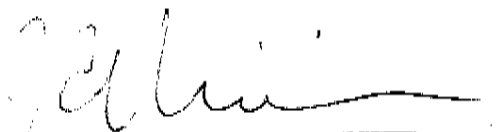
ORDERED that Defendants' motion is granted to the extent that the report of the Referee in this matter is confirmed in its entirety, and is otherwise denied; and it is further

ORDERED that the issue of Defendants' application for attorney's fees, and any remaining claims, are hereby severed, and shall be addressed at a hearing; and it is further

ORDERED that the parties and counsel shall appear before the undersigned for a hearing to fix attorneys fees on June 7, 2013 at 10:00 a.m.

This constitutes the Decision and Order of this Court.

Dated: Carmel, New York
April 25, 2013



Francis A. Nicolai
Supreme Court Justice

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