STATE OF NEW YORK

6577

2023-2024 Regular Sessions

IN SENATE

April 27, 2023

Introduced by Sen. KAVANAGH -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the real property actions and proceedings law, the real property law, the criminal procedure law, and the civil practice law and rules, in relation to the theft of real property and protections for victims of real property theft

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The real property actions and proceedings law is amended by adding a new section 756-a to read as follows:

§ 756-a. Stay of action or proceeding when a party's claim to title is in dispute. 1. (a) A federal, state or local government agency may move for a stay of any proceeding to recover possession of or quiet title to real property relating to a residential dwelling unit or property, based on a pending good faith investigation into the theft or fraud in the title to, or the financing of, the premises that is the subject of any proceeding. Upon the agency's showing of the pendency of a good faith investigation, the court shall issue a stay of the proceeding, including staying execution of a warrant of eviction or enforcement of a judgment so long as the investigation is ongoing.

(b) Every six months, the court shall schedule a status conference with the government agency and any other parties to the action to review any stay and to determine if the investigation is still continuing in good faith and shall continue the stay of the proceeding until the government investigation is closed. If it should deem necessary, a court may review any supporting documents filed by the government agency in camera and to be filed under seal if deemed necessary by the government agency.

2. The court shall stay all proceedings to recover possession of or quiet title to real property relating to a residential dwelling unit or

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD10874-02-3

property, where a charging instrument is filed against a party to such proceeding for deed theft, larceny, offering a false instrument for filing, criminal possession of stolen property or any other law asserting theft or fraud in obtaining title to property and said charging instrument relates to the premises that are the subject of such proceeding. The stay shall remain in effect until resolution of such criminal action.

3. The court shall stay all proceedings to recover possession of or quiet title to real property relating to a residential dwelling unit or property, where a federal, state or local government agency has commenced a civil action or proceeding relating to the theft or fraud in the title to, or the financing of, the premises that are the subject of such proceeding.

4. The court shall stay all proceedings under section seven hundred eleven or seven hundred thirteen of this article for ninety days to allow a party to file a complaint in the appropriate forum when the court makes a determination that there is a bona fide dispute between parties purporting to own the property that is the subject of the proceeding.

(a) A rebuttable presumption that a bona fide dispute to title exists shall be created when the party disputing petitioner's title, owns or owned the property that is the subject of the court proceeding during the last three years, or is a person interested in the property, as defined by section one hundred three of the surrogate's court procedure act.

(b) A party may seek an additional stay of the proceeding beyond the initial ninety day stay by the court if they were unable to file a complaint or seek a stay from another forum. In extending the stay, the court shall consider, without limitation, the totality of the circumstances including steps the parties have taken to resolve the dispute, the harm to the parties of a further stay, and the ability of the parties to advocate for themselves or retain counsel.

(c) This section shall not apply to any proceeding commenced pursuant to subdivision ten of section seven hundred thirteen of this article.

5. Nothing in this section shall diminish the court's own discretion to further stay a proceeding in the interests of justice.

6. Nothing in this section shall limit a party from seeking relief, including a stay of a proceeding under this article, in another court.

7. For purposes of this section, a proceeding to recover possession of or quiet title to real property shall include any proceeding under section seven hundred eleven or seven hundred thirteen of this article, an ejectment action or a writ of assistance pursuant to section two hundred twenty-one of this chapter, a foreclosure action, an action to enforce a mortgage note, or any other action affecting title to or encumbrance upon real property, or any other judicial or administrative proceeding to recover possession of or quiet title to real property.

8. For purposes of this section, a party shall include:

(a) a corporation, limited liability company, partnership or other entity where a charging instrument has been filed against an individual who has a financial or controlling interest in the entity that holds title to the property; or

(b) where a charging instrument has been filed against a seller of the property, including an individual or corporation, limited liability company, partnership or other entity, or where a charging instrument has been filed against an individual who has a financial or controlling interest in the entity that sold the property.

§ 2. Section 1501 of the real property actions and proceedings law is amended by adding a new subdivision 6 to read as follows:

6. Where a person, as defined in subdivision seven of section 10.00 of the penal law, has been convicted of a criminal offense in connection with a deed theft or fraudulent transaction involving real property, the conviction creates a rebuttable presumption that such deed transfer was fraudulent. This section also applies where a grantee of a fraudulent deed is an entity that is beneficially owned by such convicted person. A defendant may in such action produce proof to establish by a preponderance of the evidence that such deed was not procured through fraud.

§ 3. Paragraph (g) of subdivision 2 of section 265-a of the real property law, as added by chapter 308 of the laws of 2006, is amended to read as follows:

(g) "Foreclosure" means that there is an active [~~lis pendens~~] **notice of pendency** filed in court pursuant to article thirteen of the real property actions and proceedings law**, or a foreclosure action pursuant to article eleven or thirteen of the real property actions and proceedings law has been commenced** against the subject property, **or an action to enforce a mortgage note has been commenced against the borrower whose property is secured by a mortgage loan,** or the subject property is on an active property tax **or utility** lien sale list.

§ 4. Paragraph (d) of subdivision 1 of section 265-b of the real property law, as added by chapter 472 of the laws of 2008, is amended to read as follows:

(d) "Distressed home loan" means a home loan [~~that is in danger of being foreclosed because the homeowner has one or more defaults under the mortgage that entitle the lender to accelerate full payment of the mortgage and repossess the property~~] **for which an installment payment is more than sixty days past due**, or a home loan where the lender has commenced a foreclosure action. For purposes of this paragraph, a "home loan" is a loan in which the debt is incurred by the homeowner primarily for personal, family or household purposes, and the loan is secured by a mortgage or deed of trust on property upon which there is located or there is to be located a structure or structures intended principally for occupancy of from one to four families which is or will be occupied by the homeowner as the homeowner's principal dwelling.

§ 5. Section 266 of the real property law is amended to read as follows:

§ 266. Rights of purchaser or incumbrancer for valuable consideration protected. This article does not in any manner affect or impair the title of a purchaser or incumbrancer for a valuable consideration, unless it appears that [~~he~~] **such purchaser or incumbrancer** had previous notice**, whether actual or constructive,** of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor. **There shall be a rebuttable presumption that a purchaser or incumbrancer had notice of fraud or fraudulent intent in the case of a transfer of mortgaged real property, between a purchaser and seller who are not associated parties, that is not accompanied by the recording with the clerk of the county or with the commissioner of deeds in which the property is located, of a statement, executed by the mortgagee, and duly acknowledged, stating, substantially, that (a) a party is assuming the seller's indebtedness secured by the mortgage; or (b) that the indebtedness secured by the mortgage has been satisfied.**

For the purposes of this section, "associated parties" means spouses, ex-spouses, parents and children, siblings, a homeowner and that home-

owner's family trust, or a homeowner and that homeowner's wholly-owned limited liability company.

§ 6. Section 420.45 of the criminal procedure law, as added by chapter 167 of the laws of 2019, is amended to read as follows:

§ 420.45 Post-trial motion relating to certain instruments affecting residential real property.

1. When a defendant has been convicted after a trial or pled guilty to [~~violating either section 175.30 or 175.35 of the penal law in connection to~~] any crime that affects the title to, encumbrance of, or the possession of, real property and where there is an instrument that is material to [~~the~~] such encumbrance, transfer or purchase of [~~residential~~] said real property, the district attorney, the attorney general, or any law enforcement agency may file a motion in the supreme court in the county where the property that is the subject [~~to~~] of the instrument is located or the prosecution occurred on behalf of the victim to void [~~the~~] said instrument [~~that is the subject of such criminal information or indictment~~]. Such motion must be in writing and [~~provide reasonable notice to all persons who have an interest in the property affected by such instrument. The motion papers must~~] state the county or borough, if in the city of New York, and block, lot, street address of such property, and a description of such property[~~. The motion papers must state the grounds of the motion, must contain sworn allegations of fact supporting such grounds~~], and include a copy of the [~~guilty disposition attached to the document~~] judgment of conviction. Notice must be given to all persons who have an interest in the property.

2. Within ten days after filing a motion pursuant to subdivision one of this section, the [~~district attorney~~] agency filing the motion shall record a copy of the notice of motion in the office of the clerk of the county in which the property is situated. The notice shall be indexed by the clerk in the manner prescribed by subdivision (c) of rule sixty-five hundred eleven of the civil practice law and rules for a notice of pendency of action and shall have the same effect as such notice.

3. The supreme court must conduct a hearing and make findings of fact essential to the determination whether to declare the instrument described in subdivision one of this section void ab initio. [~~All persons providing factual information at such hearing must testify under oath.~~] There will be a rebuttable presumption that where a party is convicted after a trial [~~in criminal court~~] or a guilty plea to [~~either section 175.30 or section 175.35 of the penal law in connection with~~] any crime that affects the title to, encumbrance of, or the possession of, real property and where there is an instrument that encumbers or is material to the transfer or sale of [~~residential~~] real property, that such instrument is void ab initio.

4. Upon the defendant's conviction of or guilty plea [~~to section 175.30 or section 175.35 of the penal law~~] as described in subdivision one of this section, and after conducting a hearing pursuant to subdivision three of this section, a court shall make a determination and if appropriate shall order that the instrument described in subdivision one of this section be declared void ab initio or grant other appropriate relief to the victim. The order of the court shall describe the nature of the false statement or false information contained in such instrument. A copy of such instrument shall be attached to the order of the court.

5. If the order relates to an instrument that has been filed with, registered, or recorded in a public office, [~~the district attorney shall record~~] a certified copy of such order shall be recorded in the office

of the recording officer of the county in which such property is situated[~~, in the same manner as a conveyance duly acknowledged or proved and certified so as to entitle it to be recorded. Such recording officer shall record the same in his or her said office~~].

6. For purposes of this section, "all persons who have an interest in the property affected by such instrument" shall mean all parties who have recorded an instrument affecting the real property that is the subject of the instrument described in subdivision one of this section, [~~including~~] any **last record owner and anyone in residence during the pendency of the prosecution and any** party [~~or entity~~] **with a lien against the property that is unsatisfied, or any other party** that may **claim to** have liens [~~of interest on~~] **or an interest in** the property, and any current residents of the property, as of the date of the filing of the criminal information or indictment.

7. Nothing in this section shall be deemed to inhibit or prevent **(a) relief otherwise provided by law, or (b)** a party's right to appeal such order.

§ 7. Section 6501 of the civil practice law and rules, as amended by chapter 657 of the laws of 1993, is amended to read as follows:

§ 6501. Notice of pendency; constructive notice. **(a)** A notice of pendency may be filed in any action in a court of the state or of the United States in which the judgment demanded would affect the title to, **incumbrance of,** or the possession, use or enjoyment of, real property, except in a summary proceeding brought to recover the possession of real property. The pendency of such an action is constructive notice, from the time of filing of the notice only, to a purchaser from, or incumbrancer against, any defendant named in a notice of pendency indexed in a block index against a block in which property affected is situated or any defendant against whose name a notice of pendency is indexed. A person whose conveyance or incumbrance is recorded after the filing of the notice is bound by all proceedings taken in the action after such filing to the same extent as a party.

(b) Notwithstanding any provision of subdivision (a) of this section to the contrary, a notice of pendency may be filed by a district attorney's office or the office of the attorney general upon a determination after investigation that there is probable cause that a crime has occurred that affects the title to, incumbrance of, or possession of real property, in the county where the real property is located. Such notice of pendency shall remain in effect for a period of six months but may be renewed twice.

(c) Notwithstanding any provision of subdivision (a) of this section to the contrary, a notice of pendency may be filed by a district attorney's office or the office of the attorney general upon the filing of a criminal complaint or indictment that allege charges affecting the title to, incumbrance of or possession of real property, in the county where the real property is located. A notice of pendency filed will remain in effect until the prosecution of a criminal case is either dismissed, or otherwise disposed of at sentencing and is not subject to a three year period of expiration under section six thousand five hundred thirteen of this article.

§ 8. This act shall take effect on the thirtieth day after it shall have become a law.