

STATE OF VERMONT
WASHINGTON COUNTY

FILED

2008 APR -9 A 11:12

Deutsche Bank National Trust Company,)
Plaintiff,)

Washington Superior Court

Docket No. 166-3-06 Wncv

v.)

SUPERIOR COURT
WASHINGTON COUNTY

Donald Grabowski, et al.,)
Defendants.)

ENTRY

Motion for Judgment Nunc Pro Tunc

This is an ordinary residential foreclosure case. A Judgment Order and Decree in Foreclosure and Order for Public Sale was entered on July 27, 2006. The judgment called for a public sale in the event of a failure to redeem. Following Mortgagors' failure to redeem, the court issued a Certificate of Non-Redemption. Mortgagee recorded the Certificate of Non-Redemption in the land records to preserve its rights under 12 V.S.A. § 4530. A public sale has not yet taken place, and the parties have reached a settlement. Plaintiff wishes to avoid holding a public sale, and wishes title to remain vested with Mortgagors.

Mortgagee has filed a Motion for Judgment Nunc Pro Tunc to "nullify" its recording of the Certificate of Non-Redemption, which clouds Mortgagors' title. Plaintiff requests a Judgment Nunc Pro Tunc stating that the Judgment of July 27, 2006 and Certificate of Non-Redemption are "void ab initio." Plaintiff has submitted a proposed form of Judgment that includes a 'declaration' that the recording of the new judgment "shall eliminate the public record effected by the recording of the Certificate of Non-Redemption."

A nunc pro tunc judgment is one that is issued either to correct an earlier judgment that contains incorrect language or to create a judgment that should have been issued earlier but was not. It reflects the court's inherent authority to ensure that its judgments "speak the truth" by accurately reflecting the record. *In re Estate of Moody*, 115 Vt. 1, 6 (1946). It is authority that should be exercised "with great caution and only where the error or omission has been proved beyond all doubt." *Id.* at 7. It is, essentially, the same power that the court exercises under Rule 60(a) to correct mistakes in judgments or other parts of the record.

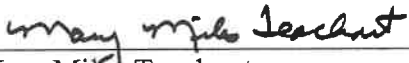
In this case, there is no mistake in the record for the court to correct. Therefore, there is no basis for a judgment nunc pro tunc or relief under Rule 60(a). The parties are capable of clearing the cloud on Mortgagors' title without the court's involvement by executing and recording instruments clarifying the parties' interests pursuant to the settlement agreement. The court declines to engage in the fiction of stating that its prior Judgment was a mistake, which would constitute a misuse of the process of issuing nunc pro tunc judgments. Moreover, the court questions its authority to "declare" in this type of judgment the legal effect of a document that appears in the land records.

Nonetheless, Plaintiff has a legitimate claim for partial relief from the Judgment of July 26, 2006. In the current posture of this case, the foreclosure judgment continues to require a public sale even though the parties have arrived at a settlement agreement that eliminates the need for a sale. Implicitly, Mortgagee requests relief from the prospective operation of that portion of the foreclosure judgment that orders a public sale. In these circumstances, the parties are entitled to relief from the prospective operation of the foreclosure judgment under Rule 60(b)(5): "the judgment has been satisfied, released, or discharged . . . or it is no longer equitable that the judgment should have prospective application."

Accordingly, if Plaintiff submits a motion and stipulation of the parties seeking relief under Rule 60(b)(5) from the prospective operation of the foreclosure judgment based on the terms of a settlement between the parties, a motion for such relief will be granted.

For the foregoing reasons, Mortgagee's Motion for Judgment Nunc Pro Tunc is *denied* without prejudice to file a new motion as described above.

Dated at Montpelier, Vermont this 5th day of April 2007.



Mary Miles Teachout
Superior Court Judge