

*Judge Teachout*

STATE OF VERMONT  
WINDSOR COUNTY, SS.

Bank of America, N.A., : Windsor County Superior Court  
Successor in interest by merger :  
of Bank of America, FSB : Docket No. 489-9-02 Wrcv

v. :

M. Kathryn Edwards, Peter P. Drutchal, :  
Banknorth, N.A., and :  
Occupants residing at :  
594 Adventure Quest Drive, :  
Reading, Vermont :

**DECISION RE: OCCUPANT'S MOTION TO STAY PROCEEDINGS**

Plaintiff mortgagee Bank of America, N.A. filed this action for foreclosure on September 20, 2002. The court issued a Judgment Order and Decree of Foreclosure on May 2, 2003; the redemption period expired on November 3, 2003; and the clerk issued a Certificate of Non-Redemption and Writ of Possession on November 7, 2003. At issue is whether the tenants, Joseph Januszewski and family, have any right to stay the proceedings or otherwise delay their eviction.

The procedure for joining occupants of mortgaged property as defendants in a foreclosure action is governed by 12 V.S.A. § 4523. If the procedure is followed, and if the court issues a writ of possession after the foreclosure is granted and the premises are not redeemed, then "the writ shall be served on the tenant, and no sooner than 30 days after the writ is served the plaintiff shall be placed in possession of the property without further proceedings." 12 V.S.A. § 4528. These statutes on foreclosure of mortgages are not superseded or preempted by the Residential Rental Agreements Act, 9 V.S.A. §§ 4451 et seq. Vermont Tenants, Inc. v. Vermont Housing Finance Agency, 170 Vt. 77 (1999). The underlying rationale is that "[w]here the mortgage precedes the lease the lessee's rights can rise no higher than those of his landlord, the mortgagor." *Id.* at 80 (quoting G. Nelson & D. Whitman, Real Estate Finance Law § 4.22, at 195 (2d ed. 1985)).

Plaintiff Bank of America, N.A. followed the statutory procedure. The complaint, which names the occupants as co-defendants, contains the notice to occupants required by 12 V.S.A. § 4523(c)(2). Plaintiff's attorney served the occupants with a summons and a copy of the complaint, by first class mail on September 19, 2002, as required by § 4523(c)(1). Susan Januszewski, one of the tenants, responded through a letter dated October 14, 2002, from Attorney Richard Mullaly, by asking that she "be advised of the proceedings." Both the court and plaintiff's attorney have complied with her request. When plaintiff's attorney filed his Motion for Default Judgment and Issuance of Clerk's Accounting, and Proposed Judgment Order, he provided copies to Ms. Januszewski and to Attorney Mullaly. When the court sent out a Clerk's Accounting, the Deputy

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Clerk provided a copy to Attorney Mullaly. After the court issued the Judgment Order and Decree of Foreclosure on May 2, 2003, plaintiff's attorney mailed copies to Ms. Januszewski and to Attorney Mullaly. After the court issued the Certificate of Non-Redemption and Writ of Possession, plaintiff's attorney arranged for personal service. The Deputy Sheriff served Mr. Januszewski with the Writ of Possession and a copy of the Judgment Order, on November 21, 2003.

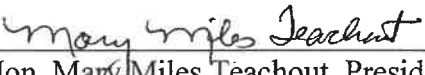
On November 21, 2003, Mr. Januszewski filed a letter with the court, asserting that it would be impossible for him and his family to be out of the house by December 29, 2003. He maintains that they need "at least 90 days, from December 29, 2003, to contact an attorney."

Plaintiff opposes Mr. Januszewski's request for additional time, in a memorandum filed November 25, 2003. Plaintiff maintains that under 12 V.S.A. § 4523, the Writ of Possession is enforceable on December 21, 2003; that a lockout has been scheduled for January 6, 2003; and that there is no legal or equitable basis to stay the proceedings beyond January 6, 2003.

The court agrees with plaintiff. Plaintiff has followed the statutory procedures, and has kept the Januszewskis informed. The Januszewskis have known about the proceedings since at least October of 2002. They have recently asked for a delay of the eviction, but they have not stated any basis for granting such a delay. Plaintiff has a right to take possession, as it plans to do, on January 6, 2003.

Mr. Januszewski's motion to stay the proceedings is DENIED.

Dated at Woodstock, Vermont, this 19th day of December, 2003.

  
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Hon. Mary Miles Teachout, Presiding Judge

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