

**MINUTES
BENCH-BAR FORECLOSURE COMMITTEE
SUBCOMMITTEE RE MOTIONS TO OPEN JUDGMENT**

May 24, 2012

Members in attendance: Attorney Denis Caron, Chair, Hon. Douglas Mintz, Attorney Robert Frankel, Attorney Raphael Podolsky, Attorney Adam Bendett
Invited Guests: Attorney Pamela Heller and Attorney David Borrino.

Attorney Caron called the meeting to order at 10:00 A.M.

1. Proposals for addressing automatic stay issues surrounding the denial of motions to open judgments of strict foreclosure and foreclosure by sale.

Discussion began regarding the Westport case and concerns with motions to open judgment and possibility of continuous motions being filed as well as motions for stay and to terminate a stay. Members began discussing the problem and possible solutions.

The subcommittee members discussed the possibility of adding another section to Practice Book Rule § 61-11, or modifying the appeal period. The members reviewed and discussed the draft of proposed additions to the Practice Book Rule. With a few changes, the subcommittee agrees with the proposed additions to the rule.

2. Proposals for addressing issues concerning the implementation of Conn. Gen. Stat. §49-17 in light of current Practice Book provisions limiting the use of judgment files in foreclosure actions.

The members began discussing the C.G.S. §49-17 issue of having to record the decree of foreclosure on the land records since a judgment file is no longer prepared for foreclosure cases. Possible solutions include defining what needs to be recorded in the Practice Book Rule, using the Certificate of Judgment form for these situations in addition to redemption cases or recording a certified copy of the Notice of Judgment that the court sends to the parties. Attorney Caron will draft a proposed Practice Book Rule change.

Meeting adjourned at 12:00 PM

Rule 61-11. Stay of Execution in Noncriminal Cases

(a) Automatic stay of execution

Except where otherwise provided by statute or other law, proceedings to enforce or carry out the judgment or order shall be automatically stayed until the time to take an appeal has expired. If an appeal is filed, such proceedings shall be stayed until the final determination of the cause. If the case goes to judgment on appeal, any stay thereafter shall be in accordance with Section 71-6 (motions for reconsideration), Section 84-3 (petitions for certification by the Connecticut supreme court), and Section 71-7 (petitions for certiorari by the United States supreme court).

(b) Matters in which no automatic stay is available under this rule

Under this section, there shall be no automatic stay in actions concerning attorneys pursuant to chapter 2 of these rules, in juvenile matters brought pursuant to chapters 26 through 35a, or in any administrative appeal except as otherwise provided in this subsection. In addition, no automatic stay shall apply to orders of relief from physical abuse pursuant to General Statutes § 46b-15 or to orders of periodic alimony, support, custody or visitation in domestic relations matters brought pursuant to chapter 25 or to any later modification of such orders.

Unless a court shall otherwise order, any stay that was in effect during the pendency of any administrative appeal in the trial court shall continue until the filing of an appeal or the expiration of the appeal period, or any new appeal period, as provided in Section 63-1. If an appeal is filed, any further stay shall be sought pursuant to Section 61-12.

For purposes of this rule, "administrative appeal" means an appeal taken from a final judgment of the trial court or the compensation review board rendered in an appeal from a decision of any officer, board, commission, or agency of the state or of any political subdivision thereof. In addition to appeals taken pursuant to the Uniform Administrative Procedure Act, "administrative appeal" includes, among other matters, zoning appeals, teacher tenure appeals, tax appeals and unemployment compensation appeals.

(c) Termination of stay

Termination of a stay may be sought in accordance with subsection (d) of this rule. If the judge who tried the case is of the opinion that (1) an extension to appeal is sought, or the appeal is taken, only for delay or (2) the due administration of justice so requires, the judge may at any time after a hearing, upon motion or sua sponte, order that the stay be terminated.

(d) Motions to terminate stay

A motion to terminate a stay of execution may be filed before judgment; if it is, it may be ruled upon when judgment is entered. If such a motion is filed before judgment, or after judgment but before an appeal, it shall be filed in triplicate with the clerk of the superior court. If it is filed after an appeal is filed, an original and three copies shall be filed with the appellate clerk, who shall forward the motion to the judge who tried the case. That judge shall file any ruling thereon with the appellate clerk and with the clerk of the trial

court where the matter was tried. If the judge who tried the case is unavailable, the motion shall be forwarded to the clerk of the court in the judicial district where the case was tried, who shall assign the motion for a hearing and decision to any judge of the superior court.

(e) Motions to request stay

Requests for a stay pending appeal where there is no automatic stay shall be governed by Section 61-12.

(f) In any action for foreclosure of a mortgage or lien in which the defendant owner has filed and the court has denied at least two motions to open or reopen a judgment of strict foreclosure, no automatic stay shall arise upon the court's denial of any subsequent contested motion to open said judgment unless the defendant owner has certified under oath within said motion that it was filed in good faith and the court's order of denial includes a finding that the motion was filed in good faith. The provisions of Rule 66-6, relating to motions for review of a denial of automatic stay, shall not apply to any order of denial made pursuant to this subsection.

(g) In any action for foreclosure of a mortgage or lien in which any defendant has filed a motion to open or reopen a judgment of foreclosure by sale, which motion was denied fewer than twenty days prior to the scheduled auction date, the auction shall proceed as scheduled notwithstanding the court's denial of the motion, but no motion for approval of the sale or allowance of fees or expenses shall be filed until the expiration of the appeal period following the denial of the motion to open or reopen the judgment. The trial court shall not vacate the automatic stay following its denial of the motion to open or reopen the judgment.

(f) In addition to and not in lieu of the other subdivisions of this Section, in an action to foreclose a mortgage or lien, the following apply:

(1) When a defendant has filed a motion to open a judgment of strict foreclosure, and the court has previously denied at least two motions by any defendant or defendants to open or reopen a judgment of foreclosure in that action, no automatic stay shall arise upon the court's denial of said motion to open or reopen the judgment of strict foreclosure unless the moving defendant or the moving defendant's attorney has certified under oath within said motion that it was filed in good faith and the court's order denying said motion (i) includes a finding that the motion was filed in good faith and (ii) expressly provides that the proceedings, including the pending law days, are stayed pursuant to Practice Book Section 61-11(a) upon entry of said order. Any order entered pursuant to this subsection (i) shall not be subject to the 10-day stay provisions of Practice Book Section 61-14 and (ii) absent further and express order of the Appellate Court or by the judicial officer who made said order on said motion to open or reopen judgment, shall not be stayed by the filing of a motion for review pursuant to Practice Book Section 66-6 or by the filing of an appeal.

(2) The denial of a motion to open or reopen a judgment of foreclosure by sale shall not operate to create a stay of the scheduled sale date or of the acts and duties of the Committee of Sale and court-appointed appraiser, until and unless an appeal is filed prior to the sale and within the time provisions provided by Practice Book Section 63-1; however, if a motion to open or reopen a judgment of foreclosure by sale is denied fewer than twenty days prior to the date of the sale, the superior court shall not act on any motion for approval of the sale until the time for appeal from the denial of the motion to open or reopen judgment has expired.