

Anglo Irish Bank Corp. Ltd. v YL Rector St. LLC
2009 NY Slip Op 31310(U)
June 16, 2009
Supreme Court, New York County
Docket Number: 101796/2009
Judge: Joan A. Madden
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon Joan A. Muddler
Justice

PART 11

Index Number : 101796/2009
ANGLO IRISH BANK
vs.
YL RECTOR STREET
SEQUENCE NUMBER : 004
DISMISS

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

and cross motions

Upon the foregoing papers, It is ordered that this motion *is* decided in accordance with the attached Memorandum Decision + order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED
JUN 17 2009
COUNTY CLERK'S OFFICE
NEW YORK

Dated: June 16, 2009

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

-----X INDEX NO. 101796/2009

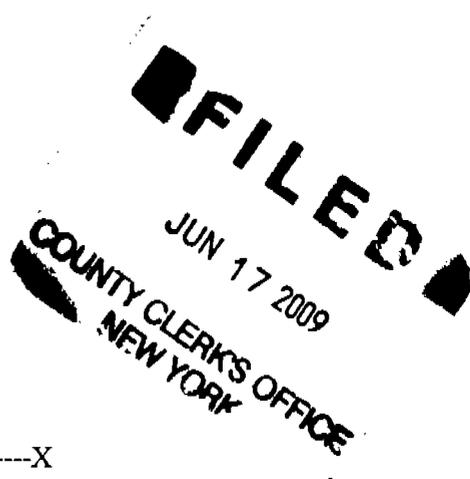
ANGLO IRISH BANK CORPORATION LIMITED
(f/k/a ANGLO IRISH BANK CORPORATION PLC),
as Administrative Agent for Itself and FORTRESS
CREDIT OPPORTUNITIES I LP and DRAWBRIDGE
SPECIAL OPPORTUNITIES FUND LTD.,

Plaintiffs,

--against--

YL RECTOR STREET LLC, YAIR LEVY, et al.

Defendants.



-----X
JOAN A. MADDEN, J.:

In this foreclosure action, defendants YL Rector Street (“YL”) and Yair Levy (“together the mortgagor defendants”) move for an order dismissing the complaint for failure to join Fortress Credit Opportunities I LP (“Fortress”) and Drawbridge Special Opportunities Fund Ltd (“Draw Bridge”) as parties and consolidating an action entitled YL Rector Street LLC and Yair Levy v. Anglo Irish New York Corporation and Drawbridge Special Opportunities Fund Ltd; Index No. 001612/09 (“the Nassau County action”) with this action. Plaintiff Anglo Irish Bank Corporation Limited as Administrative Agent for Itself and Fortress and Draw Bridge (“Anglo Irish Bank”) opposes the motion and cross moves for sanctions.

YL is the owner of property known as 225 Rector Place, New York, NY (“the Premises”) which is a residential apartment building with 304 residential units, commercial retail space and a parking garage. Mr. Levi is a managing member of YL and owns a substantial interest in it. The complaint alleges that on September 7, 2007, YL entered into a Loan Agreement with

Anglo Irish Bank, and Fortress, and other lenders, under which YL was loaned \$165,000,000 (the “Loan”). As security for the Loan, YL executed and delivered to Anglo Irish Bank mortgages on the Premises. Also in connection with the loan, Anglo Irish Bank alleges it entered into a Building Loan Agreement with Fortress and Draw Bridge.¹ Additionally, in the complaint, Anglo Irish Bank alleges that “pursuant to a Co-Lender Agreement with Fortress and Drawbridge, plaintiff is authorized to bring this action in its own name and as Administrative Agent for itself, Fortress and Drawbridge.”²

Anglo Irish Bank commenced this foreclosure action against the mortgagor defendants alleging default under the mortgages.

The mortgagor defendants now move to dismiss the action on the ground that Fortress and Draw Bridge, as co-lenders with Anglo-Irish Bank. (together “the Co-Lenders”), are necessary parties to this action and must be named as parties.

The motion is without merit. First, as noted by Anglo Irish Bank in its opposition papers, the mortgages being foreclosed on in the action are held by it, as Administrative Agent, and not by the Lenders. In addition, section 13.7 of the Co-Lender Agreement gives Anglo Irish Bank, as the

¹The court notes that the Building Loan Agreement was for \$13,431,116. In addition, it appears that Drawbridge was not a named lender under the Building Loan Agreement. However the Building Loan Leasehold Mortgage Agreement signed in connection with the Building Loan Agreement (a copy of which is annexed as Exhibit N to the complaint) defines “Lenders” as “Anglo Irish Bank...and such other lending institutions, signatory to the Loan Agreement and who become “Lenders” pursuant to the Loan Agreement, together with their successors, and permitted assigns in accordance with the terms of the Loan Agreement.”

² The court notes that the entire Co-Lender agreement is not attached to Anglo Irish Bank’s papers.

Administrative Agent “the sole and exclusive authority to... institute any foreclosure proceeding.”³

Next, under section 7.01 of the Building Loan Agreement, the Anglo Irish Bank was given authority to act for itself and the Co-Lenders. Under section 7.03 of the Building Loan Agreement it was agreed that in the event of the default, “the Administrative Agent ...shall...take such action with respect to such Default or Event of Default which is continuing, including with respect to the exercise of remedies or the realization on, or operation or disposition of any or all Mortgaged Property.” This section further provided that “[e]ach of the Lenders acknowledges and agrees that no individual Lender may separately enforce or exercise any provision of any of the Loan Documents (including, without limitation, the Notes, other than through the Administrative Agent).”

Thus, it is clear that the lenders delegated the authority to Anglo Irish Bank to institute this action on their behalf. Furthermore, when as here, the relevant documents delegate the authority to a servicing agent to bring the foreclosure action and the complaint identifies the actual mortgage holder, the servicing agent has standing to bring such an action on its behalf. See Fairbanks Capital Corp. v. Board of Managers of Forty Sutton Place Condominium, 289 AD2d 99 (1st Dept 2001). Under these circumstances, it cannot be said that the Co-Lenders are necessary

³Section 13.7 of the Co-Lender Agreement among the three lenders, provides that:

Administrative Agent ...shall have sole and exclusive authority with respect to the administration of, and exercise of rights and remedies with respect to the Loan, including without limitation the sole authority...to declare and waive any Events of Default, accelerate the Loan or institute any foreclosure action.

or indispensable parties and the motion to dismiss the complaint must be denied.⁴

As for the consolidation motion, as stated on the record on June 12, 2009, this motion is granted, on consent, only to the extent of transferring the Nassau County action to this court where it shall be referred to Part 11, so that it can track the mortgage foreclosure action.

Accordingly, it is

ORDERED that the motion to dismiss is denied; and it is further

ORDERED that the motion to consolidate YL Rector Street LLC and Yair Levy v. Anglo Irish New York Corporation and Drawbridge Special Opportunities Fund Ltd.; Index No.

001612/09, now pending in the Supreme Court, Nassau County, is granted only to the extent of transferring the action from the Supreme Court, Nassau County to this court for assignment to this Part; and it is further

ORDERED that venue of YL Rector Street LLC and Yair Levy v. Anglo Irish New York Corporation and Drawbridge Special Opportunities Fund Ltd.; Index No. 001612/09 is changed from the Supreme Court, Nassau County to this court and the Clerk of the Supreme Court Nassau County is directed to transfer the papers on file in such action (Index No. 001612/09) to the Clerk of the Supreme Court, County of New York, upon service of a certified copy of this order and payment of appropriate fees, if any; and it is further

ORDERED that the Clerk of the Supreme Court, New York County, upon receipt of a copy of this order with notice of entry, shall assign, without further fee, a new York County index

⁴Even if the Co-Lenders were proper parties to the proceeding, they would not be indispensable such as to warrant dismissal since “[t]he absence of a necessary party in a mortgage foreclosure action simply leaves that parties’ rights unaffected by the judgment of foreclosure and sale.” Marine Midland Bank, N.A. v. Freedom Road Realty Assocs., 203 AD2d 538, 539 (1st Dept 1994)

number to file transferred pursuant to this order; and it is further

ORDERED that, upon consent of the parties, and based on its relationship with this foreclosure action, the transferred action shall be referred to Part 11; and it is further

ORDERED that the cross motion for sanctions is denied.

DATED: June 16 2009



J.S.C.

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