

Anglo Irish Bank Corp. Ltd. v YL Rector St. LLC

2010 NY Slip Op 30938(U)

April 15, 2010

Supreme Court, New York County

Docket Number: 101796/09

Judge: Joan A. Madden

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

4-21-10

PRESENT: MADDEN
Justice

PART 11

ANGLO IRISH BANK CORP
- v -
YL RECORD SR

INDEX NO. 101796/09
MOTION DATE _____
MOTION SEQ. NO. 9
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

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

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is determined in accordance with the annexed decision and order.

FILED
APR 21 2010
NEW YORK
COUNTY CLERK'S OFFICE

Dated: April 15, 2010

[Signature]
HON. JOAN A. MADDEN
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

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

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

-----X

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.,

INDEX NO. 101796/09

Plaintiff,

-against-

YL RECTOR STREET LLC, YAIR LEVY, DEMAR
PLUMBING CORP., IVAN BRICE ARCHITECTURE,
INC., ENVIRONMENTAL CONTROL BOARD OF
THE CITY OF NEW YORK, THE BOARD OF MANAGERS
OF RECTOR SQUARE CONDOMINIUM, THE STATE
OF NEW YORK,

Defendants.

-----X

JOAN A. MADDEN, J.:

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In this mortgage foreclosure action, counsel for defendants YL Rector Street LLC (“YL Rector”) and Yair Levy (collectively the mortgagor or mortgagor defendants) move for an order pursuant to CPLR 321(b)(2) permitting Sukenik, Segal & Graff, P.C. to withdraw as counsel for said defendants, and for an order staying this action for 30 days so that said defendants can retain new counsel. Plaintiff Anglo Irish Bank Corporation Limited as Administrative Agent for Itself and Fortress and Drawbridge (“Anglo Irish Bank” or mortgagee) opposes the motion in part.

For the reasons stated below, the motion is denied with leave to renew in accordance with this decision.

On October 21, 2005, defendant YL Rector purchased the premises known as 225 Rector Place, New York, NY, which is a residential apartment building with 304 residential units,

commercial retail space and a parking garage. Of the 304 residential units, 71 condominium units have been sold and 233 are available for sale. Defendant Yair Levy is a managing member of YL Rector, and has a substantial economic and beneficial interest in that entity. On September 7, 2007, YL Rector entered into a loan agreement with plaintiff Anglo Irish Bank for three mortgage loans totaling \$165 million. The loans were intended to refinance an existing loan secured by the premises, renovate the premises, pay the construction costs associated with the renovation, and convert the premises to condominium ownership.

On February 9, 2009, Anglo Irish Bank commenced this action to foreclose on the mortgages. By a decision dated January 19, 2010, this court granted Anglo Irish Bank's motion for summary judgment, and its request for the appointment of a Referee to Compute pursuant to RPAPL 1321. On March 3, 2010, this court issued an order appointing Carol Lilienfeld, Esq., "as Referee to ascertain and compute the amount due, and the amount which thereafter may become due to Plaintiffs on the Notes and Mortgages set forth in the Verified Complaint for principal, interest, and other charges, in accordance with the Order Appointing Receiver, including amounts advanced by Plaintiffs to protect the collateral afforded by the Notes and Mortgages being foreclosed upon, and the amounts that are or may be due for such of the Defendants as are prior encumbrances of the mortgaged premises, and to examine and report whether the mortgage premises can be sold in parcels, and that said referee report to this Court with all convenient speed." The Referee to Compute has set a hearing date for this Monday, April 19, 2010.

Counsel for defendants YL Rector and Levy is now moving to be relieved. In support of the motion, defendants' counsel, David C. Segal, argues that if he is not relieved, he will be

required to provide many hours of legal services without a reasonable expectation of compensation. Specifically, Mr. Segal states in his affirmation that “there is a substantial amount of work yet to be performed” and “[t]his will result in tens of thousands of fees being charged which neither YL nor Levy have the ability to pay.” While Mr. Segal states that he is owed \$24,791 in fees and that based on defendants’ failure to pay promptly, and an additional \$34,570 is owed, he asserts that his law firm is mainly concerned about the fees going forward. Mr Segal argues that the amount due under the mortgage is “a complicated matter,” but “more important is the question of how the property will be sold.” Segal asserts that under RPAPL 1371(2), a debtor is entitled to a credit against the debt of the higher of the bid price at the foreclosure auction and the fair market value of the real property at the time of the auction. He argues that a sale of the property by individual condominium units will result in a higher sale price than a bulk foreclosure sale. According to Segal, substantial legal services will be required to represent defendants in litigating the issue of whether the property should be sold in bulk or as individual units, and in connection with a hearing as to a deficiency judgment, where Segal argues the issue will be whether the total of the fair market value of the individual units exceeds the debt. At oral argument, Mr. Segal appeared to argue that an evidentiary hearing before the Referee with expert testimony would be needed to determine how the property should be sold. While he agreed to represent defendants through the hearing by the Referee to Compute, regarding the amount owed, he strenuously objected to continuing his representation after the calculation.

The court rejects Segal’s argument that the issue of how the property is to be sold will involve an extended hearing before the Referee to Compute. The issue is discrete, and on its face, at this stage, does not present any complex legal issues.

Under the court's prior order, one of the issues upon which the Referee to Compute is to report, is whether the premises can be sold in one parcel or different parcels. At the hearing, the Referee may hear argument and consider law on the issue, and afterwards she will report to the court her recommendations. The court on a motion for judgment of sale pursuant to RPAPL 1351, determines whether to confirm the Referee's report and how the property is to be sold. Based on this procedure, it cannot be said that the hearing before the Referee will necessarily encompass many hours of legal services.

To the extent Segal relies on RPAPL 1371(2), that section provides that upon a motion to enter a deficiency judgment, the court shall determine "the fair and reasonable market value of the mortgaged premises as of the date such premises were bid in at auction" and the deficiency judgment, if any, "shall be for an amount equal to the sum of the amount owing . . . less the market value as determined by the court or the sale price of the property whichever shall be the higher." RPAPL 1371(2). Thus, the fair market value as determined by the court under section 1371(2) and any hearing regarding such value, are applicable to a motion for a deficiency judgment. See Columbus Realty Investment Corp v. Gray, 240 AD2d 529 (2nd Dept 1997).

Segal also relies on Sanders v. Palmer, 68 NY2d 186 (1996) in support of his argument that the units must be sold individually and "a deficiency proceeding should be held prior to the sale of the units encumbered, to determine whether or not the debt has been paid prior to the sale of the last unit." Sanders involved a single debt secured by three separate mortgages on three separate properties, where the court directed that unless the lower court ordered otherwise, separate sales of the security in such order as the court fixed were required, with an application after each sale to for determine if a deficiency existed after such sale. The instant case is

factually distinct from Sanders, as here, a single debt is secured by a single mortgage where the unsold units in the condominium collectively constitute the collateral on the loan. Nonetheless, the court makes no determination as to whether Sanders is applicable or whether a modified procedure is practicable in light of the number of unsold units, particularly in the absence of the loan documents.

While the court recognizes that attorneys are entitled to compensation for their services, the court also recognizes that all parties to the lawsuit are entitled to a resolution of the action in a timely manner. In this action, due to YL Rector's defaults under the loans, plaintiff Anglo Irish Bank has made advances to fund construction of the common areas of the building and to fund short falls in its operating costs. Since the revenue from the building is insufficient to cover the operating costs, this shortfall continues, as arrears in monthly maintenance charges with respect to the unsold units continue to accrue.

Mr. Segal submitted the Order to Show Cause to withdraw as counsel on April 1, 2010, and although defendants had failed to pay in a timely fashion for many months, Mr. Segal stated it was only "now," presumably on or about April 1, 2010, that he "recognized" that "because of Levy's financial condition," he was unable to pay for legal services. This "recognition" occurred shortly before the scheduled hearing date set by the Referee. Delaying the hearing before the Referee will delay the ultimate sale, with resulting prejudice to plaintiff, based on the financial circumstances described above. As Mr. Segal has indicated that he is willing to continue his firm's representation through calculation, and that the firm's main concern are the fees for future legal services, and as the issues before the referee are discrete, Mr. Segal's application is denied. This denial is without prejudice to renewal upon papers demonstrating the existence of

circumstances warranting such relief and the absence of prejudice to plaintiff..

Accordingly, it is

ORDERED that the motion by Sukenik, Segal & Graff, P.C. to withdraw as counsel for defendants YL Rector Street LLC and Yair Levy, is denied with leave to renew in accordance with the foregoing decision.

DATED: April 15, 2010

ENTER:


HON. JOAN A. MADDEN
J.S.C.

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