

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

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CUSTOMERS BANK,

Plaintiff(s),

- against -

**DECISION AND ORDER**

Index No: 31174/19E

2250 SUPERIOR APARTMENT LLC, ABDUL M. KHAN,  
NEW YORK STATE DEPARTMENT OF TAXATION AND  
FINANCE, THE PEOPLE OF THE STATE OF NEW  
YORK, NEW YORK CITY DEPARTMENT OF FINANCE,  
THE CITY OF NEW YORK DEPARTMENT OF HOUSING  
PRESERVATION & DEVELOPMENT, NEW YORK CITY  
ENVIRONMENTAL CONTROL BOARD, WORKERS'  
COMPENSATION BOARD OF NEW YORK STATE, NYC  
PARKING VIOLATIONS BUREAU and JOHN DOES 1-10  
AND JANE DOES 1-10,

Defendant(s),

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In this action for foreclosure on a mortgage and sale of the real property pledged as security, plaintiff moves seeking an order pursuant to RPL § 254(10), appointing a receiver to preserve the premises secured by the mortgage in this action.

For the reasons that follow hereinafter, plaintiff's motion is granted, on default and without opposition.

The instant action is for foreclosure on a mortgage and the sale of the real property pledged as security. The complaint alleges that on February 7, 2017, plaintiff loaned defendant 2250 SUPERIOR APARTMENT LLC (Superior) \$3,100,000. Superior executed a

Consolidated and Restated Promissory Note (note) pledging therein to repay the loan and also executed a Consolidation and Extension Agreement (mortgage) which pledged the premises located at 2250 Grand Concourse, Bronx, NY (2250) as security for the note. Pursuant to the foregoing agreements, Superior was obligated to make payments on all sums borrowed and the failure to make payment when due would constitute a default, which, per the agreements, would authorize plaintiff to foreclose on the mortgage and sell 2250. On February 7, 2017, Defendant ABDUL M. KHAN (Khan) executed Carveout Guaranty (guaranty agreement), wherein Khan agreed to guarantee all payments due under the loan to Superior. On March 12, 2019, Superior defaulted under the terms of the agreements and Khan failed to pay the sums due under the loan. Thus, plaintiff seeks a judgment authorizing foreclosure and the sale of the property.

Plaintiff's application seeking to appoint a receiver is hereby granted. Significantly, plaintiff establishes that the mortgage executed by Superior contains a provision authorizing the appointment of a receiver, where, as here, there exists a foreclosure action.

RPL § 254 and § 254(10), read together, state that

[i]n mortgages of real property, and in bonds and notes secured thereby or in assignments of mortgages and bonds and

mortgages and notes, or in agreements to extend or to modify the terms of mortgages and bonds and mortgages and notes, the following or similar clauses and covenants must be construed as follows . . . Mortgagee entitled to appointment of receiver. A covenant 'that the holder of this mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver,' must be construed as meaning that the mortgagee, his heirs, successors or assigns, in any action to foreclose the mortgage, shall be entitled, without notice and without regard to adequacy of any security of the debt, to the appointment of a receiver of the rents and profits of the premises covered by the mortgage; and the rents and profits in the event of any default or defaults in paying the principal, interest, taxes, water rents, assessments or premiums of insurance, are assigned to the holder of the mortgage as further security for the payment of the indebtedness.

Thus, where a mortgage contains language providing for the appointment of a receiver in an action to foreclose on a mortgage, upon application, the court must appoint a receiver and can do so without notice (*Maspeth Fed. Sav. and Loan Ass'n v McGown*, 77 AD3d 890, 891 [2d Dept 2010] ["The mortgage agreement at issue contains a provision which specifically authorizes the appointment of a receiver upon application by the mortgagee in any action to foreclose the mortgage. Consequently, the plaintiff, as mortgagee, was entitled to the appointment of a receiver without notice and without regard to the adequacy of the security."]; *Naar v I.J. Litwak & Co., Inc.*, 260 AD2d 613, 615 [2d Dept 1999]; *Clinton*

*Capital Corp. v One Tiffany Place Developers, Inc.*, 112 AD2d 911, 912 [2d Dept 1985]). Under the foregoing circumstances, the mortgagee has no obligation to establish the necessity of a receiver (*Febbraro v Febbraro*, 70 AD2d 584, 585 [2d Dept 1979]).

Here, in support of the instant application, plaintiff submits an affidavit by Steve Kachanian (Kachanian), plaintiff's agent, who reiterates the allegations in the complaint. Kachanian further states that the mortgage and note, upon which he bases his affidavit, were made, kept, and maintained in the ordinary course of plaintiff's business.

Plaintiff submits the note<sup>1</sup> to which Kachanian refers, which is dated September 7, 2017, is between plaintiff and Superior, and states that defendant is being loaned \$3,100,000, and has an obligation repay the same by making an interest only payment through February 28, 2017, monthly payments of \$13,790.60 through

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<sup>1</sup> Plaintiff's records are admissible insofar as Kachanian laid the requisite business records foundation. To be sure, the business record foundation only requires proof that (1) the record at issue be made in the regular course of business; (2) it is the regular course of business to make said record and; (3) the records were made contemporaneous with the events contained therein (CPLR § 4518; *People v Kennedy*, 68 NY2d 569, 579 [1986]). Accordingly, "[i]t is well settled that a business entity may admit a business record through a person without personal knowledge of the document, its history or its specific contents where that person is sufficiently familiar with the corporate records to aver that the record is what it purports to be and that it came out of the entity's files" (*DeLeon v Port Auth. of New York and New Jersey*, 306 AD2d 146 [1st Dept 2003]).

March 1, 2022, monthly interest only payments through March 1, 2027, and then a final payment of the loan by March 1, 2027.

Plaintiff submits the mortgage, which is also dated September 7, 2017, is between plaintiff and Superior, and is made to secure the note executed by the parties. The mortgage also states that it is secured by 2250. Section VIII, Paragraph 2 indicates that the loan would be paid as provided by the note. Paragraph 18 defines a default as, *inter alia*, when "any Installment is not paid within ten (10) days after the same is due." Paragraph 19 grants plaintiff the right to initiate a foreclosure proceeding in the event of Superior's default and with respect to the appointment of a receiver, paragraph 21 states that

[i]n any action to foreclose the Consolidated Mortgages the Mortgagee shall be entitled to the appointment of a receiver without notice, and without regard to the adequacy of the security.

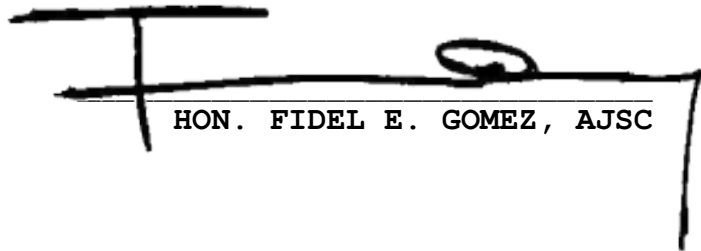
Based on the foregoing, the relief sought by plaintiff - the appointment of a receiver - is authorized by RPL § 254(10), since the mortgage to which Superior is bound contains the enabling language prescribed therein, namely the initiation of the instant foreclosure action. Accordingly, it is hereby

**ORDERED** that a receiver be appointed in accordance with the

Order Appointing a Receiver and Granting Related Relief, dated August 16, 2022, and annexed hereto. It is further

**ORDERED** that plaintiff serve a copy of this Decision and Order and Order Appointing a Receiver and Granting Related Relief with Notice of Entry upon all parties within thirty (30) days hereof.

Dated :8/22/22  
Bronx, New York



HON. FIDEL E. GOMEZ, AJSC