

DCR Mtge. 10 Sub 2, LLC v 179 Ludlow Owners LLC
2024 NY Slip Op 31588(U)
May 3, 2024
Supreme Court, New York County
Docket Number: Index No. 850662/2023
Judge: Francis A. Kahn III
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. FRANCIS A. KAHN, III PART 32

Justice

-----X INDEX NO. 850662/2023

DCR MORTGAGE 10 SUB 2, LLC,

MOTION DATE _____

Plaintiff,

MOTION SEQ. NO. 002

- v -

179 LUDLOW OWNERS LLC, SHARON SUTTON, JESSE SUTTON, BOARD OF MANAGERS OF THE 179 LUDLOW STREET CONDOMINIUM, NEW YORK STATE DEPT. OF TAXATION & FINANCE, NEW YORK CITY DEPT. OF FINANCE, JOHN DOE,

DECISION + ORDER ON MOTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 31, 32, 33, 34, 35, 36, 37

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, the motion is determined as follows:

This action is to foreclose on a mortgage encumbering a parcel of commercial real property located at 179 Ludlow Street, Unit C, New York, New York. The mortgage, dated November 27, 2017, was given by Defendant 179 Ludlow Owners, LLC ("Ludlow") to non-party Mercantil Bank, NA to secure a loan with an original principal amount of \$1,950,000.00 which is memorialized by a note of the same date as the mortgage. The note and mortgage were executed by Defendant Jesse Sutton as Authorized Signatory of Ludlow. Concomitantly with these documents, Defendants Jesse Sutton and Sharon Sutton executed guarantees of the indebtedness. Plaintiff commenced this action alleging *inter alia* Defendants defaulted in repayment under the note. All the Defendants defaulted in appearing or answering. Now, Plaintiff moves for *inter alia* a default judgment against Defendants, appointing a referee to compute, and to amend the caption. Defendant Ludlow submitted limited opposition.

"An applicant for a default judgment against a defendant must submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting defendant's failure to answer or appear" (*Deutsche Bank Natl. Trust Co. v Silverman*, 178 AD3d 898, 899 [2d Dept 2019]). A plaintiff needs "only [to] allege enough facts to enable a court to determine that a viable cause of action exists" (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). However, granting a default judgment is not a mandatory mistrial duty and the Court has the discretion to deny a motion for same absent opposition (*see Newrez, LLC v City of Middletown*, 216 AD3d 655 [2d Dept 2023]).

Plaintiff established its entitlement to a default judgment against all the Defendants by submitting proof of the mortgage, the unpaid note, proof of service on each Defendant as well as proof of their failure to appear or answer (*see CPLR §3215[f]; SRMOF II 2012-I Trust v Tella*, 139 AD3d 599,

600 [1st Dept 2016]; *U.S. Bank Natl. Assn. v Wolnerman*, 135 AD3d 850 [2d Dept 2016]; *see also Deutsche Bank Natl. Trust Co. v Silverman*, 178 AD3d 898 [2d Dept 2019]).

“To defeat a facially adequate CPLR 3215 motion, a defendant must show either that there was no default, or that it has a reasonable excuse for its delay and a potentially meritorious defense” (*Deutsche Bank Natl. Trust Co. v Silverman*, 178 AD3d 898, 901 [2d Dept 2020], *citing US Bank N.A. v Dorestant*, 131 AD3d 467, 470 [2d Dept 2015]). In opposition, Defendant Ludlow proffered no argument to support it did not default or to vacate same (*see Wilmington Trust v Ashe*, 189 AD3d 1130 [2d Dept 2020]).

The branch of Plaintiff's motion to amend caption is granted without opposition (*see generally* CPLR §3025; *JP Morgan Chase Bank, N.A. v Laszio*, 169 AD3d 885, 887 [2d Dept 2019]).

Accordingly, it is

ORDERED that Plaintiff is awarded a default judgment against the non-appearing defendants; and it is further

ORDERED that that **Ronald Zezima, Esq., 271 North Ave., Ste. 908, New Rochelle, New York 10801-914-633-5600** is hereby appointed Referee in accordance with RPAPL § 1321 to compute the amount due to Plaintiff and examine whether the tax parcel can be sold in parcels; and it is further

ORDERED that in the discretion of the Referee, a hearing may be held, and testimony taken; and it is further

ORDERED that by accepting this appointment the Referee certifies that he is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2 (c) (“Disqualifications from appointment”), and §36.2 (d) (“Limitations on appointments based upon compensation”), and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall immediately notify the Appointing Judge; and it is further

ORDERED that, pursuant to CPLR 8003(a), and in the discretion of the court, a fee of \$350 shall be paid to the Referee for the computation of the amount due and upon the filing of his report and the Referee shall not request or accept additional compensation for the computation unless it has been fixed by the court in accordance with CPLR 8003(b); and it is further

ORDERED that the Referee is prohibited from accepting or retaining any funds for himself or paying funds to himself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED that if the Referee holds a hearing or is required to perform other significant services in issuing the report, the Referee may seek additional compensation at the Referee's usual and customary hourly rate; and it is further

ORDERED that plaintiff shall forward all necessary documents to the Referee and to defendants who have appeared in this case within 30 days of the date of this order and shall *promptly* respond to every inquiry made by the referee (promptly means within two business days); and it is further

ORDERED that if defendant(s) have objections, they must submit them to the referee within 14 days of the mailing of plaintiff's submissions; and include these objections to the Court if opposing the motion for a judgment of foreclosure and sale; and it is further

ORDERED the failure by defendants to submit objections to the referee shall be deemed a waiver of objections before the Court on an application for a judgment of foreclosure and sale; and it is further

ORDERED that plaintiff must bring a motion for a judgment of foreclosure and sale within 30 days of receipt of the referee's report; and it is further

ORDERED that if plaintiff fails to meet these deadlines, then the Court may *sua sponte* vacate this order and direct plaintiff to move again for an order of reference and the Court may *sua sponte* toll interest depending on whether the delays are due to plaintiff's failure to move this litigation forward; and it further

ORDERED that the caption is hereby amended by striking therefrom the "JOHN DOE" defendants as parties herein; and it is further

ORDERED that the caption shall read as follows:

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

-----X
DCR MORTGAGE 10 SUB 2, LLC,

Plaintiff,

-against-

179 LUDLOW OWNERS LLC, SHARON SUTTON,
JESSE SUTTON, BOARD OF MANAGERS OF THE 179
LUDLOW STREET CONDOMINIUM, NEW YORK
STATE DEPT. OF TAXATION & FINANCE, NEW
YORK CITY DEPT. OF FINANCE,

Defendants.
-----X

and it is further

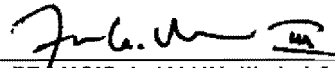
ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being removed pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address (www.nycourts.gov/suptctmanh)); and it is further

All parties are to appear for a virtual conference via Microsoft Teams on **September 18, 2024, at 10:20 a.m.** If a motion for judgment of foreclosure and sale has been filed Plaintiff may contact the Part Clerk Tamika Wright (tswright@nycourt.gov) in writing to request that the conference be cancelled. If a motion has not been made, then a conference is required to explore the reasons for the delay.

5/3/2024

DATE



FRANCIS A. KAHN, III, A.J.S.C.

HON. FRANCIS A. KAHN II
J.S.C

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE