

**CIT Lending Servs. Corp. v 654 Broadway Partners  
LLC**

2010 NY Slip Op 31867(U)

July 7, 2010

Supreme Court, New York County

Docket Number: 112833/09

Judge: Carol R. Edmead

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

PRESENT: CAROL EDMEAD  
J.S.C.  
*Justice*

PART 35

Index Number : 112833/2009  
**CIT LENDING SERVICES**  
VS.  
**654 BROADWAY PARTNERS**  
SEQUENCE NUMBER : 006  
SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_  
MOTION DATE 6/11/10  
MOTION SEQ. NO. \_\_\_\_\_  
MOTION CAL. NO. \_\_\_\_\_

n this motion to/for \_\_\_\_\_

PAPERS NUMBERED

Answering Affidavits — Exhibits

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**FILED**  
**JUL 13 2010**  
**COUNTY CLERK'S OFFICE**  
**NEW YORK**

The instant motion is decided in accordance with the accompanying Memorandum Decision. It is hereby

ORDERED that CIT's motion for summary judgment is granted against defendants Broadway Partners, Ransford and Stahelski on the issue of liability, and it is further

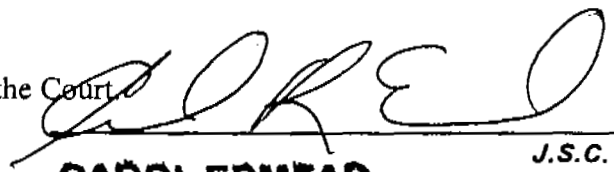
ORDERED that **Roberta Ashkin**, Esq., 580 Broadway, Suite 906, New York, New York 10012, (212) 965-0010 is hereby appointed referee to ascertain and compute the amount due upon the Note and Mortgage being foreclosed upon in this action.

The parties are directed to cooperate with the referee and furnish him/her with all documents necessary to perform the computations. Upon a successful motion to confirm the referee's report, CIT may move for summary judgment on damages and a final judgment of foreclosure. And it is further

ORDERED that counsel for plaintiff CIT Lending Services Corporation shall serve a copy of this order with notice of entry within twenty (20) days of entry on counsel for defendants and Referee Ashkin.

This constitutes the decision and order of the Court.

Dated: 7/7/10

  
\_\_\_\_\_  
J.S.C.

**CAROL EDMEAD**

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 : IAS PART 35

----- X

CIT LENDING SERVICES CORPORATION,

Plaintiff,

INDEX NO.  
112833/09

-against-

654 BROADWAY PARTNERS LLC, KYLE  
RANSFORD, TREVOR STAHELSKI, GRUBB &  
ELLIS NEW YORK, INC., NEW YORK CITY  
ENVIRONMENTAL CONTROL BOARD, NEW  
YORK CITY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION, NEW YORK  
CITY DEPARTMENT OF FINANCE, AND JOHN  
DOE # 1 THROUGH JOHN DOE # 10,

Defendants.

----- X

**FILED**  
**JUL 13 2010**  
COUNTY CLERK'S OFFICE  
NEW YORK

**CAROL R. EDMEAD, J.:**

In this mortgage foreclosure action plaintiff CIT Lending Services Corporation ("CIT") moves for an order pursuant to CPLR 3212 granting summary judgment against defendants 654 Broadway Partners LLC ("Broadway Partners"), Kyle Ransford ("Ransford"), and Trevor Stahelski ("Stahelski") (collectively "defendants").

In August 2007 CIT and Broadway Partners entered into a "Loan Agreement" setting forth the terms of a loan (the "Loan") that CIT provided to Broadway Partners in connection with the latter's purchase and development of the land and building located at 654 Broadway in Manhattan ("654 Broadway"). Pursuant to the terms of the Loan Agreement, Broadway Partners executed a note (the "Note") under which CIT agreed to advance up to the principal amount of

\$12,000,000, and Broadway Partners agreed to pay all amounts owed under the Note by August 13, 2009 (the "Maturity Date"). As security for payment of the indebtedness evidenced by the Note, CIT required Broadway Partners to execute a "Mortgage, Assignment of Leases and Rents and Security Agreement" (the "Mortgage") granting CIT a security interest in 654 Broadway as well as a seemingly redundant second "Assignment of Leases and Rents" (the "Assignment"). CIT also required Broadway Partners' principals, Ransford and Stahelski, to execute a Guaranty of Recourse Obligations (the "Recourse Obligation Guaranty") pursuant to which they jointly and severally guaranteed the performance of Broadway Partners' obligations under the Note and Mortgage as well as a Guaranty of Completion pursuant to which they jointly and severally guaranteed the performance of Broadway Partners' obligations in connection with improvements to 654 Broadway.

According to CIT, Broadway Partners defaulted under the Note and Mortgage by: failing to pay the outstanding principal of \$11,999,927.61 and related charges on the Maturity Date; failing to pay monthly interest payments due in November 2008 through August 2009; failing to make the required monthly deposits of interest for the payments due in November 2008 through August 2009; and, failing to remedy the filing of a mechanic's lien by Grubb & Ellis on April 6, 2009 in the amount of \$142,310.21 (collectively the "Events of Default").

As a result of the alleged Events of Default, on August 28, 2009 CIT made a written demand on Broadway Partners for payment of \$11,999,927.61 in principal plus interest, late charges, and an "Exit Fee." CIT also made a written demand on Ransford and Stahelski for payment under the Recourse Obligation Guaranty. The payments demanded were not forthcoming.

CIT commenced this action in September 2009. Issue was joined in October. In their answer defendants asserted four affirmative defenses: CIT's claims are barred by the doctrine of equitable estoppel; CIT's claims are barred because it breached its agreements with Broadway Partners; CIT's claims are barred because it acted in bad faith; and, CIT's claims are barred because any breach by Broadway Partners was caused by CIT's own conduct (see answer, Kirby supporting affirmation, exhibit C, p 6). The answer also alleged that defendants did not make the requisite payments because CIT made promises to extend the Maturity Date (*id.*, ¶¶ 35, 36 and 37).

In support of its motion, CIT argues that it has established a *prima facie* case for summary judgment by producing the Mortgage, the unpaid Note, and evidence of four Events of Default. CIT then argues (prematurely) that “[d]efendants have failed to come forward with any admissible evidence to support [their] affirmative defenses.” CIT adds that defendants’ allegation in their answer that CIT made promises to extend the Maturity Date cannot serve to defeat CIT’s motion because the allegation is unsupported, insufficient to raise a triable issue of fact, and vitiated by, *inter alia*, the Loan Agreement which provides that any modification of its terms must be in writing signed by the party against whom enforcement is sought. CIT contends further that Ransford and Stahelski are jointly and severally liable under the Recourse Obligation Guaranty for all amounts owed to CIT by Broadway Partners.

In opposition, Broadway Partners “acknowledges the non-payment of certain sums purportedly due, [but] maintains that such non-payments do not constitute a default under the [Loan] under the principles of waiver, estoppel, and unclean hands” (see defendants’ memorandum of law, p 8). To support these defenses, Ransford evokes a December 2006 loan

commitment of approximately \$19 million that CIT made to an entity controlled by him, known as East Houston Partners, LLC (“Houston Partners”), in connection with Houston Partners’ acquisition, demolition, and reconstruction of a building in lower Manhattan (the “East Houston Project”). According to Ransford, CIT demanded an additional influx of capital for the East Houston Project, which made it virtually impossible for him and his investment partners to “prop up” the project at 654 Broadway. Ransford contends that CIT’s demands that he and his co-investors provide substantial additional capital for the East Houston Project, coupled with CIT’s failure to cooperate in the sale of units at 654 Broadway along with CIT’s representations that the East Houston loan would be extended and a forbearance period on the (654 Broadway) Loan formalized caused Broadway Partners to default.

The court finds that plaintiff’s motion should be granted to the extent that it seeks summary judgment on the issue of defendants’ liability. “[T]he proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact ... . Once that initial burden has been satisfied, the burden of production shifts to the party opposing the motion to produce sufficient evidence of the existence of a material issue of fact requiring a trial of the action” (*Grossman v Amalgamated Housing Corporation*, 298 AD2d 224, 226 [1st Dept 2002], citing *Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]).

“It is settled that in moving for summary judgment in an action to foreclose a mortgage, a plaintiff establishes its case as a matter of law through the production of the mortgage, the unpaid note, and evidence of default [citation omitted]” (*Village Bank v Wild Oaks Holding, Inc.*, 196 AD2d 812 [2d Dept 1993]). CIT has produced the requisite documents (see Cleary supporting

affidavit, exhibits A - G, J) and defendants do not dispute that Broadway Partners has defaulted under the Loan. Ransford's arguments concerning assurances made by CIT in connection with the East Houston Project are of no avail because the "Modification, Waiver in Writing" provision in the Loan Agreement provides that "[n]either any modification, amendment, extension ... or waiver of any provision of this Agreement or of any other Loan Document, nor any consent to any departure by [Broadway Partners] therefrom, shall in any event be effective unless the same shall be in writing signed by the party against whom enforcement is sought ..." (see Cleary affidavit, exhibit A, § 10.4). Defendants have produced no such writing. Furthermore, Ransford's arguments concerning the East Houston Project serve only as a purported explanation for Broadway Partners' undisputed failure to meet its obligations under the Note and Mortgage and are otherwise not legally relevant. Finally, the East Houston Project is the subject of a separate foreclosure action brought by CIT against East Houston Partners, Ransford, Stahelski, *et al.* (index no. 113222/09) which has been consolidated with an action brought by East Houston Partners against CIT for, *inter alia*, breach of contract (index no. 112343/09). The consolidated action, which is based on the East Houston Project, is the proper forum for Ransford's arguments concerning the East Houston loan.<sup>1</sup>

Accordingly, it is hereby

ORDERED that CIT's motion for summary judgment is granted against defendants

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<sup>1</sup> Although Ransford's opposing affidavit has been considered, it is not properly before the court. The affidavit, which was notarized in California, fails to comply with CPLR 2309(c) (Oaths and affirmations taken without the state) (see *Green v Fairway Operating Corp.*, 72 AD3d 613 [1<sup>st</sup> Dept 2010]). Were this technicality to be enforced (CIT has not raised the issue and the affidavit could be certified *nunc pro tunc*), CIT's motion would be granted on default rather than on the merits.

Broadway Partners, Ransford and Stahelski on the issue of liability, and it is further


ORDERED that **Roberta Ashkin**, Esq., 580 Broadway, Suite 906, New York, New York 10012, (212) 965-0010 is hereby appointed referee to ascertain and compute the amount due upon the Note and Mortgage being foreclosed upon in this action.

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ORDERED that counsel for plaintiff CIT Lending Services Corporation shall serve a copy of this order with notice of entry within twenty (20) days of entry on counsel for defendants and Referee Ashkin.

This constitutes the decision and order of the court.

DATED: July 7, 2010



Justice Carol R. Edmead, J.S.C.

**HON. CAROL EDMEAD**