

Sovereign Bank v Stone Cr. Realty Assoc., LLC

2010 NY Slip Op 32416(U)

August 24, 2010

Sup Ct, NY County

Docket Number: 104599/2009

Judge: Judith J. Gische

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
HON. JUDITH J. GISCHE

PRESENT: _____
Justice

PART 10

Index Number : 104599/2009
SOVEREIGN BANK
vs.
STONE CREEK REALTY ASSOC. LLC
SEQUENCE NUMBER : 002
DEFAULT JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. 002
MOTION CAL. NO. _____

n this motion to/for _____

PAPERS NUMBERED

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


Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED
AUG 25 2010
NEW YORK
COUNTY CLERK'S OFFICE

**MOTION IS DECIDED IN ACCORDANCE WITH
THE ACCOMPANYING MEMORANDUM DECISION.**

Dated: AUG 24 2010


HON. JUDITH J. GISCHE J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE
 SUBMIT ORDER/JUDG. SETTLE ORDER /JUDG.

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 10

-----X
SOVEREIGN BANK,

Plaintiff,

-against-

STONE CREEK REALTY ASSOCIATES, LLC.
AND RAMONA RESILEN A/K/A
ROMONA RESILEN A/K/A RAMONA M.
RESILIEN, INDIVIDUALLY,

Defendants.
-----X

DECISION/ ORDER
Index No.: 104599/2009
Seq. No.: 002

PRESENT:
Hon. Judith J. Gische
J.S.C.

Recitation, as required by CPLR § 2219 [a] of the papers considered in the review of this (these) motion(s):

FILED
AUG 5 2010
NEW YORK
COUNTY CLERK'S OFFICE

Papers **Numbered**
Plt's n/m (3215) w/JR affirm, MR affid, ver complaint 1

Upon the foregoing papers, the decision and order of the court is as follows:

This is an action brought for repayment of a line of credit in the principal amount of \$74,718.44. A prior motion by plaintiff Sovereign Bank for entry of a default judgment against the defendants was granted only to the extent that the court found that the defendants had defaulted in answering the complaint or appearing in this action (Order, Gische J., March 2, 2010) ("prior order"). Although the court found that it had personal jurisdiction over the parties, the court denied that branch of Sovereign Bank's motion seeking entry of a money judgment on their alleged damages. The denial was, however, without prejudice to renewal within Ninety (90) Days of the prior order. Defendant has now moved to renew. In addition to renewal, Sovereign Bank seeks the amendment of the caption to show that Sovereign Bank has assigned the debt to "Portsmouth, Inc." Since the renewal motion is timely, it will be considered on the merits.

Sovereign Bank has now provided the affidavit of a person with knowledge of the facts, Mario Romano ("Romano") who is the president of Portsmouth, Inc. the assignee. Roman states that the loan was assigned to Portsmouth, Inc. and he provides a document dated October 26, 2009, showing the assignment. Therefore, that branch of Sovereign Bank's motion, seeking the amendment of the caption to show that the plaintiff is now "Portsmouth, Inc. as assignee of Sovereign Bank" is hereby granted. Hereinafter, any reference to "plaintiff" shall mean "Portsmouth, Inc. as assignee of Sovereign Bank," unless otherwise stated.

Plaintiff has also provided a copy of the promissory note in the amount of \$75,000 showing that the loan was taken out by Stone Creek Realty Associates, LC and personally guaranteed by "Ramona Resilien." Beneath the guarantor's name, however, the name "Romona Resilien" is printed. Plaintiff has provided a copy of the guarantor's driver's license to show that although her legal name is "Ramona M. Resilien" she is, at times also known as "Ramona Resilien" and that the printed name is apparently a variation of her name which she did not correct when she signed the guaranty. Plaintiff's motion, for an order further amending the caption to identify the defendants as "Stone Creek Realty Associates, LLC and Ramona Resilen a/k/a Romona Resilen a/k/a Ramona M. Resilien a/k/a Romona Resilien, Individually" is hereby granted.

Plaintiff has established that defendants took advances from the account in the principal sum of \$78,718.44. Plaintiff has also established that defendants made no payments on the account after March 31, 2008 and the amount is still due and owing to plaintiff. Therefore, plaintiff is entitled to a money judgment in the principal amount demanded in the complaint plus interest thereon from March 31, 2008.

Pursuant to the express terms of the note, plaintiff is entitled to interest at the default rate which is defined as "four percent (4%) plus the interest rate otherwise payable hereunder." The non-default rate is the prevailing rate, or "the Bank's Published Prime Rate plus 2.99%..." The prime rates in effect during the operative period time are as follows: 2008-12-16 3.25%; 2008-10-29 4.00%; 2008-10-08 4.50%; 2008-04-30 5.00%; 2008-03-18 5.25% (<http://www.selectcdrates.com/prime-rates>). In accordance with the contractual rate, plaintiff has calculated the interest at \$15,831.14 through May 27, 2010. Thus, the clerk shall enter judgment against the defendants jointly and severally in the principal sum of \$78,718.44, together with interest of \$15,831.14 through May 27, 2010. Interest from May 28, 2010 until entry of judgment shall be calculated at 10.24%.

Conclusion

In accordance with the foregoing,

It is hereby:

ORDERED that plaintiff's motion is granted in its entirety; and it is further

ORDERED that upon service of a copy of this decision with notice of entry, the clerk shall amend the caption as follows:

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 10**

-----X

PORTSMOUTH, INC. as assignee
SOVEREIGN BANK,

Plaintiff,

Index No.: 104599/2009

-against-

STONE CREEK REALTY ASSOCIATES, LLC.
AND RAMONA RESILEN A/K/A
ROMONA RESILEN A/K/A RAMONA M.
RESILIEN A/K/A ROMONA RESILIEN, INDIVIDUALLY,

Defendants.

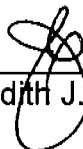
-----X

and it is further;

ORDERED that the clerk shall enter judgment in favor of Portsmouth, Inc. as assignee of Sovereign Bank against Stone Creek Realty Associates, LLC and Ramona Resilen a/k/a Romona Resilen a/k/a Ramona M. Resilien a/k/a Romona Resilien, jointly and severally, in the principal sum of Seventy Eight Thousand Seven Hundred Eighteen Dollars and 44/100 cents (\$78,718.44) with interest thereon of Fifteen Thousand Eight Hundred Thirty One and 14/100 cents (\$15,831.14) through May 27, 2010, plus interest from May 28, 2010 until entry of judgment, which shall be calculated at 10.24%, plus costs and disbursements as taxed by the court; and it is further

ORDERED that this shall constitute the decision and order of the court.

Dated: New York, New York
August 24, 2010

So Ordered:


Hon. Judith J. Gische, J.S.C.

FILED
AUG 25 2010
NEW YORK
COUNTY CLERKS OFFICE