

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

2010 NY Slip Op 34066(U)

September 24, 2010

Supreme Court, New York County

Docket Number: 101796/09

Judge: Joan A. Madden

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This opinion is uncorrected and not selected for official publication.

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

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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.

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JOAN A. MADDEN, J.:

This motion by plaintiff Anglo Irish Bank Corporation Limited (Anglo Irish) to confirm the report of the Referee is granted for the following reasons .

On March 3, 2010 this court this court appointed Carol Li;ienfeld, Esq., as Referee to ascertain and compute the amount due and to examine and report as to whether the mortgaged premises should be sold as one parcel or in individual parcels. The property in issue is a residential apartment building (the Building) with 304 residential units, a parking garage and commercial retail space. Loans secured by mortgages were used to finance construction and other costs related to the renovation and conversion of the Building to condominium ownership. As to the residential units, 72 have been sold, and the mortgaged premises consist of the remaining 232 unsold units.

The opposition of defendants YL Rector Street LLC and Yair Levy (together YL Rector) to the motion fails to provide a legally sufficient basis for rejecting the Referee's report. YL Rector's assertion that the Referee unreasonably refused to allow an adjournment and prevented them from preparing for the hearing by not directing Anglo Irish to produce certain documents is without merit. The Referee gave YL Rector an opportunity to adjourn the hearing and it did not immediately respond. While the Referee did not adjourn the start of the hearing on the following Monday, she adjourned the hearing for a week after taking testimony of one witness. Moreover, YL Rector does not identify any surprise or prejudice it suffered, nor any documents introduced into evidence at the hearing of which it was unaware. Nor does YL Rector dispute Anglo Irish's contention that the documents in evidence consisted of loan documents, court orders, accountings and other documents which YL Rector had in its possession during the pendency of this action and prior to the hearing.

YL Rector's contention that there was no reliable evidence at the hearing to enable the Referee to have rendered a meaning opinion as to the amount owed or as to how to sell the units is without support in the record. Anglo Irish called Mr. Kevin Kelly, who testified he has been employed by Anglo Irish for four years and, as the current manager for the loans, he is familiar with the loan documents. YL Rector's contention that Mr. Kelly's testimony is insufficient as he was not present at the execution of the loan documents and has no personal knowledge of the loans is without legal basis. No such foundation is required for either the admission of the documents or testimony regarding their contents. For similar reasons, since Anglo Irish is the agent for handling Fortress' loans, Mr. Kelly's testimony as to loans by Fortress was permissible. Moreover, regarding YL Rector's contention that there was no testimony by the

receiver to identify the amounts expended by the receiver, the Referee properly relied upon the receiver's accounting as approved by the court.<sup>1</sup>

As to how the Building is to be sold, at the outset, the court notes, it is undisputed that the loan documents leave this decision to the discretion of the lender. Moreover, the evidence at the hearing supports the recommendation of the Referee that the Building be sold as one parcel.

At the hearing, Anglo Irish called Mr. Andrew Scandalios, a Senior Managing Director for four years at Holliday, Fenoglio and Fowler, LLP which he described as a capital market real estate brokerage firm. Mr. Scandalios testified he has been a licensed real estate broker for 14 years, and has been involved in marketing condominium conversions similar to the conversion at issue. Mr. Scandalios further testified that in his opinion the highest bid would be obtained if the Building was sold as one parcel. Mr. Scandalios explained that as there was no reserve fund, and, as at closing there would be no sponsor, it would be difficult for purchasers to obtain financing and there would be no assurance that operating expenses could be met given the number of unsold units. Thus, Mr. Scandalios testified sales of individual units would be deeply discounted.

YL Rector called Mr. Giefaan Kim who testified he is employed as the Director of New Business in the Bracha Group at Prudential Douglas Elliman and has experience in the last four years in bulk sales of condominium units within buildings. Mr. Kim testified that the highest sales price would be obtained from the sale of individual units, and that the lack of operating capital might affect sales and the ability to get financing, but he was unsure whether it would

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<sup>1</sup>However, the court notes the Referee has included \$4,180.02 as her fee in the \$134,686,680.11 judgment amount. However, this is not properly included and this fee is being deducted so that the judgment amount is \$134,682,500.09.

affect price.

In her report, the Referee concludes that sales of individual units would not “solve the problems of the interim responsibilities and costs which only a bulk sale would afford.” While there was a difference of opinion between Mr. Scandalios and Mr. Kim as to whether a sale in one parcel or in individual parcels would obtain the highest price, there was sufficient evidence for the Referee to give a recommendation. Based on the loan documents and on Anglo Irish’s preference that the Building be sold in one parcel, the evidence at the hearing, including the testimony of Mr. Scandalios that the lack of a reserve fund and operating capital would make it difficult for prospective purchasers of individual units to obtain financing, and the fact that at foreclosure there will be no sponsor, the court finds that the Referee’s report should be confirmed as to the manner of sale and that the Building shall be sold in one parcel.

As to YL Rector’s assertions that the Referee drew on her own experience and incorrectly summarized the testimony of Mr. Scandalios during the hearing, these assertions mischaracterize the Referee’s statements, and in any event, are not of such nature or significance so as to undermine the integrity of the proceedings or the Referee’s report.

Accordingly, for the foregoing reasons, it is

ORDERED that the motion to confirm the Referee’s report is granted.

Dated: September 24, 2010 .



J.S.C.

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