

**Board of Mgrs. of the 345 Greenwich St.  
Condominium v 345 Greenwich St., LLC**

2011 NY Slip Op 34231(U)

January 3, 2011

Supreme Court, New York County

Docket Number: 108838/10

Judge: Judith J. Gische

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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: IAS PART 10**

-----X  
Board of Managers of the 345 Greenwich  
Street Condominium,

Plaintiff (s),

***-against-***

345 Greenwich Street, LLC, Rosenthal &  
Rosenthal, Inc., LT & LT, LLC, Vietnam  
Art Design, Corp., and "John Doe,"

Defendant (s).  
-----X

**DECISION/ ORDER**  
Index No.: 108838/10  
Seq. No.: 001

**PRESENT:**  
Hon. Judith J. Gische

**J.S.C.  
FILED**

**JAN 04 2011**

**NEW YORK  
COUNTY CLERK'S OFFICE**

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

<b>Papers</b>	<b>Numbered</b>
Pltff n/m 3212 w/PS affid, exhs .....	1
Def R&R affid w/ LSR affid .....	2

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

**GISCHE J.:**

This is an action by plaintiff, the Board of Managers of the 345 Greenwich Street Condominium ("Board") to recover common charges due and owing by defendant 345 Greenwich Street, LLC ("Greenwich LLC"), the record owner of Units 1A and 1B located at 345 Greenwich Street, New York, New York ("condominium"). Presently before the court is the Board's motion for summary judgment, 1) discontinuing the action against "John Doe," and amending the caption accordingly, 2) appointing a referee to compute, and 3) appointing a temporary receiver to collect rent from the tenants for plaintiff's

benefit.

Defendant Rosenthal & Rosenthal, Inc. ("Rosenthal") has answered the complaint. Rosenthal apparently holds a second mortgage on both units in the total amount of \$3,500,000. Defendants LT & LT, LLC ("LT") and Vietnam Art Design, Corp. ("Vietnam") have been named only because they may have a possessory interest and/or lien on the units. Vietnam's interest is in Unit 1A whereas LT's interest is in Unit 1B.

Rosenthal does not oppose the Board's motion provided that any surplus monies that remain after the payment of the condominium arrears and the first mortgage are then applied to any sums due to Rosenthal on its second mortgage.

There is due proof of service on LT and Vietnam. Each was served through the Secretary of State in accordance with 303 of the Limited Liability Law. LT was served July 9, 2010 whereas Vietnam was served on July 10, 2010. Neither defendant has answered the complaint and their time to do so has expired.

Since issue has been joined as to Rosenthal but the note of issue has not yet been filed, summary judgment relief is available as to that defendant (CPLR § 3212 [a]; Myung Chun v. North American Mortgage Co., 285 AD2d 42 [1<sup>st</sup> Dept 2001]). However, as to L&T and Vietnam, the Board can only seek entry of a default judgment and, in any event, there is no proof of service of this motion on L&T or Vietnam. Therefore, this motion must be denied as against L&T and Vietnam.

The Board and Rosenthal agree that Rosenthal is the holder of a second mortgage. The first mortgage is held by Dime Savings Bank, a non-party. The Board's lien has priority over all other liens, except the sums unpaid on a first mortgage of record (RPL § 339-z). Therefore, the Board's lien is superior to Rosenthal's and the

Board's motion, for summary judgment on its 1<sup>st</sup> cause of action against Rosenthal is granted. The condition that Rosenthal seeks, that any surplus monies remaining after the monies owed to the Board and the first mortgagee are satisfied then be paid to Rosenthal, is denied. There is insufficient information before the court for it to make any determination about Rosenthal's priority, other than to say Rosenthal is not the holder of the first mortgage, and therefore, subordinate to the Board's lien. The priorities of L&T and Vietnam have not been established and no default judgment has been entered against them. The court will, however, order that in the event of a sale, surplus monies, if any, be held in escrow and defendants notified of the surplus.

The Board's motion for the appointment of a referee to compute is also granted. The court appoints Miriam Marcia Breier, Esq., with offices at 156 Fifth Avenue, Ste 600, New York, NY, (212) 791 3900. The Board shall, within Ten (10) Days of entry of this decision and order, present the court with a proposed "Order of Appointment of a Referee to Compute" for its signature.

The Board's motion for a Receiver to collect the common charges on each unit (RPL § 33-a) is also granted on condition that the Board pay the Receiver's fees from the monies collected. The court appoints Andrew Lavcott bluestone, Esq., with offices at 233 Braodway, Ste 2702, New York, NY, (212) 791 5600. A proposed "Order of Appointment of a Temporary Receiver" shall, within Ten (10) Days of entry of this decision and order be presented to the court for its signature.

The Board's motion for an order allowing it to discontinue this action against "John Doe" and amending the caption accordingly, is granted. Upon service of a copy of this decision and order, the Clerk shall amend the caption to remove the name "John

Doe" from it.

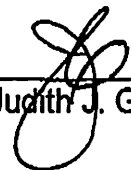
**Conclusion**

The Board's motion for summary judgment is granted as to defendant Rosenthal & Rosenthal, Inc. The motion is also granted for the appointment of: 1) a referee to compute and 2) a temporary receiver to receive the rents. The Board shall present the court with proposed orders for each appointment. The motion to discontinue this action against "John Doe" and amend the caption accordingly, is granted. Upon service of a copy of this decision and order, the Clerk shall amend the caption to remove the name "John Doe" from it.

Any relief requested but not expressly addressed is hereby denied.

This constitutes the decision and order of the court.

Dated: New York, New York  
January 03, 2011

So Ordered:  
  
\_\_\_\_\_  
Hon. Judith J. Gische, JSC

**FILED**

**JAN 04 2011**

**NEW YORK  
COUNTY CLERK'S OFFICE**