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

PRESENT: EMILY JANE GOODMAN PART 17

Justice

Index Number : 810118/2010

HUDSON VALLEY BANK N.A.

vs.

6 W.37 ST REALTY LLC.

SEQUENCE NUMBER : 003

SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

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 is decided by the annexed Memorandum Decision and Order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 1/13/12

EJG

EMILY JANE GOODMAN J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

☐ SUBMIT ORDER/ JUDG. ☐ SETTLE ORDER/ JUDG.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 17

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WEXA1 HBV, AS ASSIGNEE
OF HUDSON VALLEY BANK,

Plaintiff,

-against- Index No.: 810118/10

6 W 37 ST REALTY LLC, LAWRENCE OMANSKY, NICOLENA NATOLI OMANSKY, THE BOARD OF MANAGERS OF THE DRAGON ESTATES CONDOMINIUM, ENVIRONMENTAL CONTROL BOARD OF THE CITY OF NEW YORK, NEW YORK CITY PARKING VIOLATIONS BUREAU, et. al.,

Defendants.

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EMILY JANE GOODMAN, J.:

Motion sequence numbers 007 and 003 are consolidated for disposition.

Plaintiff, WEXA1 HBV LLC, as assignee of Hudson Valley Bank (WEXA1), seeks to recover on a note for $3,385,000, that is secured by a Mortgage and Security Agreement (the Mortgage) affecting real property consisting of a condominium unit, Unit 1E, at 51 Warren Street in Manhattan (the Unit), and the guarantees of several of the individual defendants. In motion sequence number 003, plaintiff moves, pursuant to CPLR 3212, for summary judgment in its favor on its complaint, and to dismiss the affirmative defenses of the defendants who have answered in this action, that is, 6 W 37 St Realty LLC (Realty LLC), Lawrence Omansky and Nicolena Natoli Omansky (together, the Answering Defendants). WEXA1 also seeks a default judgment against the defendants that have not answered (CPLR 3215), the appointment of a referee to compute the amount due to plaintiff under the note and to determine whether the

property should be sold in one parcel, and to amend the caption.

In motion sequence 007, the Answering Defendants move for leave to amend their answer to include a sixth affirmative defense of fraud in the inducement, pursuant to CPLR 3025 (b), and for a declaratory judgment declaring that plaintiffs have committed fraud. The Answering Defendants also seek dismissal of the action, pursuant to CPLR 3211 or 3212, based on fraud and on plaintiff's breach of its duty to negotiate in good faith, pursuant to Real Property Actions and Proceedings Law (RPAPL) § 1304 and CPLR 3408.

Hudson Valley Bank, N.A. (HVB) commenced this action alleging that it is the owner and holder of a $3,385,000 Mortgage Note (the Note). The Note is secured by the Mortgage on the Unit and by another, separate, mortgage, on a condominium apartment on Warren Street that was to be purchased and renovated with the Note proceeds (Unit 5-6W). The Note (annexed to the complaint) was executed by Lawrence on behalf of Realty LLC, with Realty LLC the borrower. The Mortgage on the Unit was executed by Lawrence Omansky (Lawrence), but as attorney in fact for Nicolena Natoli Omansky (Nicolena), to secure the Note. The mortgage on Unit 5-6W was executed by Lawrence, as the managing member of 6 W 37th Street Realty, LLC. Plaintiff has informed the court that Unit 5-6W was sold after the commencement of this action.[1]

The Note states that it is secured by respective guarantees of Lawrence and Nicolena, and a first-lien mortgage on the real property referred to here as the Unit, as well as a mortgage on the now-sold Unit 5-6W. The Note states that its $3,385,000 in proceeds were to be used for the purchase and renovation of Unit 5-6W ($2,750,000), to refinance the mortgage on the Unit

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[1]Nicolena avers that the sales price for Unit 5-6W was $2.625 million, less than the full face amount of the Note.

($355,000), for "Satisfaction of other personal debt" ($20,000), and for other things not relevant here (Pl Mov., Exh. C [Note, at 2 (complaint attachment)]). The maturity date stated on the Note is April 1, 2009.

Plaintiff alleges that it has not been paid all outstanding principal and interest due on the Note upon its maturity date, and that it sent a default notice advising the mortgagors and obligors that it would enforce its remedies under the Note and Mortgage if the default were not cured, but to no avail. Plaintiff further contends that it has not been paid certain escrow payments, for taxes and other costs, as provided for in the loan documents, that defendants have not paid these costs, and that during the pendency of this action it might be compelled to pay sums due on various things, such as insurance premiums, and water charges on the mortgaged premises. Plaintiff prays that it may recover these amounts, to be repaid from the proceeds of the sale of the mortgaged premises, and seeks contractual attorneys' fees under the Mortgage, as well as costs and disbursements. Plaintiff also seeks to recover any deficiency due under the Note, after the foreclosure sale on the Unit, from the alleged guarantors on the Note, Lawrence and Nicolena.

The Foreclosure[2]

On a motion for summary judgment in an action to foreclose on a mortgage, a plaintiff establishes its case as a matter of law by submitting the note, the mortgage, evidence of ownership of both and of default (*Witelson v Jamaica Estates Holding Corp. I,* 40 AD3d 284 [1st Dept 2007]; *see Wells Fargo Bank, N.A. v Webster*, 61 AD3d 856, 856 [2d Dept 2009]). Upon

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[2]Parts of this decision are identical to that in *WEXA1HBV LLC, as Assignee of Hudson Valley Bank v L.G.R.R.A. Realty LLC*, (Sup Ct, New York County, index No.: 810098/2010), because many of the same arguments asserted in that case, about another Warren Street condominium unit, in which Lawrence is a defendant and WEXA1 the plaintiff, were also asserted here.

the making of such a showing, it is incumbent upon the party opposing foreclosure to come forward with evidence sufficient to raise a fact issue as to any available defense (*Wells Fargo Bank, N.A.*, 61 AD3d at 856).

To meet its burden, WEXA1 provides a copy of the Note and the Mortgage, both of which are dated March 18, 2008, and a September 30, 2010 Notice of Default and Acceleration from HVB (*see* Arnone Aff., Exh. C [complaint attachments]; Leavitt Aff., Exh. B, D, G). WEXA1 also provides a copy of a document assigning the Mortgage and Note from HVB to WEXA1 (Leavitt Aff., Exh. A).

In opposition, defendant Lawrence submits an affidavit in which he avers that he is both a defendant and a principal of Realty LLC. Lawrence notes that the caption does not reflect the name Hudson Valley Bank, N.A., but only Hudson Valley Bank, and argues that only the former had authority to assign the Note. The assignment submitted by plaintiff reflects that Hudson Valley Bank N.A. assigned both the Note and the Mortgage, and consequently Lawrence's argument about the caption raises no genuine fact issue for trial (*see* Leavitt Aff., Exh. A, at 1 [Assignment of Mortgage with note obligation described therein]).

Lawrence relies on *LNV Corp. v Madison Real Estate, LLC* (2010 WL 5126043, 2010 NY Misc LEXIS 5937, 2010 NY Slip Op 33376[U] [Sup Ct, NY County 2010]), to support his contention that summary judgment should be denied, arguing that the WEXA1 has no personal knowledge about transactions with HVB, prior to the December 15, 2010 assignment to WEXA1. *LNV Corp.* stands for the proposition that, in a foreclosure action, a plaintiff must demonstrate that it is the owner of the note and the mortgage when commencing the action in order to have standing to bring it. The record evidence in *LNV Corp.* did not demonstrate that

the plaintiff-movant held the note, and the court determined that a foreclosure action may not be commenced by such a party.

Lawrence does not dispute that the documentary evidence, attached to the complaint, shows that the Note, secured by the Mortgage, was entered into with HVB, and held by HVB when it brought this action. Therefore, HVB, the note holder, had standing to commence the action. Lawrence also does not dispute that soon after commencement of this action, HVB assigned the Note and Mortgage to WEXA1, and that WEXA1's unopposed motion to be substituted as plaintiff in this action was granted by this court's order dated, April 14, 2011 (*Maspeth Fed. Sav. and Loan Assn. v Simon-Erdan*, 67 AD3d 750, 751 [2d Dept 2009]). Lawrence does not demonstrate that WEXA1 does not hold the Note and Mortgage now.

In addition to the documents evidencing the Note, Mortgage and assignment, in moving, WEXA1 has provided the affidavit of its managing member, Alan Leavitt, who avers that he has personal knowledge of WEXA1's books and records as they relate to the instant action, and has thoroughly reviewed them. Leavitt also states that no "robo-signed documents" have been filed in connection with this action (Pl. Mov., Leavitt Aff., ¶ 3). Lawrence argues that Leavitt does not have sufficient knowledge to make this averment, because he has no personal knowledge about what occurred while the loan was held by HVB.

Although Lawrence does not define the term "robo-signed documents," apparently he alludes to instances where a foreclosure plaintiff's employee signs an affidavit averring that a verification of facts and records concerning a foreclosure debt was performed, when the verification either was not done, or was cursory. This action was commenced by the original lender, there is no indication that it submitted affidavits with unverified information, and

Lawrence does not point to any. Furthermore, there is no indication that these instruments have ever been assigned to any party other than WEXA1, and Lawrence does not assert that Leavitt does not have personal knowledge of WEXA1's own records, or dispute the factual assertions made by WEXA1 here.[3] The documents plaintiff submits speak for themselves as to their nature and obligations, and Lawrence does not contend that any specific fact asserted by HVB or WEXA1 is incorrect or false.

Lawrence also cites to *Aurora Loan Servs., LLC v Thomas* (2010 WL 4314480, 2010 NY Misc LEXIS 5242, 2010 NY Slip Op 33023[U] [Sup Ct, Suffolk County 2010]), in which the court found that the movant had not met its burden on summary judgment because it did not submit admissible evidence in support of its burden as movant. This case is not analogous to *Aurora*, in which the court determined that certain affidavits and transcripts were not in admissible form, and that there was no certificate acknowledging conveyance of real property outside of the state.

The Affirmative Defenses

Omansky argues that plaintiff has not met its burden to demonstrate that the Answering Defendants' affirmative defenses should be dismissed, because the movant lacks personal knowledge, and therefore, does not submit admissible evidence to meet its burden. Plaintiff, however, has addressed each of the affirmative defenses in moving.

In the first affirmative defense, the Answering Defendants assert that the complaint fails to state a cause of action, but have not cross-moved to dismiss on this ground. The complaint

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[3]Any dispute as to the exact amount owed by the mortgagor to the mortgagee does not preclude the granting of summary judgment as to liability (*see Layden v Boccio*, 253 AD2d 540 [2d Dept 1998]), although Lawrence does not dispute the amount allegedly owed here.

states a cause of action, as plaintiff has met its prima facie burden on the foreclosure. The defense does not change the outcome concerning the foreclosure, but, at worst, is surplusage, "as it may be asserted at any time even if not pleaded" (*Riland v Todman & Co.*, 56 AD2d 350, 352 [1st Dept 1977]), and, therefore, is not dismissed.

The second affirmative defense, based upon lack of proper service of process is dismissed. CPLR § 3211 (e) requires the defendant to move for judgment within sixty days of filing an answer, otherwise this defense is considered waived (*see Wiebusch v Bethany Mem. Reform Church*, 9 AD3d 315, 315 [1st Dept 2004]).

The third and fourth affirmative defenses, that plaintiff has failed to comply with New York State banking law and New York's Real Property Actions and Proceedings Law (RPAPL), are dismissed. The Answering Defendants do not point to a provision of either RPAPL or the State's Banking Law that has been violated. To the extent that the Answering Defendants may be seeking the protections afforded under Banking Law §§ 6-1 and 6-m or RPAPL § 1304, those protections are afforded to those who obtain what is defined in the statutes as a home loan. As discussed below, the definition of home loan includes only those loans where the borrower is a natural person, and not, as here, a limited liability company.[4]

The Motion to Amend the Answer and to Dismiss the Complaint

The Answering Defendants argue that they should be permitted to amend their answer to assert a fraudulent inducement claim, and that the case should be dismissed on this basis. "Leave to amend a pleading is freely given (CPLR 3025 [b]), absent prejudice or surprise resulting

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[4]Omansky cites to *Stern-Obstfeld v Bank of Am.* (30 Misc 3d 901 [Sup Ct, NY County 2001]), which discusses notice requirements for foreclosures on cooperative residential apartments, but the Unit is not a cooperative, with shares, but real property.

directly from the delay" (*Eighth Ave. Garage Corp. v H.K.L. Realty Corp.*, 60 AD3d 404, 405 [1st Dept 2009]). A proposed pleading that fails to state a claim or that plainly lacks merit will not be permitted (*id.*, at 405). The elements of a cause of action or defense alleging fraud in the inducement are representation or omission of a material existing fact, falsity, scienter, reliance, and injury (*see Lama Holding Co. v Smith Barney*, 88 NY2d 413, 421 [1996]; *see also Ross v Louise Wise Servs., Inc.*, 8 NY3d 478, 488 [2007]; *Stuart Silver Assoc. v Baco Dev. Corp.*, 245 AD2d 96, 98-99 [1st Dept 1997]).

The Answering Defendants contend that Nicolena was misled into believing that, in the event of foreclosure, she would be entitled to the benefits afforded those who obtain a home loan. In support of the Answering Defendants' motion, Nicolena submits an affidavit in which she swears that she was fraudulently induced into entering into what she believed was a loan that could only be foreclosed upon as a residential foreclosure. Nicolena avers that she was approached by Lawrence about investing in Unit 5-6W and asked to place the Unit, her residence, as additional collateral to procure a loan, and that it was explained to her that she was acting as a guarantor. Nicolena states that she tendered a personal finance statement to HVB, which made HVB aware the Unit was her residence. Nicolena avers that she did not attend the closing, but reviewed all of the loan documents before giving Lawrence power of attorney to execute them on her behalf, and that none of them state that she was waiving her right to be foreclosed upon as a residential unit in the event of Realty LLC's default. Nicolena contends that HBV's failure to advise her that she would be waiving rights to a residential foreclosure, was fraud in the inducement, as she understood that the Unit could be foreclosed on, if Realty LLC defaulted, but was led to believe that if this happened, she would benefit from the protections of

CPLR 3408 and RPAPL § 1304.[5] Nicolena avers that she would not have agreed to the Mortgage had she known that it would be subject to commercial foreclosure, and thus has been damaged because she did not receive the protections of CPLR 3408 and RPAPL § 1304, and because of the high default interest rate in the loan documents.

Nicolena also states that she believed that the loan was labeled as a commercial loan solely because Unit 5/6W was being purchased with the loan proceeds as an investment/commercial property, to flip.[6] Nicolena points out that paragraph 21 (b) of the Mortgage, which discusses rights and remedies upon default, does not mention that the foreclosure would be processed as if the loan were commercial. She also asserts that section 51 of the Mortgage (Mortgage ¶ 51) prohibits the use of loan proceeds for the borrower's debts, but that the closing statement reflects that $355,000.00 of the loan proceeds went toward the refinancing of the Unit and $20,000 for satisfaction of personal debt. Nicolena contends that HVB's payment of these funds, despite the language of Mortgage ¶ 51, led her to believe that that language, stating that the Mortgage was for a commercial transaction, was to be ignored. Nicolena also states that she believed that she was receiving a residential mortgage because the tax paid on the $1,485,000 dollars was a residential mortgage tax rate, not a commercial one.

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[5]The provisions of CPLR 3408 provide for a mandatory settlement conference in any residential foreclosure action involving a "home loan" as defined pursuant to RPAPL § 1304. While Nicolena was not entitled to a CPLR 3408 conference, the court conducted a settlement conference in this case. Nicolena argues that plaintiff did not inform her that she would not be entitled to a residential foreclosure, and she thus lost the protection of the CPLR 3408 mandatory conference that requires good faith settlement negotiations. CPLR 3408, however, was made effective as of August 5, 2008, and the Note and Mortgage were executed before then. Therefore, when the Note and Mortgage were executed, the right to such a conference did not exist.

[6]Lawrence avers that Unit 5-6W was purchased as an "investment flip" (Lawrence Aff. [Seq. 007], at 2)

Nicolena believed that the Mortgage was residential because it is separate from the Unit 5/6W mortgage, and for a different amount, and that the refinancing of her prior mortgage on the Unit did not change its status from a residential mortgage to a commercial one.

Nicolena is correct that she pledged her residential apartment to secure the Note, and assuming the truth of Nicolena's statement that the home is her residence,[7] the foreclosure here is of a residence. The Banking Law and RPAPL statutes to which Nicolena refers protect those who obtain what are defined as "home loans" under the statutes. The statutes define a home loan as one made to a natural person that is "primarily for personal, family, or household purposes" (Banking Law §§ 6-l (e), 6-m (d); RPAPL § 1304 [5] [a] [ii] and [iii]). Where there is no dispute that the bulk of the $3,385,000 Note's proceeds were allocated toward the financing of a property to flip, a commercial venture, a determination that the loan was *primarily* for personal, family or household purposes is not in order. But it is unnecessary to reach this issue, as the documentary evidence reflects that the borrower, Realty LLC, is not a natural person. Therefore, Nicolena did not have a right to the protections of the statutes upon which she relies. As she had no right to these protections, there was no right of which she was not informed. Nicolena provides no authority to support her assertion that HVB had an obligation to inform her of the law, including the Banking Law or RPAPL statutes discussed.

Nicolena argues that the allocation of loan funds, despite the Mortgage ¶ 51 language, led her to believe that her acknowledgment that the loan was a commercial transaction was to be ignored. Fraud requires a misrepresentation made by the party accused of fraud. Nicolena's

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[7]Plaintiff has provided a listing for the sale of the Unit, but this does not prove that it is not Nicolena's current residence and is not admissible.

acknowledgment that the loan was a commercial transaction and that its proceeds were not for personal, family or household purposes, is not a representation of the lender. Furthermore, reasonable reliance is not demonstrated where a party has the means to discover the truth with the exercise of ordinary intelligence, but does not do so (*Stuart Silver Assoc.*, 245 AD2d at 98-99).[8] Where Nicolena avers that she read all the loan documents and expressly acknowledged that the loan transaction was commercial, and the Note expressly states that a relatively small portion of the proceeds would be used to satisfy personal debt, reasonable reliance on a misrepresentation is not stated. Nicolena had the means to discover the truth about this transaction, because it was stated in the Note, which is referenced in the Mortgage. Realty LLC was embarking on a multimillion dollar project.[9] While there certainly have been instances where an unwary home purchaser is deceived by a lender's unscrupulous behavior, the Answering Defendants have not demonstrated that this case, confined to the circumstances here, is such a case.

Nicolena argues that the mortgage cannot cover both units;. However, there are two separate mortgages here, not one, as two properties were separately pledged to secure repayment of borrowed money. Nicolena does not point to anything to demonstrate that a lender is prohibited from accepting the pledge of collateral in this manner, or that the fact she did not sign

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[8]The Mortgage specifically states that: "MORTGAGOR ACKNOWLEDGES AND REPRESENTS THAT THE LOAN, AS EVIDENCED BY THE NOTE SECURED BY THE MORTGAGE, IS A COMMERCIAL TRANSACTION, AND THAT THE PROCEEDS OF THE LOAN SHALL NOT BE USED FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES" (Pl. Mov., Leavitt Aff., Exh. C, ¶ 51).

[9] Notably, Nicolena is an officer of Realty LLC (*see* Ans. Def. Mov. Aff., "Exhibit 7" [Condominium Unit –Contract of Sale], at 5) and Lawrence, her former husband, who signed the Mortgage on her behalf, is an attorney.

the Note referenced in the Mortgage, or the Unit 5/6W Mortgage, makes a difference.

Finally, while Nicolena states that she was led to believe that the foreclosure would be under the guidelines of CPLR 3408 and RPAPL § 1304, she does not indicate that she had any discussions with HVB on this topic and her affidavit gives no details about any contact with HVB. While Nicolena may have thought that the transaction was only being labeled as a commercial loan, because Note proceeds were also allocated for Unit 5-6W, she does not state that HVB misrepresented the law.[10] For these reasons, the motion to amend the answer and to dismiss the complaint is denied.

The Answering Defendants do not dispute the validity of the Note or Mortgage, or the default, the opposition submitted does not give details as to affirmative defenses or specify facts that would require trial, and the Answering Defendants do not submit admissible evidence demonstrating a fact issue for trial, as required to defeat summary judgment. The Answering Defendants' conclusory assertion that discovery is necessary in this case, alone, is not a bar to summary judgment (*see* CPLR 3212 [f]). As the opposition does not raise a genuine issue of fact, in the face of the documentary evidence that a loan was made which has not been repaid, summary judgment is granted against the Answering Defendants, on the foreclosure action, and dismissing the affirmative defenses. Moreover, a referee will be appointed as requested by plaintiff to compute the amount due on the mortgage and to hear and report on whether the property should be sold in one parcel.

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[10]Lawrence notes that Nicolena is not a signatory to Realty LLC's Mortgage, but does not state the significance of this fact.

Pursuant to paragraph 22 of the Mortgage, plaintiff is entitled to reasonable attorneys' fees, costs and disbursements in the foreclosure action from Nicolena. Plaintiff is, therefore, entitled to a judgment of liability on this issue, with the issue of the amount owed to be referred to a referee.

Plaintiff further contends that it has not been paid escrow payments for certain taxes and other costs, as provided for in the "loan documents," that these costs have not been paid for the Unit and plaintiff seeks recovery of funds that it might be compelled to pay on the Unit, for example for insurance premiums and sewer charges. Plaintiff prays that it be awarded these amounts from the foreclosure sale proceeds. While plaintiff is not precluded from later demonstrating that it is entitled to this recovery, relief will not be granted here, as it has not sufficiently addressed the basis for this entitlement, by pointing to a specific supporting document, or law, to demonstrate liability and providing evidence that it has not received funds to which it is entitled.

The Guaranties

Plaintiff moves for summary judgment on its complaint, which seeks recovery against Lawrence and Nicolena on commercial guaranties executed, respectively, by each. Plaintiff does not point to anything in the assignment demonstrating that these guaranties were assigned with the Note and Mortgage.[11] In order to meet its prima facie burden, plaintiff must at least, in its

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[11]Leavitt states in his affidavit that plaintiff holds the guaranties by virtue of the mortgage assignment (Leavitt Aff., ¶ 5), but the assignment does not state that the guaranties were transferred (*see* Leavitt Aff., Exh. A [second page of Assignment of Mortgage]). If plaintiff seeks judgment based on the language of the guaranties themselves, it should so state, and explain the basis for its contention, in order to meet its burden.

moving papers, adequately address the basis for its entitlement to judgment by discussing, or at least identifying, the contractual provisions upon which it is relying to prove its case. As it has not done so, the motion is denied without prejudice to renewal.

Amending the Caption

Plaintiff's motion to amend the caption to strike the defendants listed as John Doe numbers 1 through 15 is granted without opposition.

Default Judgments against the Defendants that have not Answered

On a motion for leave to enter a default judgment pursuant to CPLR 3215, the movant is required to submit "proof of service of the summons and the complaint . . . proof of the facts constituting the claim, the default and the amount due by affidavit made by the party" (CPLR 3215 [f]). Default judgments are appropriate against the Environmental Control Board of the City of New York, the New York City Parking Violations Bureau and the Board of Managers of the Dragon Estates Condominium, all of which were named as defendants only insofar as they have, or may have, an interest in the Unit. Plaintiff has demonstrated service on them,[12] and, with its verified complaint, which may be used as the affidavit of the facts constituting the claim, states that any interest possessed by these parties including any lien, judgment or possessory right, is subordinate and/or inferior to the Mortgage lien.

Finally, plaintiff requests an extensive order/judgment predicated on its complaint, but

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[12]While Omansky argues that plaintiff has only produced evidence of a mailing, and not actual service on Board of Managers of the Dragon Estates Condominium, the letter to which he refers as evidence of a mailing is an acknowledgment of the acceptance of service of process, and a party may accept such a form of service as sufficient (*Pohlers v Exeter Mfg. Co.*, 293 NY 274 [1944]).

has not submitted a proposed order, and its lengthy claim for relief in the complaint is not specific to this case. Therefore, the court will not use that language, but instead directs that plaintiff and the Answering Defendants

Settle Order and Judgment on Notice.

Dated: 1/13/12

ENTER:

J.S.C.
EMILY JANE GOODMAN