

Noble Sec. Holding, LTD v Kamhi
20FGNY Slip Op 3HG Ì (U)
October 10, 20FG
Supreme Court, New York County
Docket Number: 111981/2009
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. EILEEN A. RAKOWER
Justice

PART 15

Index Number : 111981/2009
NOBLE SECURITIES HOLDING
vs.
KAMHI, STEVEN
SEQUENCE NUMBER : 004
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 1
Answering Affidavits — Exhibits _____ | No(s). 2
Replying Affidavits _____ | No(s). _____

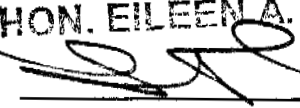
Upon the foregoing papers, it is ordered that this motion is

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

FILED
OCT 12 2012
COUNTY CLERKS OFFICE
NEW YORK

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

Dated: 10/10/12

HON. EILEEN A. RAKOWER

_____, J.S.C.
HON. EILEEN A. RAKOWER

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

-----X

NOBLE SECURITIES HOLDING, LTD.,
Petitioner,

Index No.
111981/09

-v-

Decision and
Order

STEVEN KAMHI, MAURICE ENBAR,
23-123RD STREET LLC, 60 WEST 124 LLC,
CRAIG MARX, BOARD OF MANAGERS-
THE SARATOGA CONDOMINIUM, NEW YORK
CITY ENVIRONMENTAL CONTROL BOARD LIENS,
and DEPARTMENT OF HOUSING &
PRESERVATION & DEVELOPMENT, BANK
OF AMERICA, N.A., MICHELE GOODSTEIN,
CITY NATIONAL BANK, CLAIRE M. KAMHI,
and "JOHN DOE #1" through "JOHN DOE #10,"
the last ten names being fictitious and unknown to
plaintiff, the persons or parties intended being the tenants,
occupants, persons, or corporations, if any, having
or claiming an interest in or lien upon the premises
described in the Complaint,

Mot Seq. #4, 5, 6

Respondents.

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This is an action commenced by plaintiff Noble Securities Holding, Ltd. ("Plaintiff") to foreclose upon the property located at 330 East 75th Street, Unit 11K, New York, NY 10021. Plaintiff commenced this foreclosure action on August 21, 2009.

By Order dated March 13, 2012, this Court denied Plaintiff's motion for summary judgment, directed the parties enter a mandatory settlement conference, and granted Plaintiff's motion to amend the complaint to add Claire M. Kamhi, Bank of America, N.A., Maurice Enbar, 23-123rd Street LLC, and 60 West 124 LLC. Plaintiff filed its Amended Verified Complaint on or about May 7, 2012, and thereafter served the defendants.

By Amended Order dated June 18, 2012, the Court noted that the parties attended a mandatory settlement conference on May 9, 2012 and granted Plaintiff's motion to renew/reargue to the extent that receiver Darren R. Marks was appointed.

Mot. Seq. #4

Presently before the Court is Plaintiff's motion for an Order (Mot Seq. #4) (1) for summary judgment, pursuant to CPLR 3212, against defendants Steven Kamhi, City National Bank, and Claire M. Kamhi; (2) for default judgment, pursuant to CPLR 3215, against defendants 23-123rd Street LLC, 60 West 124 LLC, Board of Managers - The Saratoga Condominium, the New York City Environmental Control Board and the New York City Department of Housing & Preservation & Development, and Bank of America, N.A.; (3) for an order, pursuant to RPAPL 1321, appointing a referee to compute the amount owed to Plaintiff under the Mortgage and Loan Instruments, as well as to compute whether the mortgaged premises may be sold in one or more parcels; and (4) for extension of the Notice of Pendency from August 21, 2012 to August 21, 2015. Defendant Steven Kamhi submits opposition; however, no affidavit of service is provided to the Court. No other defendant submits opposition.

Defendants Steven Kamhi, City National Bank, and Claire M. Kamhi have served answers to Plaintiff's Amended Verified Complaint. Defendant Steven Kamhi's answer contained no affirmative defenses. Plaintiff requests summary judgment as to Steven Kamhi on the basis that he is in default of the underlying mortgage and related loan documents. As to defendants City National Bank and Claire M. Kamhi, Plaintiff seeks summary judgment on the basis that their liens as against defendant Steven Kamhi are subordinate to Plaintiff's Mortgage.

Defendants 23-123rd Street LLC, 60 West 124 LLC, Board of Managers - The Saratoga Condominium, the New York City Environmental Control Board and the New York City Department of Housing & Preservation & Development, and Bank of America, N.A. have not answered or otherwise responded to the Amended Verified Complaint, and their time to do has since expired. Although the Saratoga Board did not answer, it filed a Notice of Appearance dated May 11, 2012, requesting that the Notice of Sale and surplus monies proceedings be served on it.

In support of its motion, Plaintiff submits the Affidavit of Don Scholar.

According to Scholar's Affidavit, defendant Steven Kamhi, Maurice Enbar, 23-123rd Street LLC, and 60 West 124 LLC ("Mortgagor Defendants") are in default of several Mortgage and Loan Instruments, pursuant to which Plaintiff lent the Mortgagor Defendants the principal amount of \$475,000, to be repaid with 12% interest within six months. Among the Mortgage and Loan Documents is a Mortgage between Noble and Kamhi, pursuant to which Kamhi secured the \$475,000 Loan with the premises that are at issue in this foreclosure action. The Mortgagor Defendants have been in default of these instruments for almost four years - since September 20, 2008. None of the principal amount has been repaid, and the Mortgagor Defendants have not made any interest payments since January 20, 2009. Plaintiff annexes the subject Loan Agreement dated December 20, 2005, Promissory Note dated December 20, 2005, initial Mortgage Contract dated December 20, 2005 and subsequent new Mortgage Contract recorded on July 16, 2007, Guaranty dated December 20, 2005 between plaintiff, Kamhi, and Enbar, and Pledge and Security Agreement. Defendants City National Bank and Claire M. Kamhi hold judgments against Kamhi. City National Bank's judgment against Kamhi was docketed on April 13, 2011. Claire M. Kamhi's judgment was docketed on April 20, 2011.

The proponent of a motion for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law. That party must produce sufficient evidence in admissible form to eliminate any material issue of fact from the case. Where the proponent makes such a showing, the burden shifts to the party opposing the motion to demonstrate by admissible evidence that a factual issue remains requiring the trier of fact to determine the issue. The affirmation of counsel alone is not sufficient to satisfy this requirement. (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]). In addition, bald, conclusory allegations, even if believable, are not enough. (*Ehrlich v. American Moninger Greenhouse Mfg. Corp.*, 26 N.Y.2d 255 [1970]). (*Edison Stone Corp. v. 42nd Street Development Corp.*, 145 A.D.2d 249, 251-252 [1st Dept. 1989]).

In mortgage foreclosure actions, it is well settled that a mortgagee makes a *prima facie* showing of entitlement to judgment as a matter of law when it "produce[s] the mortgage documents underlying the transaction and undisputed evidence of nonpayment (*Red Tulip, LLC v. Neiva*, 2007 NY Slip Op 6340, *5 [1st Dept. 2007]) (citation omitted). Once a mortgagee fulfills its initial burden, it becomes incumbent on the party opposing summary judgment to come forward with competent evidence of any defenses to raise an issue of fact (*see Barcov Holding Corp. v. Bexin Realty*

Corp., 16 A.D.3d 282, 283 [1st Dept. 2005]).

“On a motion for summary judgment to enforce a written guaranty, all that the creditor need prove is an absolute and unconditional guaranty, the underlying debt, and the guarantor’s failure to perform under the guaranty.” (*City of New York v. Clarose Cinema Corp.*, 256 AD2d 69, 71 [1st Dept. 1998]).

Here, Plaintiff has made its *prima facie* showing of entitlement to summary judgment as against Kamhi. Plaintiff has annexed copies of the mortgage documents underlying the subject property, and has submitted proof of nonpayment in the form of Don Scholar’s Affidavit, which states that “as of January 20, 2009, the Mortgagor Defendants [which includes Kamhi] failed to make any more payments. To date, the monthly payments of principal and interest still remain unpaid.” Defendant Steven Kamhi has failed to provide evidence demonstrating any triable issues of fact to preclude summary judgment. Furthermore, as to defendants City National Bank and Claire M. Kamhi, Plaintiff has shown that its Mortgage was recorded prior to their liens and as no opposition is submitted to dispute the same, Plaintiff is entitled to summary judgment.

Mot. Seq. #5

Also before the Court is Plaintiff’s motion (Mot. Seq. #5) for an Order for default judgment, pursuant to CPLR 3215, against defendants Maurice Enbar, Craig Marz, and Michele Goodstein. Plaintiff relies upon the supporting affirmation of Renee M. Zaytsev, Esq., and the affidavit of Don Scholar, Plaintiff’s Director, submitted in support of Plaintiff’s summary judgment motion.

On or about May 7, 2012, Plaintiff filed an Amended Verified Complaint against the Defaulting Defendants. The Amended Verified Complaint was properly served upon each of them, as demonstrated by proofs of service annexed to the supporting attorney affirmation of Renee M. Zaytsev, Esq. None of the Defaulting Defendants have answered or otherwise responded to the Amended Verified Complaint and the time to do so has expired. Defendant Maurice Enbar is a personal guarantor of the underlying loan agreement. Defendant Carl Marz is named as a defendant pursuant to RPAPL 1311 because, upon Plaintiff’s information and belief, he is the tenant that currently resides at the subject premises. Defendant Michele Goodstein is named as a defendant pursuant to RPAPL 1311 because she has a

judgment against Kamhi that was docketed on December 2, 2011.

Mot. Seq. #6

Also before the Court is defendant Steven Kamhi's motion to dismiss and plaintiff's cross motion for sanctions. Defendant Steven Kamhi's motion is denied as moot in accordance with this decision. Plaintiff's cross motion is denied.

Wherefore it is hereby

ORDERED that the motion for summary judgment is granted as against defendants Steven Kamhi, City National Bank, and Claire M. Kamhi on Plaintiff's First Cause of Action seeking foreclosure of the mortgaged Premises that are the subject of this action; and it is further

ORDERED that a default is hereby entered against non-appearing defendants 23-123rd Street LLC, 60 West 124 LLC, Board of Managers - The Saratoga Condominium, the New York City Environmental Control Board and the New York City Department of Housing & Preservation & Development, and Bank of America, N.A. is granted without opposition; and it is further

ORDERED that plaintiff Noble Security Holding, Ltd's motion for an Order pursuant to CPLR 3215 granting entry of default judgments against non-appearing defendants Maurice Enbar, Craig Marx, and Michele Goodstein is granted without opposition; and it is further

ORDERED that the caption be amended by striking therefrom the names of "JOHN DOES #1' through 'JOHN DOE #10", such names being fictitious; and all other papers and proceedings heretofore filed herein shall be deemed amended accordingly; and it is further

ORDERED that the caption shall read as follows:

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

-----X

NOBLE SECURITIES HOLDING, LTD.,
Plaintiff,

Index. No. 111981/2009

-against-

STEVEN KAMHI, MAURICE ENBAR, 23-123RD
STREET LLC, 60 WEST 124 LLC, CRAIG MARX,
BOARD OF MANAGERS- THE SARATOGA
CONDOMINIUM, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD LIENS,
NEW YORK CITY DEPARTMENT OF HOUSING
& PRESERVATION & DEVELOPMENT, BANK
OF AMERICA, N.A., MICHELE GOODSTEIN,
CITY NATIONAL BANK, and CLAIRE M. KAMHI,
Defendants.

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; and it is further

ORDERED that this action be and the same is hereby referred to Glenn Harlan Spiegel, Newman Ferrara LLP, 1250 Broadway, Fl. 27, New York, NY 10001, Tel: (212) 619-5400, as Referee, to Compute the amount due to the Plaintiff, to ascertain and compute the amount due to the Plaintiff for principal, interest, and other disbursements advances as provided for in the note and mortgage upon which this action was brought, to examine and report whether or not the mortgaged premises can be sold in parcels, and that the referee make his/her report to the Court with all convenient speed; and it is further

ORDERED that the Referee's hearing be had in the County of New York; and it is further

ORDERED that by accepting this appointment the referee certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to, section 36.20 (Disqualifications From Appointment), and section 36.2(d) (Limitations on Appointments Based on Compensation); and it is further

ORDERED that Plaintiff's attorney serve a conformed copy of this order upon

the County Clerk and the Trial Support Office for amendment of their records; and it is further

ORDERED that defendant Steven Kamhi's motion to dismiss is denied; and it is further

ORDERED that Plaintiff's cross motion is denied.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: 10/10/12



EILEEN A. RAKOWER, J.S.C.

FILED
OCT 12 2012
COUNTY CLERKS OFFICE
NEW YORK