

**Board of Mgrs. of the Battery Pointe Condominium v  
Kabot**

2013 NY Slip Op 34242(U)

November 14, 2013

Supreme Court, New York County

Docket Number: 113793/09

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: DEBRA A. JAMES  
*Justice*

PART 59

THE BOARD OF MANAGERS OF THE BATTERY  
POINTE CONDOMINIUM,  
Plaintiff,

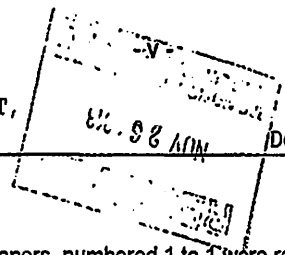
Index No.: 113793/09

Motion Date: 03/21/13

Motion Seq. No.: 01

Motion Cal. No.: \_\_\_\_\_

CRAIG KABOT,  
Defendant.



The following papers, numbered 1 to 1 were read on this motion to dismiss.



PAPERS NUMBERED	
Notice of Motion/Order to Show Cause -Affidavits -Exhibits _____	1
Answering Affidavits - Exhibits _____	
Replying Affidavits - Exhibits _____	

Notice of Motion/Order to Show Cause -Affidavits -Exhibits \_\_\_\_\_  
Answering Affidavits - Exhibits \_\_\_\_\_  
Replying Affidavits - Exhibits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is

ORDERED that the motion is hereby granted on default; and it is further

ORDERED, ADJUDGED AND DECREED, that the liened premises, as described in the Complaint in this action be sold at public auction by and under the direction of ANDREW H. KULAK, ESQ., Fiduciary Number 162548 who is hereby appointed Referee for that purpose; that the said Referee give public notice of the time and place of such sale according to law and the practice of this Court, in an official publication, to wit; and it is further

Check One:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO-NOT POST  REFERENCE

SETTLE/SUBMIT ORDER/JUDG.

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

ORDERED that the Referee ascertain and compute the amount due to the Plaintiff for common charges, interest and other disbursements and costs, including attorneys' fees, advanced as provided for in the written Lien for Unpaid Common Charges, dated May 10, 2007 and upon which this action was brought, to examine and report whether the liened premises can be sold in one parcel, such report to be filed with the court prior to the date of auction; and it is further

ORDERED, ADJUDGED AND DECREED, that the Referee at the time of sale may accept a written bid from the Plaintiff or the Plaintiff's attorneys, just as though the Plaintiff were physically present to submit said bid; and it is further

ORDERED, ADJUDGED AND DECREED, that the premises be sold in "as is" condition defined as the condition the premises are in as of the date of sale and continuing through the date of closing, and that said sale shall be subject to:

- (a) Rights of the public and others in and to any part of the mortgaged premises that lies within the bounds of any street, alley, or highway; restrictions and easements of record;
- (b) Any state of facts that an accurate, currently dated survey might disclose;
- (c) Rights of tenants, occupants or squatters, if any. It shall be the responsibility of the Purchaser to evict or

remove any parties in possession of premises being foreclosed. There shall be no pro rata adjustment in favor of the purchaser for any rents that are paid for a period after the date of the foreclosure sale;

(d) The right of redemption of the United States of America, if any;

ORDERED, ADJUDGED AND DECREED, that the Plaintiff or any other parties to this action may become the purchaser or purchasers at such sale; that in case the Plaintiff shall become the purchaser at the said sale, it shall not be required to make any deposit thereon; and it is further

ORDERED, ADJUDGED AND DECREED, that the Referee conducting the sale shall pay out of the proceeds of sale all taxes, assessments, sewer rents, and water rates which are liens upon the property at time of sale. Purchaser shall be responsible for interest due on any real property tax liens accruing after the first day of the month following the foreclosure sale; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee then take the remaining proceeds of sale and deposit them in his/her own name as Referee in JP Morgan Chase, N.A., and in addition to executing a deed to the purchaser(s) of the premises sold, shall thereafter make

the following payments and his/her checks drawn for that purpose:

FIRST: The statutory fees of said Referee for conducting the sale not to exceed \$500.00 as and for his/her fee for conducting the sale, pursuant to CPLR 8003.

SECOND: The Referee shall pay the costs of advertising/posting as listed on bills presented to and certified by the Referee to be correct, duplicate copies of which shall be annexed to the report of sale when filed.

THIRD: Said Referee shall also pay to the Plaintiff or its attorney the following <sup>as set forth in the report</sup>

Costs and Disbursements: ~~\$395.00~~ adjudged to the Plaintiff for costs and disbursements in this action, to be taxed by the clerk and inserted herein, with interest at the legal rate thereon from the date of entry hereof.

Additional Allowance: \$0.00 is hereby awarded to the Plaintiff in addition to costs with interest at the legal rate thereon from the date of entry hereof.

Amount Due Plaintiff: ~~\$165,283.65~~ <sup>2.5</sup> said amount <sup>1.5</sup> so reported due as aforesaid together with interest at the rate provided by law and statute from the date computed to in this Order until the date of entry of this judgment, with interest at the statutory rate thereon until the date of transfer of the Referee's Deed, or so much of the purchase money as will the same, and that he/she take a receipt for said payment and file it with his/her report of sale.

DAG  
J.S.C

Attorney's Fees: \$1,650.00 is hereby awarded to the Plaintiff as reasonable additional legal fees herein, with legal interest from the date of entry of judgment,

Plaintiff, may, after entry of this judgment, add to the amount due any and all advances made by Plaintiff for inspection fees, maintenance charges, taxes, insurance premiums or other advances necessary to preserve the property, whether or not said advances were made prior to or after entry of judgment, so long as said charges were not included in the Decision and Order, and the Referee be provided with receipts for said expenditures, all together with interest thereon pursuant to the Condominium Governing documents.

FOURTH: That in case the Plaintiff be the purchaser of said mortgaged premises at said sale, said Referee shall not require the Plaintiff to pay in cash the entire amount bid at said sale, but shall execute and deliver to the Plaintiff a Deed of the premises sold upon the payment to said Referee of the amounts specified above in items marked "FIRST" and "SECOND"; That the balance of the amount bid, after deducting the amounts paid by the Plaintiff, for Referee's fees, and advertising expenses, shall be allowed to the Plaintiff and applied by said Referee upon the amounts due to the Plaintiff as specified above in item marked "THIRD"; that if after applying the balance of the amount bid, there shall be a surplus over and above said amounts due to the Plaintiff, the Plaintiff shall pay the same to said Referee, who shall deposit the funds in accordance with paragraph "FIFTH" below.

FIFTH: The Referee shall take receipts for the money so paid out by him/her and file the same with his/her report of sale, and that he/she deposit the surplus money, if any, with the New York County Treasurer within five (5) days after the same shall be received and be ascertainable, to the credit of this action, to be withdrawn only upon the written order of this Court, signed by a Justice of this Court; that the Referee make *his/her report* of such sale under oath showing the disposition of the proceeds of the sale accompanied by the vouchers of the person to whom the payments were made and file it with the Clerk of the Court within thirty (30) days of completing the sale, and executing the proper conveyance to the purchaser. If the proceeds of such sale be insufficient to pay the amount reported due the Plaintiff with interest and costs as aforesaid, the Plaintiff may recover of the Defendant(s) CRAIG KABOT the whole deficiency or so much thereof as the Court may determine to be just and equitable of the debt remaining unsatisfied after the sale of the liened premises and the application of the proceeds thereof, provided a motion for a deficiency judgment shall be made as prescribed by Section 1371 of the Real Property Actions and Proceeding Law within the time limited therein, and the amount thereof is determined and awarded by an order of this Court as provided for in said action; and it is further

ORDERED, ADJUDGED AND DECREED, that the purchaser or purchasers at such sale be let into possession on producing the Referee's Deed; and it is further

ORDERED, ADJUDGED AND DECREED, that each and all of the Defendants in this action and all persons claiming under them, or any or either of them, after the filing of such Notice of Pendency of this action, be and they hereby are, barred and foreclosed of all right, claim, lien, title, interest and equity of redemption in the said mortgaged premises and each and every part thereof; and it is further

ORDERED, ADJUDGED AND DECREED, that the liens of the Plaintiff other than the common charge lien that are the subject matter of this action also be foreclosed herein as though the Plaintiff was named as a party Defendant, specifically reserving to the Plaintiff its right to share in any surplus monies as a result of such position as a lien creditor; 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, §36.2(c) ("Disqualification from appointment") and §36.2(d) ("Limitations on appointments based upon compensation") and if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall notify the Appointing Judge forthwith; and it is further

ORDERED that pursuant to CPLR 8003(b), absent application to the court, further court order, and compliance with Part 36 of the Rules of the Chief Judge, the Referee shall not demand, accept or receive more than the statutory \$500.00 otherwise payable to the Referee for the foreclosure sale stage, regardless of adjournment, delay or stay of the sale; and it is further

ORDERED, that the Referee is prohibited from accepting or retaining any funds for him/herself or paying funds to him/herself without compliance with Part 36 of the Rules of the Chief Administrative Judge.

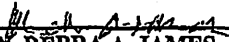
ORDERED, that the Referee appointed to sell herein be served with a signed copy of this Judgment of Foreclosure and Sale with notice of entry; and it is further

ORDERED, that the Referee must submit the Notice of Sale to the Motion Support Office, in the Supreme Court, Room 119 at least ten (10) days prior to the date of auction; and it is further

That a description of the said mortgaged premises hereinbefore mentioned, is annexed hereto as Schedule A - Legal Description.

Dated: NOV 14 2013  
New York, New York

ENTER:

  
\_\_\_\_\_  
HON. DEBRA A. JAMES  
JUSTICE OF THE SUPREME COURT

DEBRA A. JAMES  
J.S.C.