

**Board of Mgrs. of 220 Riverside Blvd . at Trump
Place Condominium v Levy**

2014 NY Slip Op 30629(U)

March 7, 2014

Supreme Court, New York County

Docket Number: 104011/12

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 — NEW YORK COUNTY

PRESENT: JOAN A. MADDEN

PART 11

Justice

BOARD of Managers of
220 Riverside Boulevard at
TRUMP PLACE Condominium,
Plaintiff,

INDEX NO. 104011/12

MOTION DATE _____

MOTION SEQ. NO. 003

IDAN LEVY, et al
Defendant.

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

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

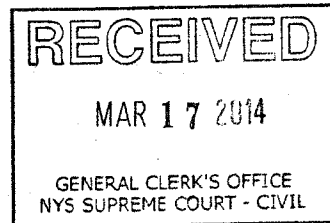
PAPERS NUMBERED

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ORDERED that the motion is determined
in accordance with the annexed decision.
Settle order on notice.



Dated: March 7, 2014

[Signature]
JOAN A. MADDEN J.S.C.

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

S/O

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

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

-----X
BOARD OF MANAGERS OF 220 RIVERSIDE
BOULEVARD AT TRUMP PLACE CONDOMINIUM,

INDEX NO. 104011/12

Plaintiff,

-against-

IDAN LEVY, MERS, AS NOMINEE FOR WALL STREET MORTGAGE BANKERS, LTD d/b/a POWER EXPRESS, CHASE BANK USA, N.A., TRANSIT ADJUDICATION BUREAU OF THE CITY OF NEW YORK AND "JOHN DOE" NO. 1 through "JOHN DOE" NO. 15, the true name of said defendants being unknown to plaintiff, the parties intended to be those persons having or claiming an interest in the lien premises described in the complaint by virtue of being tenants, or occupants, or judgment-creditors, or lienors of any type or nature in all or part of said premises,

Defendants.

-----X
JOAN A. MADDEN, J.:

Plaintiff moves for an order pursuant to CPLR 2221(a) and (d) granting leave to reargue the decision of this court dated September 18, 2013, which, *inter alia*, denied the portion of plaintiff's prior motion for an order pursuant to CPLR 3215(a), granting default judgments against defendants MERS, As Nominee for Wall Street Mortgage Bankers, Ltd. d/b/a Power Express, Chase Bank USA, N.A., and Transit Adjudication Bureau of the City of New York. Plaintiff also moves for the first time for an order pursuant to RPL §339-aa and section 5.9 of the condominium by-laws, appointing a receiver to lease the condominium unit at issue and collect the rents and profits from any tenant occupying said unit.

* 3]

As noted in the court's prior decision, plaintiff commenced this action in October 15, 2012, seeking to foreclose on its lien for unpaid condominium charges. Defendant Levy answered by counsel, admitting and denying certain allegations in the complaint but not asserting any affirmative defenses; the answer specifically admitted Levy was the owner of Unit 22F in the condominium. In January 2013, plaintiff originally moved for summary judgment against defendant Levy. Plaintiff also moved for default judgments against defendants, MERS, As Nominee for Wall Street Mortgage Bankers, Ltd. d/b/a Power Express, Chase Bank USA, N.A., and Transit Adjudication Bureau of the City of New York, based on their failure to appear and answer.

When none of the defendants opposed the motion, including Levy, the motion was submitted on default. While the motion was *sub judice*, counsel for defendant Levy moved by order to show cause to withdraw as counsel. On April 18, 2013, this court issued an order granting the motion to withdraw and staying the action for 30 days. The order also directed that plaintiff's motion would be placed on the calendar for June 6, 2013 at 9:30 a.m., and provided that "if defendant Idan Levy fails to appear by counsel or *pro se* at the June 6, 2013, 9:30 am status conference, the court will find him in default and take appropriate measures, which may include granting plaintiff's motion for summary judgment on default and entering an order appointing a Referee to compute based on 202.27 of the Uniform Rules of Trial Courts."

On June 16, 2013, defendant Levy failed to appear. The court adjourned the motion to June 27, 2013 and directed plaintiff to notify defendant Levy. By letter dated June 7, 2013, plaintiff's counsel notified defendant Levy of the June 27, 2013 date, and advised that "[i]f you fail to appear on the next motion date, I will give Judge Madden copies of my email from

4]

Wednesday afternoon and a copy of this letter, so she is aware that you are, and have been, aware of the motion dates, but are ignoring them.” The court subsequently rescheduled the motion to July 18, 2013 and again to July 31, 2013, and plaintiff’s counsel notified defendant Levy of each change. On July 31, 2013, defendant Levy did not appear in court, and did not contact the court or plaintiff’s counsel. As a result, the prior motion was submitted on default, without any opposition from defendant Levy.

By a decision dated September 18, 2013, this court determined that plaintiff was entitled to summary judgment of foreclosure against defendant Levy, the striking of defendant Levy’s answer, and the appointment of a Referee to Compute. The court, however, denied the motion to the extent plaintiff sought default judgments against the non-appearing defendants, MERS, As Nominee for Wall Street Mortgage Bankers, Ltd. d/b/a Power Express, Chase Bank USA, N.A, and Transit Adjudication Bureau of the City of New York.

Plaintiff’s is now moving, by order to show cause, for leave to reargue the portion of the court’s prior decision which denied default judgments against defendants MERS, As Nominee for Wall Street Mortgage Bankers, Ltd. d/b/a Power Express, Chase Bank USA, N.A., and Transit Adjudication Bureau of the City of New York. Those defendants have not responded to the instant motion and did not appear on the return date. Defendant Levy, however, appeared *pro se* on the return date, and requested an opportunity to submit opposition and obtain counsel. The motion was adjourned to March 5, 2014. On March 5, 2014, Levy failed to appear and did not submit any opposition.

Thus, in the absence of opposition, plaintiff’s motion for leave to reargue is granted, and upon reargument, the portion of plaintiff’s motion for default judgments against defendant

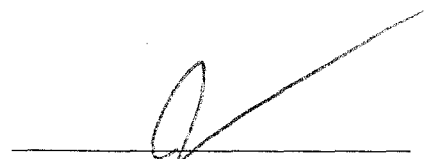
MERS, As Nominee for Wall Street Mortgage Bankers, Ltd. d/b/a Power Express, defendant Chase Bank USA, N.A., and defendant Transit Adjudication Bureau of the City of New York, is granted. Plaintiff's supplemental submissions delineating the interests of defendant MERS, As Nominee for Wall Street Mortgage Bankers, Ltd. d/b/a Power Express, defendant Chase Bank USA, N.A., and Adjudication Bureau of the City of New York, establish that a default judgment is properly granted against those defendants.

The portion of plaintiff's motion for the appointment of a receiver is denied, without prejudice to renewal in the event the foreclosure sale does not go forward in the immediate future.

Settle order on notice, which incorporates the relief granted in the court's prior decision dated September 18, 2013.

DATED: March 7, 2014

ENTER:



J.S.C.