

**Board of Mgrs. of 222 Riverside Dr. Condominium v  
Holland**

2014 NY Slip Op 31000(U)

April 17, 2014

Supreme Court, New York County

Docket Number: 103410/12

Judge: Louis B. York

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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

EA  
4/18/14  
KE

Index Number : 103410/2012  
BD. MGRS. 222 RIVERSIDE DRIVE  
vs  
HOLLAND, LAUREN M.  
Sequence Number : 001  
SUMMARY JUDGMENT

PART 2

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). \_\_\_\_\_  
Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

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

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

MOTION IS DECIDED IN ACCORDANCE  
WITH ACCOMPANYING MEMORANDUM DECISION.

Dated: 4/17/14

*lvj*  
**LOUIS B. YORK**, J.S.C.

- 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

S/D

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 2

-----X  
THE BOARD OF MANAGERS OF 222 RIVERSIDE  
DRIVE CONDOMINIUM,

Plaintiff,

Index No.: 103410/12  
DECISION/ORDER

-against-

LAUREN M. HOLLAND, KIMBERLY G. PIECHOTA,  
NEW YORK CITY PARKING VIOLATIONS BUREAU,  
ENVIRONMENTAL CONTROL BOARD OF THE  
CITY OF NEW YORK, UNITED STATES OF AMERICA,  
INTERNAL REVENUE SERVICE, and "JOHN and JANE  
DOES 1-10",

Defendants.

The named "John and Jane Does 1-10" are fictitious,  
whose actual names are unknown to Plaintiff and are  
meant to describe any persons in possession of, or having  
or claiming to have any right, title or interest in or to the  
property being foreclosed upon.

-----X  
**HON. LOUIS B. YORK, J.S.C.:**

In this residential landlord/tenant foreclosure action, plaintiff moves for partial summary  
judgment (motion sequence number 001). For the following reasons, this motion is granted.

**BACKGROUND**

The Plaintiff Board of Managers of 222 Riverside Drive Condominium (the board) is the  
owner of a residential condominium apartment building located at 222 Riverside Drive in the  
County, City and State of New York (the building). *See* Notice of Motion, Brooks Affidavit, ¶ 1.  
Non-party Douglas Elliman Property management (Douglas Elliman) is the building's property  
manager. *Id.* Defendant Lauren M. Holland (Holland) is the record owner of unit 10D in the  
building (the apartment). *Id.*, ¶ 3. Co-defendant Kimberly G. Piechota (Piechota) is Holland's

tenant and is currently in possession of the apartment. *Id.*, ¶ 15. The remaining defendants are alleged to be possible holders of interests in or liens upon the apartment. *Id.*, ¶ 16.

The board alleges that Holland has failed to pay common charges on the apartment since 2010, and commenced this action in July 2012 to foreclose its lien on those accrued charges. *See* Notice of Motion, Brooks Affidavit, ¶ 3. The board also alleges that all of the defendants, except for Piechota and the Internal Revenue Service (IRS), are in default, and that the New York City Parking Violations Bureau (PVB) and Environmental Control Board (ECB) have already docketed judgement and/or liens against Holland in separate administrative proceedings. *Id.*, ¶¶ 16-17. The board has presented copies of the deeds to the building and the apartment, of its records of Holland's non-payment, of the lien and the complaint that it filed against Holland, and of the answers submitted herein. *Id.*; Brooks Affidavit, Exhibits A-G; Walsh Affirmation, Exhibits F, G, H. The board has also presented copies of its affidavits of service on Holland, and of the non-military affidavit that it obtained. *Id.*; Walsh Affirmation, Exhibits C, D, E; Walsh Non-Military Affirmation, Exhibit A

Now before the court is the board's motion for partial summary judgment against the appearing defendants and for the entry of default judgments against the non-appearing defendants; to appoint a referee to hear and determine the amounts owed to the board, to appoint a receiver to collect rent from Piechota, and for an order to evict Piechota (motion sequence number 001).

#### DISCUSSION

When seeking summary judgment, the moving party bears the burden of proving, by competent, admissible evidence, that no material and triable issues of fact exist. *See e.g.*

*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 (1985); *Sokolow, Dunaud, Mercadier & Carreras v Lacher*, 299 AD2d 64, 70 (1<sup>st</sup> Dept 2002). Once this showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action. See e.g. *Zuckerman v City of New York*, 49 NY2d 557, 562 (1980); *Pemberton v New York City Tr. Auth.*, 304 AD2d 340, 342 (1<sup>st</sup> Dept 2003). Here, the court finds that the board has borne its burden of proof, and that the defendants herein have not.

The first portion of the board's motion seeks partial summary judgment against the defendants who have appeared herein and the entry of default judgments against the defendants who have not appeared. The time in which to answer having expired, the board's motion is granted with respect to the later defendants. With respect to the IRS and Piechota, who have submitted timely answers, the board seeks an interlocutory order to appoint a receiver to collect rent from Piechota so as to prevent the apartment from being lost through a tax lien, and to appoint a referee to hear and determine the amounts owed to the board. The IRS does not oppose this branch of the board's motion and to evict Piechota. Piechota does not oppose the portions of the board's motion s that seek the appointment of the receiver and the referee, but does oppose so much of the motion as seeks an order to evict her. Piechota argues that the fact that she has paid rent to the board during the pendency of this action means that it must recognize her as a month to month tenant whose tenancy cannot be extinguished by foreclosure. See Piechota Affidavit in Opposition, ¶¶ 6-8. The board responds that this is both legally and factually incorrect. See Notice of Motion Walsh Affirmation, ¶¶ 19-21. After review, the court finds in favot of the board.

Real Property Law (RPL) § 339-kk provides, in pertinent part, as follows:

(c) If the common charges, assessments or late fees due for any unit have not been paid in full, within sixty days after the expiration of any grace period of the earliest due date, the board of managers shall provide written notice to the tenant and the non-occupying owner providing that, commencing immediately and until such time as all payments for common charges, assessments or late fees are made current, all rental payments due subsequent to the issuance of such notice are to be made payable to the condominium association at the address listed on the notice.

Here, the board has presented a copy of the demand that it served on Piechota, and Piechota does not contest either having received the demand or having paid rent to the board afterward.

However, Piechota cites to RPL § 232-a, which provides that:

No monthly tenant, or tenant from month to month, shall hereafter be removed from any lands or buildings in the city of New York on the grounds of holding over his term unless at least thirty days before the expiration of the term the landlord or his agent serve upon the tenant, in the same manner in which a notice of petition in summary proceedings is now allowed to be served by law, a notice in writing to the effect that the landlord elects to terminate the tenancy and that unless the tenant removes from such premises on the day on which his term expires the landlord will commence summary proceedings under the statute to remove such tenant therefrom.

Piechota argues that, pursuant to this statute, her payment of said rent and the board's acceptance of it had the legal effect of creating a month to month tenancy in her. Piechota is incorrect. The portion of the RPL that she cites applies only to rent stabilized housing, and not to condominium. The Appellate Division, First Department, has long recognized that the laws which govern rent stabilized apartments do not apply to condominium or cooperative apartments. *See e.g. Fasa Properties, N.V. v Freidus*, 103 AD2d 729 (1<sup>st</sup> Dept 1984). Therefore, the court finds that Piechota's reliance on RPL § 232-a is misplaced, and rejects her argument. Therefore, the court finds that the board is entitled to an order of eviction against Piechota. Because, as was previously noted, neither Piechota nor the IRS raised any other opposition to the balance of the


board's motion, the court finds that it, too, should be granted, and that a receiver and a referee should be appointed.

DECISION

Accordingly, the Board's motion is granted in accordance with the foregoing decision  
Settle order on notice.

Dated: New York, New York  
April 17, 2014

ENTER:

  
\_\_\_\_\_  
Hon. Louis B. York, J.S.C.

**LOUIS B. YORK**