

316 Second Ave. NH v 316 Second Ave., LLC

2014 NY Slip Op 31342(U)

May 20, 2014

Sup Ct, New York County

Docket Number: 600217/10

Judge: Joan M. Kenney

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK PART 8

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316 SECOND AVE NH as assignee of GRUPO
POPULAR INVESTMENTS CORPORATION,

Index # 600217/10

Plaintiff,

-against-

DECISION & ORDER

316 SECOND AVENUE, LLC, SECOND AVENUE
FUNDING ASSOCIATES, DICONZA LARocca
DICUNTO & KAPLAN, and THE CITY OF NEW
YORK ENVIRONMENTAL CONTROL BOARD,

Defendants.

-----X
KENNEY, JOAN, M., J.S.C.

For Receiver:
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For Defendant: 316 Third Ave., LLC
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FILED

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COUNTY CLERK'S OFFICE**

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Papers considered in review of this motion: —

Papers	Numbered
Order to Show Cause, Affidavit, & Exhibits	1-13
Affirmation in Opposition & Exhibits	14-16
Affirmation in Opposition	17

In this foreclosure action the Receiver, Arthur Grieg, Esq. (the receiver or Grieg) seeks an Order discharging him as the Receiver, awarding the Receiver his Commissions upon approval of the Receiver's Report and Final Account.

This action was commenced with the service of a summons and complaint. 316 Second Ave NH as assignee of Grupo Popular

[*3]

Investments Corporation¹ brought the instant action to foreclose upon a \$2,500,000.00 consolidated note and mortgage made to 316 Second Avenue LLC, which was secured by the property known as, 316 Second Avenue, within the City, County and State of New York (the building). On January 31, 2011, this Court granted plaintiffs' motion seeking appointment of a temporary receiver. This motion was submitted with opposition. The instant application is opposed by the former owner of the property, 316 Second Avenue LLC (former owner or mortgagor). The basis for the opposition is that the receiver is some how responsible for an oil spill that occurred on the premises, and therefore should not be discharged.

It is undisputed that the receiver took all necessary steps to carry out his fiduciary obligation to file his oath of office on July 25, 2011, and exercised oversight over the attorneys and managing agent hired with this Court's approval. The receiver and his counsel have amply supported, with all appropriate documentation, everything they did to maintain and operate the building in accordance with the prior orders of this Court. The substantive documentation submitted also supports the receiver's final accounting.

The property was in disrepair when the receiver was appointed. The receiver caused extensive repairs to be made to the building

¹It is uncontested that plaintiff assigned the note and mortgage to Gramercy Park Debt, LLC on or about November 20, 2012.

* 4]

during the course of his appointment, e.g., brick pointing, leaks into apartments, electrical work that was never completed by the mortgagor, repairs to vacant apartments, skylight repairs and the attendant dry wall repairs from water penetration.

On March 26, 2012, an oil delivery was made to the building. It is undisputed that there was an oil spill that occurred in the basement. According to the building's insurance company's claims adjuster who investigated the oil spill, the damage occurred because of "[t]he wear and tear' and deterioration of the pipe that failed" Additionally, the contractor hired to repair the cracked pipe, billed the receiver for services rendered. Those services consisted of "went to the job site and found out the 2" oil line was leaking we removed and installed a new 3" x 2" black pipe and 2" oil fill box." Notably, the receiver and the current owner of the building hired the same remediation expert finish the clean up of the spill.

It is uncontested that on or about March 30, 2012, the mortgagor filed a petition in the United States Bankruptcy Court. The bankruptcy judge approved the continued appointment of the receiver to operate and maintain the building. During the course of the bankruptcy proceeding the mortgagor and the subordinate mortgagees assigned their interests to Gramercy Park Debt LLC. Moreover, the bankruptcy court Ordered that the receiver to provide a final accounting and turn over "all monies in his possession that

are property of the debtor's estate ... immediately following the effective date the receivership is terminated."

The commission sought by the receiver is within the legal limit of no more than 5% of the amount collected and disbursed by the receiver (CPLR 8004[a]), and is justified in light of the complexities of the receivership. The receiver rendered a proper accounting documenting his services in adequate detail (citations omitted) (*Chang v Zapson*, 67 AD3d 435 [1st Dept 2009]). It is also proper that the receiver is entitled to recover the attorneys' fees and costs incurred in retaining outside counsel and a managing agent. The authority for such retention was based upon court orders expressly authorizing the retention of such counsel and agent, and were undisputably supported by proper affidavits in support of the application supporting the need for the services rendered (citation omitted), *supra* at 436.

Accordingly, it is

ORDERED that plaintiff and/or its successors-in-interest, pay Arthur Greig, Esq., a commission in the amount of \$14,128.73; and it is further

ORDERED that plaintiff and/or its successors-in-interest, pay the counsel retained by Arthur Greig, Esq., Belkin, Burden, Wenig & Goldman, LLP, the amount of \$20,336.58 as reasonable attorneys' fees; and it is further

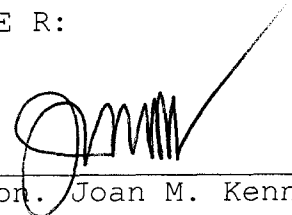
ORDERED that the receiver is hereby discharged *nuc pro tunc*

from the date the United States Bankruptcy Court discharged Arthur Greig, Esq., as receiver; and it is further

ORDERED that the receiver's final accounting is deemed accepted.

Dated: May 20, 2014

E N T E R:



Hon. Joan M. Kenney
J.S.C.

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