

**US Bank N.A. v Khandaker**

2014 NY Slip Op 33649(U)

September 19, 2014

Supreme Court, New York County

Docket Number: 108497/09

Judge: Eileen A. Rakower

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

9-29-14  
ce

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

**HON. EILEEN A. RAKOWER**

**PRESENT:** \_\_\_\_\_  
Justice

**PART** 15

Index Number : 108497/2009  
US BANK NATIONAL ASSOCIATION  
vs.  
KHANDAKER, TANVIR  
SEQUENCE NUMBER : 005  
MONEY 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). 1-2

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

Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

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

**RECEIVED**  
SEP 24 2014  
GENERAL CLERK'S OFFICE  
NYS SUPREME COURT - CIVIL

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

**FILED**

SEP 30 2014

**NEW YORK  
COUNTY CLERK'S OFFICE**

Dated: 9/19/14

  
\_\_\_\_\_  
HON. EILEEN A. RAKOWER, J.S.C.

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

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

STATE OF TEXAS

COUNTY OF DALLAS

STATE OF TEXAS

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

-----X  
US BANK NATIONAL ASSOCIATION, AS  
SUCCESSOR TRUSTEE TO BANK OF  
AMERICA NATIONAL ASSOCIATION, AS  
SUCCESSOR BY MERGER TO LASALLE  
BANK, N.A., AS TRUSTEE FOR THE MLMI  
TRUST SERIES 2006-AHL1,

Plaintiff,

- v -

Index No.  
108497/09

**DECISION  
and ORDER**

Mot. Seq. 005

TANVIR KHANDAKER; ACCREDITED HOME  
LENDERS, INC.; BATTERY PARK CITY  
AUTHORITY; BOARD OF MANAGERS OF THE  
LIBERTY VIEW CONDOMINIUM, ET. AL.,

**FILED**

SEP 30 2014

Defendant.

**NEW YORK  
COUNTY CLERK'S OFFICE**  
-----X

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

Defendant, Board of Managers of the Liberty View Condominium (the "Board") moves pursuant to CPLR §3215(i) and the January 29, 2014 stipulation settling this action and directing the issuance and entry of a money judgment in favor of Movant and against defendant Tanvir Khandaker ("Khandaker"). The Board submits the affirmation of Darryl Rankin ("Rankin"), who is employed by Milford Management Corp., the property manager for the property known as the Liberty View Condominium, 99 Battery Place, New York, New York ("the Condominium") and the managing agent of the Board.

This action was commenced by a filing of a summons and verified complaint on June 15, 2009. The Board appeared in this action by answer dated July 10, 2009 and asserted two cross-claims against Khandaker based on his failure to pay common charges due for residential condominium unit 16A located in the Condominium.

By notice of motion dated April 9, 2013, the Board moved, *inter alia*, for partial summary judgment on its cross claims against Khandaker. The Board's motion was granted and this matter was assigned to Special Referee, Louis Crespo on January 21, 2014.

On January 29, 2014, the Board and Khandaker entered into a stipulation and consent to judgment dated January 29, 2014, resolving the issues of common charges due and owing to the Board from Khandaker and attorneys' fees incurred by the Board based upon Khandaker's failure to pay common charges ("Stipulation"). By Order dated January 29, 2014, this Court so ordered the Stipulation.

In paragraph 3 of the Stipulation, Khandaker acknowledged that he owed the Board \$91,484.68 through December 19, 2013 ("the Arrears"). In paragraph 4, Khandaker consented to the immediate issuance of a money judgment against him in the amount of the Arrears ("the Judgment"). In paragraphs 5 and 6 of the Stipulation, the Board agreed to stay execution and enforcement of the Judgment on the condition that Khandaker make certain payments beginning with a payment due upon his execution of the Stipulation, monthly payments commencing on February 1, 2014, and remaining current on all common charges ("Current Charges") as they came due. Paragraph 6 of the Stipulation provides that all payments received by Plaintiff shall be first applied to Current Charges and then to arrears payments due pursuant to paragraph 5. Pursuant to paragraph 12 of the Stipulation, in the event that Khandaker fails to cure a default, the Board shall have the right to execute on the Judgment, less offset for all payments made by Khandaker and collected by the Board and the Board is entitled to recover attorneys' fees, costs and disbursements incurred as a result of Khandaker's breach of the Stipulation.

In his affidavit, Rankin avers that Khandaker has defaulted in making the payments as required by the Stipulation. Rankin states that since the execution of the Stipulation, Khandaker has made a total of \$5,400.00 in payments, which fails to cover the Current Charges owed (which total \$16,209.56). Rankin avers that the payments made by Khandaker have been applied to the payment of Current Charges, pursuant to paragraph 6 of the Stipulation, and that Khandaker, to date, has failed to tender any payments to offset the Judgment amount. In the pending application, the Board seeks to enter the entire Judgment amount of \$91,484.68 based upon Khandaker's default, and also seeks attorneys' fees as per the terms of the Stipulation.

Wherefore it is hereby

ORDERED that defendant Board of Managers of the Liberty View Condominium's motion is granted without opposition; and it is further

ORDERED that the Clerk enter judgment in favor of defendant Board of Managers of the Liberty View Condominium, and against defendant, Tanvir Khandaker, in the amount of \$91,484.68 together with interest as prayed for allowable by law (at the rate of 9% per annum) until the date of entry of judgment, as calculated by the Clerk, and thereafter at the statutory rate, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the amount of reasonable attorneys' fees and costs owed by defendant, Tanvir Khandaker, is referred to a Special Referee to hear and report with recommendations; and it is further

ORDERED that a copy of this order with notice of entry shall be served on the Clerk of the Reference Part (Room 119A) to arrange for a date for the reference to a Special Referee and the Clerk shall notify all parties, including defendants, of the date of the hearing.

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

Dated: SEPTEMBER 19, 2014

  
HON. EILEEN A. RAKOWER

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

**FILED**

SEP 30 2014

**NEW YORK  
COUNTY CLERK'S OFFICE**