

Riverbridge Ct. Condominium v Gospel Missionary Baptist Church

2014 NY Slip Op 33658(U)

October 20, 2014

Supreme Court, New York County

Docket Number: 112056/09

Judge: Cynthia S. Kern

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This opinion is uncorrected and not selected for official publication.

FA
10/22/14
E

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: _____
Justice _____

PART _____

Index Number : 112056/2009
RIVER BRIDGE COURT CONDOMINIUM
vs.
GOSPEL MISSIONARY
SEQUENCE NUMBER : 004
VACATE STAY/ORDER/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). _____
Answering Affidavits — Exhibits _____ No(s). _____
Replying Affidavits _____ No(s). _____

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

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is decided in accordance with the annexed decision.

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

Dated: 10/20/14

PK, 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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

-----X
RIVERBRIDGE COURT CONDOMINIUM, by its
BOARD OF MANAGERS

Plaintiff,

Index No. 112056/09

-against-

DECISION/ORDER

THE GOSPEL MISSIONARY BAPTIST CHURCH,
THE NEW YORK CITY PARKING VIOLATIONS
BUREAU and THE NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD,

FILED

Defendants.

OCT 22 2014

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HON. CYNTHIA S. KERN, J.S.C.

**NEW YORK
COUNTY CLERK'S OFFICE**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Affirmations in Opposition	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Plaintiff Riverbridge Court Condominium, by its Board of Managers (hereinafter referred to as "plaintiff" or the "Condominium"), commenced the instant action against defendants the Gospel Missionary Baptist Church (the "Church"), the New York City Parking Violations Bureau ("PVS") and the New York City Environmental Control Board ("ECB") seeking to foreclose a lien against the premises known as the Non-Residential Unit located at 603 West 148th Street, New York, New York a/k/a 608 West 149th Street, New York, New York (the "subject premises") for unpaid common charges and assessments. Plaintiff now moves for an Order (1) pursuant to CPLR § 5015(a)(2) vacating the Judgment of Foreclosure and Sale dated

June 21, 2013 and entered August 16, 2013 (the “Judgment”); (2) re-confirming the Referee’s Report of Amount Due and directing a money judgment in the sum of \$47,611.01, representing the amount due for unpaid common charges, assessments and late fees through and including March 27, 2012; (3) amending the Judgment and directing a Judgment of Foreclosure and Sale of the subject premises in one parcel and subject to any superior lien of record, including but not limited to the New York City Tax Lien filed on August 13, 2013 under New York City Register File No. (CRFN): 2013000318672; and (4) granting plaintiff attorney’s fees in the amount of \$31,407.70. For the reasons set forth below, plaintiff’s motion is granted in its entirety.

The relevant facts are as follows. Plaintiff is a condominium association and ownership and occupancy of any of its units is subject to compliance with its declaration, by-laws and rules and regulations. The Church purchased the subject premises on October 23, 2007. In July 2008, the Church defaulted by not paying the common charges and assessments. As a result of the Church’s default, on March 19, 2009, the Board of Managers filed a notice of lien (the “Lien”) in the New York City Register’s Office for New York County. Thereafter, on August 24, 2009, plaintiff commenced the instant action seeking to foreclose the Lien.

In July 2010, plaintiff moved for summary judgment against the Church and was granted a judgment on default pursuant to a November 29, 2010 Decision and Order issued by Justice Jane Solomon. In an Order dated August 10, 2011, Justice Solomon appointed Valerie Van Leer-Greenberg, Esq. as referee to ascertain and compute the amount due to plaintiff and to report whether the subject premises could be sold in separate parcels. Pursuant to Ms. Van Leer-Greenberg’s report (the “Referee’s Report”), she determined that the subject premises could not be sold in separate parcels and computed the amounts due to plaintiff, exclusive of attorney’s

fees, through March 2012.

In July 2012, plaintiff moved for an Order confirming the Referee's Report, directing a judgment of foreclosure and sale and granting attorney's fees. In a decision dated October 18, 2012, this court granted plaintiff's motion without opposition and directed plaintiff to submit/settle a judgment of foreclosure and sale directing that the premises be sold in one parcel and that plaintiff be granted attorney's fees in the amount of \$31,407.70. The Judgment was subsequently entered on August 16, 2013. In accordance with the Judgment, a foreclosure sale was conducted on December 11, 2013. After the foreclosure sale was conducted, plaintiff discovered that on August 13, 2013, after the Judgment was submitted to and signed by the court, a New York City Tax Lien in the amount of \$742,459.98 (the "Tax Lien") was filed against the subject premises. It is undisputed that the Tax Lien is superior to the Condominium's Lien and that any sale of the subject premises at foreclosure would be and is subject to the Tax Lien. Thus, plaintiff asserts that the subject premises cannot be sold without a judgment ordering that it be sold at foreclosure subject to the Tax Lien and requests that the Judgment be vacated and amended to reflect the Tax Lien and that the Referee's Report be re-confirmed. This court finds that plaintiff's motion should be granted in its entirety.

The Church's assertion that the Judgment should not be amended and that the Referee's Report should not be re-confirmed on the ground that there were allegedly "problems with the construction and maintenance" of the subject premises and because plaintiff did not furnish the Church with certain documents is without merit. Specifically, the Church asserts that the subject premises had issues with, *inter alia*, poor plumbing and drainage, flooding, elevator maintenance and that the subject premises was not wired for universal telephone or cable services as per the

agreement between the parties. Additionally, the Church asserts that plaintiff never furnished it with, *inter alia*, the by-laws of the Condominium. The court finds such assertions unavailing as they are merely defenses which should have been raised in the Church's answer or in opposition to plaintiff's motion for summary judgment, which was granted over three years ago. Indeed, the Church may not re-litigate, over three years later, Justice Solomon's prior determination that the Church had no defense for its failure to pay common charges or assessments. At most, the Church is limited to challenging the computation of the amounts stated in the Referee's Report. However, such amounts were already approved by this court and are not being challenged by the Church. Thus, it is hereby

ORDERED that plaintiff's motion is granted in its entirety; and it is further

ORDERED that the Judgment of Foreclosure and Sale dated June 21, 2013 and entered August 16, 2013 is hereby vacated; and it is further

ORDERED and ADJUDGED that the Referee's Report of Amount Due is hereby re-confirmed; and it is further

ORDERED that plaintiff is directed to submit/settle a new Judgment of Foreclosure and Sale directing that the subject premises be sold in one parcel and subject to any superior lien of record, including but not limited to the New York City Tax Lien filed on August 13, 2013 under New York City Register File No. (CRFN): 2013000318672 and that plaintiff be granted attorney's fees in the amount of \$31,407.70. This constitutes the decision and order of the court.

Dated: 10/20/14

FILED

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PK

J.S.C.

OCT 22 2014

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