

Centech LLC v Yippie Holdings, LLC

2015 NY Slip Op 30815(U)

May 18, 2015

Supreme Court, New York County

Docket Number: 107802/2009

Judge: Jeffrey K. Oing

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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: IAS PART 48

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CENTECH LLC,

Plaintiff,

-against-

YIPPIE HOLDINGS, LLC, NATIONAL AIDS
BRIGADE, INC., DEVAN HOLDINGS LLC, 9
BLEECKER LLC, IRWIN DANA BEAL a/k/a
DANA BEAL, and JOHN DOE #1 through #20

Defendants.

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DECISION AND ORDER

JEFFREY K. OING, J.:

Plaintiff Centech LLC ("Centech") moves, pursuant to CPLR 4403, to confirm the report of Hon. Ira Gammerman, JHO, dated March 16, 2015 (Einig Affirm., Ex. 5). Centech also moves for an award of additional attorneys' fees in connection with this motion.

The underlying facts of this action are set forth in this Court's decision and order dated December 23, 2014 (mtn seq. no. 006) and familiarity is presumed (Einig Affirm., Ex. 2). In that decision, this Court granted Centech's motion for summary judgment of foreclosure against defendants Yippie Holdings LLC ("Yippie") and National AIDS Brigade, Inc. ("NAB"), and referred the amount due to Centech under the mortgage for principal and interest, as well as any other amounts that may be due and owing, such as reasonable costs and attorneys' fees, to a Special Referee or JHO to hear and report (Id.). In the same decision

and order, for the reasons explained therein, this Court also held that 9 Bleecker LLC's ("9 Bleecker") right of first refusal was not triggered by a judicial foreclosure sale, but that it only applied in the event defendants NAB and Yippie were to sell the property directly.

Defendant 9 Bleecker is now the sole party opposing the motion to confirm JHO Gammerman's report. In so doing, 9 Bleecker argues that the amount recommended as due and owing by JHO Gammerman erroneously included interest, fees, and other charges accumulating through March of 2015 when, as it claims, any mortgage debt ceased to accumulate in December 2007, the time in which Yippie provided the deed to the property in escrow as further security for its then-acknowledged default.

The principle is "well settled that the report of a Special Referee shall be confirmed whenever the findings contained therein are supported by the record and the Special Referee has clearly defined the issues and resolved matters of credibility, since the Special Referee is considered to be in the best position to determine the issues presented" (Nager v Panandis, 282 AD2d 135, 135-136 [1st Dept 1997] [internal citations omitted]). Pursuant to CPLR 4403, the Court has the power to confirm or reject "in whole or in part ... the report of a referee to report; may make new findings with or without taking

additional testimony; and may order a new trial or hearing" if necessary.

The parties appeared for a hearing before JHO Gammerman on February 23 and March 16, 2015. Contrary to 9 Bleecker's assertion that JHO Gammerman deferred the issue as to the 2007 negotiation of the deed in lieu to this Court, JHO Gammerman took testimony and evidence on this issue and found that, in his view, the parties' subsequent course of conduct did not extinguish NAB and Yippie's interest in the property. Having reviewed the testimony and documents in this case, this Court concurs with that finding. The series of multiple negotiations to pay off the mortgage, the parties' correspondence, and the 2009 forbearance agreement all make clear that NAB and Yippie's ownership interest in the property was not extinguished when the deed was recorded as security in 2007. Moreover, as the one who heard the testimony, JHO Gammerman was in the best position to evaluate the credibility of witnesses who testified to the parties' understanding that the transfer of title would have no effect on the mortgage. Having heard such testimony, JHO Gammerman rejected 9 Bleecker's argument. This Court sees no basis in this record to disturb his evaluation.

In any event, 9 Bleecker should have raised its argument in opposition to the motion for summary judgment, on a motion to renew and reargue, or on an appeal of this Court's decision

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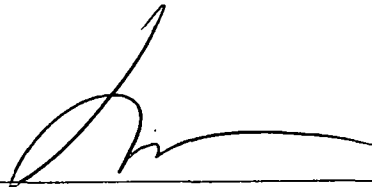
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granting judgment of foreclosure. Having failed to do so, 9
Bleecker cannot relitigate this issue at this point.

Accordingly, that branch of Centech's motion to confirm the report and recommendation of Hon. Ira Gammerman, J.H.O., dated March 16, 2015, is confirmed in its entirety. The amount due on the mortgage is \$3,749,578. The amount of attorneys' fees is \$242,229.07 through February 27, 2015, including interest at the contract rate, and is not disputed. The amount Centech advanced in connection with the maintenance of the property, the payment of taxes, insurance and receiver fees is \$397,933.30. That branch of plaintiff's motion for an award of additional attorneys' fees in connection with this motion is denied.

Judgment of Foreclosure and Sale, unopposed, signed
herewith.

Dated: 5/13/15



HON. JEFFREY K. OING, J.S.C.