

110 Lion LLC v 171st Fort Washington LLC
2015 NY Slip Op 31589(U)
August 20, 2015
Supreme Court, New York County
Docket Number: 850110/2015
Judge: Shirley Werner Kornreich
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

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110 LION LLC,

Index No.: 850110/2015

Plaintiff,

DECISION & ORDER

-against-

171ST FORT WASHINGTON LLC, 110 LION LLC,
CRM ELECTRIC, CORP. f/k/a CRM ELECTRIC INC.,
CONCRETE SOLUTIONS CONTRACTING LLC,
VALCO BUILDING & MAINTENANCE SUPPLIES
CORP., NEW YORK CITY DEPARTMENT OF
FINANCE, and NEW YORK STATE DEPARTMENT OF
TAXATION & FINANCE,

Defendants.

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SHIRLEY WERNER KORNREICH, J.:

Plaintiff 110 Lion LLC moves for a default judgment, pursuant to CPLR 3215, against defendants 171st Fort Washington LLC (the Borrower), CRM Electric, Corp. (CRM), Concrete Solutions Contracting LLC (CSC), Valco Building & Maintenance Supplies Corp. (Valco), New York City Department of Finance (the City), and New York State Department of Taxation & Finance (the State). None of the defendants filed opposition, except for CSC, which opposed and cross-moved for an extension of time to respond to the complaint. CSC's cross-motion was withdrawn by stipulation dated July 23, 2015, pursuant to which (1) CSC "consent[ed] to the relief requested in Plaintiffs Motion"; (2) plaintiff and CSC "acknowledge[ed] that the Plaintiff's mortgages being foreclosed herein have priority over [CSC's] mechanic's lien"; and (3) "Plaintiff acknowledge[d] [CSC's] appearance in this action by its undersigned counsel and agree[ed] to serve all further papers, including notice of any surplus money proceedings, in this action on [CSC's] counsel." See Dkt. 66. As the balance of plaintiff's motion remains unopposed, the motion is granted, on default, for the reasons that follow.

Plaintiff is the owner and holder of four notes and mortgages which encumber real property located at 703 West 171st Street in Manhattan (the Property). The Borrower owns the Property. The loans were originally made by non-party Commerce Bank, N.A., which, after a merger, became TD Bank, N.A. (the Original Lender). The loans were subsequently assigned to plaintiff. Plaintiff commenced this action to foreclose on the Property due to the Borrower's default on the notes. Also named as defendants are five of the Property's lien holders: (1) CRM, the holder of a mechanic's lien, filed on April 25, 2014, in the amount of \$26,815; (2) CSC, the holder of a mechanic's lien, filed on October 10, 2014, in the amount of \$1,003,000; (3) Valco, holder of a mechanic's lien, filed on February 13, 2015, in the amount of \$91,097.68; (4) the City, which may have tax liens on the Property; and (5) the State, which hold two Tax Warrants against the Borrower, totaling \$2,134.83. The complaint also names "John Doe" defendants.¹

The first loan, made on December 1, 2006, was for the principal amount of \$1.53 million (the Acquisition Loan). The history of the Acquisition Loan is set forth in paragraphs 11-14 of the complaint, and the loan and mortgage documents are attached as exhibits B and C to the complaint. *See* Dkt. 3 & 4.

The second loan, also made on December 1, 2006, was for the principal amount of \$2,925,720 (the Building Loan). The history of the Building Loan is set forth in paragraphs 15-17 of the complaint, and the loan and mortgage documents are attached as exhibits D and E to the complaint. *See* Dkt. 5 & 6.

The third loan was also made on December 1, 2006, and was for the principal amount of \$1,044,280 (the First Project Loan). The history of the First Project Loan is set forth in

¹ On this motion, plaintiff has withdrawn its claims against the John Doe defendants and requests that the court amend the caption accordingly. In the ordering language below, the Clerk is directed to amend to the caption to conform to the caption appearing at the top of this decision.

paragraphs 18-21 of the complaint, and the loan and mortgage documents are attached as exhibits F and G to the complaint. *See* Dkt. 7 & 8.

The fourth loan was made on February 26, 2009, and was for the principal amount of \$200,000 (the Second Project Loan). The history of the Second Project Loan is set forth in paragraphs 21-25 of the complaint, and the loan and mortgage documents are attached as exhibits H and I to the complaint. *See* Dkt. 9 & 10. On the date of the Second Project Loan, February 26, 2009, the first three loans were modified and extended. *See* Complaint ¶¶ 26-28.

The loans have been in default since October 1, 2009, the maturity date, when full payment was due. However, no foreclosure was sought because the Original Lender and the Borrower entered into multiple forbearances agreements, in which the Borrower: “(a) acknowledged the existence of the Events of Default, including the maturity default, (b) expressly admitted and confirmed that the lender had the right immediately to commence enforcement of the lender’s rights and remedies under the Loan Documents as a result thereof, (c) expressly waived all defenses and released any and all claims in connection with the Loans.” Complaint ¶ 44; *see* Dkt. 19.

On February 23, 2015, the Original Lender assigned the loans and mortgages to plaintiff. Complaint ¶ 32; *see* Dkt. 15-18. Plaintiff commenced this action on March 9, 2015, by filing a complaint with five causes of action. The first four causes of action asks for foreclosure of each mortgage. The fifth cause of action seeks a deficiency judgment against the Borrower. All of the defendants were served. *See* Dkt. 29-36 (affidavits of service). By order dated March 16, 2015, the court appointed Robert L. Lewis, Esq. as receiver of the Property (the Receiver). *See* Dkt. 26.

None of the defendants timely responded to the complaint. On May 4, 2015, plaintiff filed the instant motion for a default judgment. Defendants were served with the motion papers. *See* Dkt. 49. Other than CSC, none of the defendants responded to the motion. Plaintiff seeks a default judgment on liability and requests a reference to a referee to compute damages.

“When a defendant has failed to appear . . . the plaintiff may seek a default judgment against him.” CPLR 3215(a). To succeed on a motion for a default judgment, the plaintiff must submit proof of service of process and affidavits attesting to the default and the facts constituting the claim. *See* Siegel, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B, CPLR C3215:16, at 557. Moreover, in an action to foreclose on a mortgage, RPAPL § 1321 provides:

If the defendant fails to answer within the time allowed or the right of the plaintiff is admitted by the answer, upon motion of the plaintiff, the court shall ascertain and determine the amount due, or direct a referee to compute the amount due to the plaintiff and to such of the defendants as are prior incumbrancers of the mortgaged premises, and to examine and report whether the mortgaged premises can be sold in parcels and, if the whole amount secured by the mortgage has not become due, to report the amount thereafter to become due.

See Bank of New York v Stein, 2015 WL 3972186, at *1 (2d Dept July 1, 2015) (“The plaintiff was also entitled to a [reference] since, in support of its motion, it submitted the mortgage, the underlying unpaid note, the complaint setting forth the facts establishing the claim, and an affidavit attesting to the default on the mortgage, and the appellant failed to interpose an answer to the complaint”); *U.S. Bank, N.A. v Ramjit*, 125 AD3d 641, 643 (2d Dept 2015) (same); *see also 1855 E. Tremont Corp. v Collado Holdings LLC*, 102 AD3d 567, 567-68 (1st Dept 2013) (“Plaintiff established its prima facie right to foreclosure with evidence that defendants failed to pay the outstanding principal due under the parties’ mortgage documents and loan agreements”).

Here, plaintiff is entitled to a default judgment on liability because it presented *prima facie* proof of default on the four mortgage loans. The calculation of damages, including computation of principal and interest amounts due to plaintiffs, is referred to a Special Referee to hear and report. The Referee shall also recommend a plan to sell the Property, in consultation with the Receiver, who shall participate in the hearing. Accordingly, it is

ORDERED that the motion by plaintiff 110 Lion LLC for a default judgment on liability is granted on default against defendants 171st Fort Washington LLC, CRM Electric, Corp., Valco Building & Maintenance Supplies Corp., New York City Department of Finance, and New York State Department of Taxation & Finance, and the motion is granted against Concrete Solutions Contracting LLC pursuant to the stipulation dated July 23, 2015 (Dkt. 66); and it is further

ORDERED that plaintiff shall serve a copy of this order along with notice of entry upon defendants and the Receiver within 7 days of the entry of this order on the NYSCEF system; and it is further

ORDERED that an inquest on damages is referred to a Special Referee to hear and report in accordance with this decision; and it is further

ORDERED that within 15 days, plaintiff shall pay the appropriate fees and file a note of issue and shall serve a copy of this order with notice of entry, as well as a completed information sheet,² on the Special Referee Clerk at spref-nyef@nycourts.gov, who is directed to place this matter on the calendar of the Special Referee's part for the earliest convenient date, and upon the

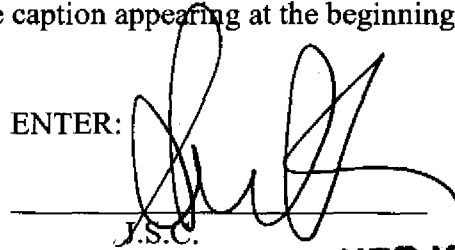
² Copies are available in Rm. 119M at 60 Centre Street, New York, NY, and on the court's website by following the links to "Court Operations", "Courthouse Procedures", and "References".

filing by the Special Referee Clerk of a Notice of Hearing, a copy of such notice shall be served upon defendants and the Receiver; and it is further

ORDERED that plaintiff shall serve a copy of this order with notice of entry upon the County Clerk at cc-nyef@courts.state.ny.us and the Clerk of the Trial Support Office at trialsupport-nyef@courts.state.ny.us, who are directed to mark the court's records to reflect that all further papers in this action shall bear the caption appearing at the beginning of this decision.

Dated: August 20, 2015

ENTER:

A handwritten signature in black ink, appearing to read 'Shirley Werner Kornreich', written over a horizontal line.

SHIRLEY WERNER KORNREICH
J.S.C.