

Board of Mgrs. of Towers on the Park Condominium v Adams
2018 NY Slip Op 32414(U)
September 27, 2018
Supreme Court, New York County
Docket Number: 156952/2017
Judge: William Franc Perry
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NYSCEF DOC. NO. 37

RECEIVED NYSCEF: 09/27/2018

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

PRESENT: HON. W. FRANC PERRY

PART

IAS MOTION 23EFM

Justice

-----X

INDEX NO. 156952/2017

BOARD OF MANAGERS OF TOWERS ON THE PARK
CONDOMINIUM,

MOTION DATE N/A

Plaintiff;

MOTION SEQ. NO. 001

- v -

MORRIS ADAMS, MIDLAND FUNDING LLC, MIDLAND FUNDING
OF DELAWARE LLC, CAPITAL ONE BANK, JOHN DOE 1
THROUGH JOHN DOE 5,

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 36

were read on this motion to/for

JUDGMENT - SUMMARY

The plaintiff, the Board of Managers of Towers on the Park Condominium (the "Plaintiff") having moved this Court for an order: (1) Dismissing with prejudice the affirmative defenses contained in Defendant's Answer as without merit as a matter of law; (2) appointing a Referee to compute the common charges, assessments, electric charges, storage fees, late fees, accrued interest and legal fees, and disbursements due and owing to the Plaintiff though the date of sale of Unit 16D, 300 Cathedral Parkway, New York, New York 10026 (the "Unit"); (3) pursuant to CPLR § 3212(a) granting Plaintiff's motion for summary judgment; (4) awarding Plaintiff legal fees pursuant to the Condominium's By-Laws Article VI, Section 3(c) in an amount to be determined by the Referee and (5) for such costs, legal fees, disbursements, and all other relief this Court deems just and proper.

NOW, upon the reading and filing of Plaintiff's notice of motion dated May 16, 2018, the affirmation of Bonnie Reid Berkow dated May 14 2018, the affidavit of Nadine Kellogg sworn to May 14, 2018, together with the exhibits annexed thereto, Plaintiff's memorandum of law, the

undated Answer to Motion for Summary Judgment by defendant Morris Adams e-filed by the Court on June 11, 2018 and the letter correspondence with exhibits from defendant Morris Adams e-filed by the Court on July 19, 2018, submitted in opposition to the motion, and the Reply Memorandum of Law in Further Support of Motion for Summary Judgment dated May 31, 2018, and upon all papers and proceedings heretofore had herein; and due deliberation having been had thereon;

NOW, upon motion of Wagner Berkow, LLP., attorneys for the Plaintiff, it is ORDERED, that the Plaintiff's motion to dismiss the affirmative defenses with prejudice and for summary judgment is granted; and it is

ORDERED, that Peter Alden Axelrod of Axelrod, Fingerhut and Dennis, with offices at 260 Madison Ave, New York, NY 10016, is hereby appointed Referee to ascertain and compute the amount due to Plaintiff for common charges, electric charges, storage fees, late fees, interest and any and all other fees due to the Plaintiff pursuant to its notice of lien for unpaid common charges, to examine and report whether the premises should be sold in parcels, and that the Referee make his/her report to this Court no later than sixty (60) days of the date of this order and that, except for good cause shown, the Plaintiff shall move for judgment no later than sixty (60) days of the date of the Referee's report; and it is further

ORDERED, that the Referee's computation may be had in any County of the State of New York. Plaintiff shall submit on notice an application confirming the Referee's report together with an affirmation of regularity and an affidavit containing the attorneys' fees and disbursements sought by Plaintiff, whereupon Plaintiff shall have, without further notice, a judgment of foreclosure and sale, and for costs and assessments as allowed by law and a money judgment against defendant Morris Adams in the amount including the common charges, electric

charges and additional common charges, including attorneys' fees, costs and expenses which are added to and shall constitute common charges payable by defendant Morris Adams pursuant to the Condominium's By-laws, as determined by the Referee to be due to Plaintiff together with any common charges and additional common charges that may accrue from the date of the Referee's report to the date that the Unit is sold; and it is further

ORDERED, that upon submission of the Referee's Report, Plaintiff shall pay \$250.00 to the Referee as compensation for his/her services, which sum may be recouped as a cost of litigation; and it is further

ORDERED, that the Referee appointed herein is subject to the requirements of Rule 35.2 (c) of the Chief Judge, and if the Referee is disqualified from receiving an appointment pursuant to the provision of that Rule, the Referee shall notify the Appointing Judge forthwith; and it is further

ORDERED, that by accepting this appointment the Referee certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCCR Part 36), including but not limited to, Section 36.2(c) ("Disqualification from appointment") and Section 36.2(d) ("Limitations of appointments based upon compensation"); and it is further

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ORDERED, that a copy of this Order with Notice of Entry shall be served upon the designated Referee, the owner of the equity of redemption, any tenants named in this action and any other party entitled to notice within twenty (20) days of entry and no less than thirty (30) days prior to any hearing before the Referee. The Referee shall not proceed to take evidence as provided herein without proof of such service, which proof must accompany any application for Final Judgment of Foreclosure and Sale.

<u>9/27/2018</u>			
DATE		W. FRANC PERRY, J.S.C.	
CHECK ONE:	☐ CASE DISPOSED	☒ NON-FINAL DISPOSITION	
	☒ GRANTED	☐ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ DENIED	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ SETTLE ORDER	☐ FIDUCIARY APPOINTMENT	☒ REFERENCE
	☐ INCLUDES TRANSFER/REASSIGN		