

RCG LV Debt IV Non-Reit Assets Holdings, LLC v Ringel
2018 NY Slip Op 32570(U)
October 9, 2018
Supreme Court, New York County
Docket Number: 156210/2014
Judge: Robert R. Reed
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 43

-----X
RCG LV DEBT IV NON-REIT ASSETS HOLDINGS, LLC,

Plaintiff,

-against-

Index No. 156210/2014

BENJAMIN RINGEL, TIBOR KLEIN, and
GERSHON KLEIN,

Defendants.

-----X
ROBERT R. REED, J.

Motion sequence nos. 010 and 011 are consolidated herein for disposition.

In sequence no. 010, plaintiff RCG LV Debt IV Non-Reit Assets Holdings, LLC (RCG) moves, pursuant to CPLR 1018 and 1021, for an order substituting Manahawkin Assets Holdings, LLC (Manahawkin) as the named plaintiff in this action, and amending the caption and all papers filed herein to delete RCG as plaintiff and substitute Manahawkin. In sequence no. 011, Manahawkin, RCG's assignee, moves, pursuant to CPLR 4403 and 22 NYCRR § 202.44, for an order confirming, rejecting, and modifying the November 21, 2017 special referee's report recommending that the court enter judgment in favor of plaintiff and against defendants Benjamin Ringel, Tibor Klein, and Gershon Klein, and other related relief.

The underlying facts and procedural history are fully set forth in this court's prior decision and order dated December 22, 2016 (prior order), and will not be repeated here, except as is necessary for clarification.

On February 3, 2011, pursuant to a promissory note (mortgage note) and mortgage loan documents, RCG loaned nonparty AC I Manahawkin, LLC (Mortgage Borrower) the principal

sum of \$36,630,000. The loan was secured by a mortgage on certain commercial property known as The Commons at Manahawkin Village located in New Jersey.

Simultaneously, pursuant to a promissory note (mezzanine note) and mezzanine loan agreement, RCG loaned nonparty AC I Manahawkin Mezz, LLC (Mezzanine Borrower) the principal amount of \$370,000. On May 27, 2011, the mezzanine note was amended to increase the loan to \$4,941,009.59, in order to reallocate a portion of the principal balance of the mortgage note to the mezzanine note. The mezzanine loan is secured by a first priority interest in the Mezzanine Borrower's ownership interests in the Mortgage Borrower.

The mezzanine note, mezzanine loan agreement, and amended loan documents were executed by Ringel, on behalf of the Mezzanine Borrower, and by the mezzanine note guarantors, Ringel individually, Tibor Klein, and Gershon Klein (collectively, the Guarantors). Subsequently, on February 3, 2012, the Guarantors executed a mezzanine guaranty of recourse obligations of the borrower in RCG's favor.

Pursuant to a forbearance agreement effective June 6, 2012, the Mezzanine Borrower acknowledged and agreed that the principal amount due to RCG was reduced to \$5,643,361.90, together with certain fees, costs, expenses, and costs of collection. On June 7, 2012, the Guarantors executed a reaffirmation of guaranties in RCG's favor.

In the prior order, this court granted RCG's motion for summary judgment on liability on the amended mortgage and mezzanine loan and guaranty documents and referred the damages issue to a special referee to hear and report with recommendations.

Plaintiff's motion to amend the caption, pleadings, and other papers filed in this action is granted in its entirety. "A motion for substitution may be made by the successors or

representatives of a party or by any party" (CPLR 1021; *see Medallion Auto v Sanders*, 272 AD2d 85, 85-86 [1st Dept 2000]; CPLR 1018). The assignment of loan and guaranty documents dated May 19, 2017 and allonge dated May 24, 2017 were executed by RCG and Manahawkin. They conclusively demonstrate that RCG assigned all of its rights under the subject mortgage and mezzanine loan documents to Manahawkin.

Contrary to defendants' contention, the mere fact that Manahawkin has not disclosed the identity of its principals does not provide a basis for denial of the motion to substitute.

Plaintiff's motion to confirm, reject, and modify portions of the report and recommendations by Special Referee Jeffrey A. Helewitz, dated November 21, 2017 and entered November 22, 2017, is granted without opposition and in its entirety. "[I]t is well-established that the report of a Referee shall be confirmed whenever the findings contained therein are substantially supported by the record and the Referee has clearly defined the issues and resolved matters of credibility" (*Kaplan v Einy*, 209 AD2d 248, 250-251 [1st Dept 1994] [internal citations omitted]) because the "Special Referee is considered to be in the best position to determine the issues presented" (*Nager v Panadis*, 238 AD2d 135, 136 [1st Dept 1997]).

The portion of the report in which the Special Referee recommended that the court enter judgment in favor of RCG and against the Guarantors in the principal amount, with accrued compounded interest at the default rate of 14.5911111111128%, beginning October 22, 2012, is confirmed.

The portion of the report in which the Special Referee overstated the total principal balance of the loan by six dollars and omitted to award late fees and prepayment penalties of 5% is rejected and that portion is modified to reflect the terms of the loan agreements.

Accordingly, it is

ORDERED that motion sequence 010 by plaintiff to substitute Manahawkin Assets Holdings, LLC as plaintiff in this action in the place and stead of RCG LV Debt IV Non-Reit Assets Holdings, LLC is granted; and it is further

ORDERED that the caption is amended to reflect such substitution; and it is further

ORDERED that all papers, pleadings and proceedings in this action be amended by substituting the name of plaintiff RCG LV Debt IV Non-Reit Assets Holdings, LLC with Manahawkin Assets Holdings, LLC without prejudice to the proceedings heretofore had herein; and it is further

ORDERED that Manahawkin Assets Holdings, LLC is directed to serve a copy of this order with notice of entry upon the Clerk of the Court and upon the Clerk of the General Clerk's Office in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/supctmanh]), who are directed to amend their records to reflect such change in the caption herein; and it is further

ORDERED that the amended caption shall read:

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

-----X
MANAHAWKIN ASSETS HOLDINGS, LLC,

Plaintiff,

-against-

Index No. 156210/2014

BENJAMIN RINGEL, TIBOR KLEIN, and
GERSHON KLEIN,

Defendants.

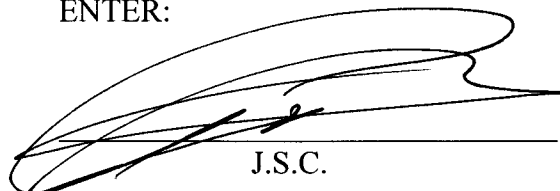
-----X;
and it is further

ORDERED that motion sequence 011 by plaintiff to confirm, reject, and modify in part the Special Referee's report with recommendations dated November 21, 2017 and entered November 22, 2017 is granted in its entirety and as detailed above; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff Manahawkin Assets Holdings, LLC and against defendants Benjamin Ringel, Tibor Klein, and Gershon Klein in the sum of \$6,642,775.48, with interest at the rate of 14.5911111111128% per annum from October 22, 2012 through November 21, 2017, and thereafter at the statutory rate, as calculated by the Clerk, together with late fees at the rate of 5% and prepayment penalties in the amount of \$247,050.18, and costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs.

Dated: October 9, 2018

ENTER:

A handwritten signature in black ink, appearing to be "J.S.C.", is written over a horizontal line. The signature is stylized with a large, sweeping loop at the beginning.

J.S.C.