

Costello v 187 St. Mazal Mgr. LLC
2018 NY Slip Op 32623(U)
October 15, 2018
Supreme Court, New York County
Docket Number: 850082/2018
Judge: William Franc Perry
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. W. FRANC PERRY

PART

IAS MOTION 23EFM

Justice

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INDEX NO. 850082/2018

ADELINA COSTELLO,

Plaintiff,

MOTION DATE

- v -

MOTION SEQ. NO. 001

187 STREET MAZAL MANAGER LLC, 187 STREET MAZAL LLC,
NEW YORK CITY ENVIRONMENTAL CONTROL BOARD,

JOHN DOE #1 through JOHN DOE #12, THE LAST TWELVE NAMES
BEING FICTITIOUS AND UNKNOWN TO PLAINTIFF, THE
PERSONS OR PARTIES INTENDED BEING THE TENANTS,
OCCUPANTS, PERSONS OR CORPORATIONS, IF ANY, HAVING
OR CLAIMING AN INTEREST IN OR LIEN UPON THE PREMISES,
DESCRIBED IN THE COMPLAINT,

**DECISION AND ORDER
WITH REFERENCE**

Defendants.

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UPON review of the summons, verified complaint and notice of pendency of action filed in this action on March 27, 2018, the affidavit of ADELINA COSTELLO sworn to on August 2, 2018 and upon the affirmation of BRUCE J. BERGMAN, ESQ. of BERKMAN, HENOCH, PETERSON, PEDDY 4 FENCHEL, P.C., counsel for Plaintiff, dated August 6, 2018 from which it appears that this action was brought to foreclose a certain commercial mortgage on real property situated in the County of NEW YORK, State of New York, known as BLOCK 2170, LOT 29, and by street address 659 WEST 187TH 187 STREET, NEW YORK, NEW YORK, by reason of certain defaults as alleged in the complaint, and it further appearing that all of the Defendants have been duly served with a copy of the summons and complaint or have appeared herein, copies of such affidavits of service being annexed hereto, except Defendants "JOHN DOE #1" through "JOHN DOE #12" who were not served copies of the summons and complaint and are not necessary parties to this action, and no answer has been interposed by the Defendants though the time to do so has expired; and it appearing that none of the Defendants is an infant, incompetent or absentee, or in the military, and that since the filing of the Notice of Pendency on March 27, 2018 it has not been

amended in any manner whatsoever; and on the pleadings and papers heretofore filed herein and no one appearing in opposition hereto,

NOW, on motion of the Plaintiff Adelina Costello (Plaintiff), for an order: (1) granting Plaintiff default judgment against Defendants; (2) appointing a referee to hear and report; and (3) amending the caption; and Defendants having failed to appear, and it appearing to the Court that an appointment is appropriate, it is now hereby

ORDERED that a Judicial Hearing Officer (“JHO”) or Special Referee shall be designated to hear and report to this court on the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose: (1) the amount due to the Plaintiff herein for principal, interest, and other disbursements advanced as provided for by statute and in the Note and Mortgage upon which this action was brought; and (2) whether the mortgaged premises should be sold in parcels; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the “References” link), shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and report as specified above; and it is further

ORDERED that counsel for Plaintiff shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186), or e-mail an Information Sheet (accessible at the “References” link on the court’s website) containing all the information called

for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the "References" link on the court's website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules); and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts; and it is further

ORDERED, that defendants captioned as "JOHN DOE #1" through "JOHN DOE #12", not having been served with copies of the summons and verified complaint, are neither necessary nor proper party defendants and their names are hereby stricken from the caption of the action; and it is further

ORDERED that the action shall bear the following caption:

ADELINA COSTELLO,

Plaintiff,

-against-

187 STREET MAZAL MANAGER LLC, 187
STREET MAZAL LLC, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD,

Defendants.

And it is further

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RECEIVED NYSCEF: 10/15/2018

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being removed pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made 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]); and it is further

ORDERED that, unless otherwise directed by this court in any Order that may be issued together with this Order of Reference to Hear and Report, the issues presented in any motion identified in the first paragraph hereof shall be held in abeyance pending submission of the Report of the JHO/Special Referee and the determination of this court thereon.

This constitutes the decision and order of the Court.

<u>10/15/2018</u>			
DATE		W. FRANC PERRY, J.S.C.	
CHECK ONE:	☐ CASE DISPOSED ☒ GRANTED ☐ DENIED	☒ NON-FINAL DISPOSITION ☐ GRANTED IN PART ☐ OTHER	
APPLICATION:	☐ SETTLE ORDER ☐ INCLUDES TRANSFER/REASSIGN	☐ SUBMIT ORDER ☐ FIDUCIARY APPOINTMENT	☐ REFERENCE
CHECK IF APPROPRIATE:			