

Atlas Union Corp. v 46 E. 82nd St. LLC
2018 NY Slip Op 33394(U)
December 26, 2018
Supreme Court, New York County
Docket Number: 850289/2017
Judge: Eileen Bransten
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. EILEEN BRANSTEN

PART

IAS MOTION 3

Justice

-----X

INDEX NO. 850289/2017

ATLAS UNION CORP.,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 001

- V -

46 EAST 82ND STREET LLC, PENNY BRADLEY, NORFOLK
STREET MANAGEMENT LLC, JOHN DOES 1-10

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 61

were read on this motion to/for

JUDGMENT - FORECLOSURE & SALE

WHEREAS Defendants NSM82 LLC, formerly known and named herein as 46 East 82nd Street LLC ("Borrower"), Penny Bradley ("Bradley"), and Norfolk Street Management LLC ("Norfolk") (collectively "Defendants") filed a Verified Answer, dated January 12, 2018, in this action;

WHEREAS Plaintiff Atlas Union Corp. and Defendants executed a Stipulation, dated July 27, 2018, pursuant to which Defendants: (1) withdrew and struck their Answer with prejudice, (2) admitted every allegation set forth in the Complaint, (3) consented, upon separate application by Plaintiff on notice, to entry of a judgment of foreclosure, and (4) to the appointment of a referee to (i) compute the amounts due and owing to Plaintiff under the controlling loan documents, and (ii) examine and report whether or not the mortgaged premises can be sold in parcels or should be sold in one parcel pursuant to the subject mortgage;

WHEREAS Plaintiff brought the instant motion for judgment of foreclosure on default on October 17, 2018;

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ORDERED Plaintiff's motion is GRANTED, without opposition; it is further

ADJUDGED AND DECLARED Plaintiff is entitled to judgment against Defendants:

(a) foreclosing, on default, the mortgage against the property located in New York County known as 46 East 82nd Street, New York, New York;

(b) adjudging Plaintiff be paid all amounts due upon the Loan Documents, including outstanding principal, interest, default interest to the time of such payment, prepayment premium, and late charges, together with the expenses of the sale, the costs, allowances and disbursements of this action, Plaintiff's reasonable attorneys' fees and expenses, other charges, any monies advanced or paid to preserve the lien of Plaintiff, and the taxes, assessments, water charges and sewer rents, premiums for insurance, repairs to the Premises and all other charges which may have been made by Plaintiff to protect the security afforded by the Mortgages and the liens thereon to be paid, with interest upon said amounts from the dates of the respective payments and advances thereof, so far as the amounts of such monies properly applicable thereto will pay the same, with the referee (or other officer) making such sale be directed to pay from the proceeds thereof all taxes, assessments, water rates, sewer rents and other charges which are liens on the property sold; and

(c) directing the entry of a money judgment against the defendants for any deficiency arising from the sale of the above-described property. It is further,

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 to

(a) compute all sums due under the Loan Documents and

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(b) determine that the Premises be sold in one or more parcels, or in several interests or portions, pursuant to the Loan Documents, and that the monies arising from such sale be brought into Court; it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR

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/suptmanh 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 shall immediately consult one another and 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 Plaintiff shall serve a pre-hearing memorandum within 24 days from the date of this order and the Defendants shall serve objections to the pre-hearing memorandum within 20 days from service of Plaintiffs’ papers and the foregoing papers shall be filed with the Special Referee Clerk prior to the original appearance date in Part SRP fixed by the Clerk as set forth above; and it is further

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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 the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; 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, 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.

12/26/2018
DATE


HON. EILEEN BRANSTEN
J.S.C.

CHECK ONE:

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CASE DISPOSED

☐

DENIED

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NON-FINAL DISPOSITION

☐

GRANTED IN PART

☐

OTHER

APPLICATION:

☐

SETTLE ORDER

☐

SUBMIT ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

☐

FIDUCIARY APPOINTMENT

☒

REFERENCE