

**Board of Mgrs. of the Hudson View W.
Condominium v Vaknin**

2019 NY Slip Op 30994(U)

April 5, 2019

Supreme Court, New York County

Docket Number: 158399/2016

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 32

Justice

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INDEX NO. 158399/2016

THE BOARD OF MANAGERS OF THE HUDSON VIEW WEST
CONDOMINIUM,

MOTION DATE

Plaintiff,

MOTION SEQ. NO. 005 006

- v -

ALON VAKNIN, BLAKE VAKNIN a/k/a BLAKE A. VAKNIN a/k/a
BLAKE MILLS VAKNIN, NEW YORK STATE DEPARTMENT OF
TAXATION AND FINANCE, CITY OF NEW YORK,

DECISION AND ORDER

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 112, 113, 114, 115,
116, 117, 118, 119, 120, 121, 122, 124

were read on this motion to/for JUDGMENT - FORECLOSURE & SALE

The following e-filed documents, listed by NYSCEF document number (Motion 006) 126, 127

were read on this motion to/for STAY

Motion Sequence Numbers 005 and 006 are consolidated for disposition. The motion
(Motion Sequence Number 005) by plaintiff for a judgment of foreclosure and sale is granted.
The motion (Motion Sequence Number 006), brought by order to show cause, by defendant Alon
Vaknin to stop the foreclosure sale is denied.

Background

In this foreclosure action based on a condo common charge lien, plaintiff moves to
confirm the referee's report and for a judgment of foreclosure and sale. The referee's report
indicates that plaintiff is owed \$137,397.78 as of August 14, 2018 (NYSCEF Doc. No. 114). In
opposition, defendant Alon Vaknin claims that he was in contract to sell the unit and that the

closing date was set for January 2019. However, at oral argument for these motions held on March 28, 2019, Mr. Vaknin admitted that the property was not sold and asked the Court for more time to try and sell the property. Mr. Vaknin hoped that he and his wife could take the money left over to them after the sale and try to start their lives anew.

In support of the order to show cause (Mot Seq 006), Ms. Vaknin attaches a letter in which she explains that she and her husband were able to purchase three other units in the same building and that they were financially successful until Mr. Vaknin lost his business about five years ago. Ms. Vaknin complains that a huge part of the debt owed for this apartment (7I) was for late fees, attorneys' fees and other fees. Ms. Vaknin explained that they had planned to pay the condo back by selling their shares in another unit in the building (7M), but the New York State Department of Taxation and Finance ended up taking "everything" and they were unable to pay plaintiff.

Discussion

The Court recognizes that the Vaknins have had a series of unfortunate financial events and that they continue to express a desire to sell the unit. But the record before this Court suggests that they have been trying to sell this apartment since at least November 2018 and still have not had success. The Court does not see any reason to delay the foreclosure sale to allow the Vaknins even more time to sell the apartment given that the Vaknins have failed to pay their common charges since January 1, 2014. The Vaknins' desire to get some money from selling the apartment is understandable but not a ground to delay granting a judgment of foreclosure and sale. There is no dispute that plaintiff is owed a substantial amount of money and the rest of the shareholders in the building should not have to continue to cover the money the Vaknins have failed to pay over the last five years.

Accordingly, it is hereby

ORDERED and ADJUDGED that the motion (Motion Sequence 005) by plaintiff to confirm the Referee's report and for a judgment of foreclosure and sale is granted and the motion (Motion Sequence 006) by defendant Alon Vaknin to delay this matter is denied; and it is further

ORDERED that the liened premises described in the complaint and as described in this judgment shall be sold within 90 days of this judgment, in one parcel, at a public auction at the New York County Courthouse located at 60 Centre Street, New York, New York under the direction of Elaine Shay, who is appointed Referee for this purpose; and it is further

ORDERED that the Referee shall give public notice of the time and place of sale in accordance with RPAPL 231(2) in the following publication: *New York Law Journal* or the *Jewish Press* at plaintiff's option; and the referee need not conduct the sale unless plaintiff shall provide the referee with proof of publication of the notice of sale, and if the sale is adjourned due to plaintiff's failure to provide such proof, then said adjournment shall not be considered at the referee's request

and it is further

ORDERED that by accepting this appointment the Referee certifies that she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2 (c) ("Disqualifications from appointment"), and §36.2 (d) ("Limitations on appointments based upon compensation"), and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall immediately notify the Appointing Judge; and it is further

ORDERED that the Referee is prohibited from accepting or retaining any funds for

herself/himself or paying funds to him/herself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED that the Referee shall conduct the foreclosure sale only if Plaintiff, its successors and/or assignees or its representatives is present at the sale or the Referee has received a written bid and Terms of Sale from Plaintiff, its successors and/or assigns, or its representatives; and it is further

ORDERED that if the Referee cannot conduct the sale within 90 days of the date of this judgment, plaintiff must make a motion to extend the time to sell the subject property explaining the reasons for the delay; and it is further

ORDERED that at the time of sale the Referee may accept a written bid from the Plaintiff or the Plaintiff's attorney, just as though Plaintiff were physically present to submit said bid; and it is further

ORDERED that the Referee shall accept the highest bid offered by a bidder who shall be identified upon the court record, and shall require that the successful bidder immediately execute Terms of Sale for the purchase of the property, and pay to the Referee in cash, certified check or bank check, ten percent (10%) of the sum bid, unless the successful bidder is Plaintiff, in which case no deposit against the purchase process shall be required and it is further

ORDERED that notwithstanding the previous paragraph, the Referee shall have the right to refuse cash payments and require a bank or certified check from the successful bidder and the Referee shall be entitled to qualify bidders and require bidders to show proof of funds before or during the auction; and it is further

ORDERED that in the event the first successful bidder fails to execute the Terms of Sale or fails to immediately pay the ten percent (10%) deposit as required, the property shall be immediately reoffered at auction on the same day; and it is further

ORDERED the Referee shall deposit the down payment and proceeds of sale, as necessary in an FDIC-insured bank where the Referee has an account for that purpose in accordance with CPLR 2609; and it is further

ORDERED that after the property is sold, the Referee shall execute a deed to the purchaser in accordance with RPAPL 1353 and the terms of sale (which shall be deemed a binding contract); and it is further

ORDERED that in the event a party other than Plaintiff becomes the purchaser at the sale, the closing of title shall be held no later than 30 days after the date of such sale unless otherwise stipulated by all parties to the sale and the Referee; and it is further

ORDERED that, pursuant to RPAPL 1353(1), if Plaintiff (or its affiliate as defined in paragraph [a] of subdivision one of section six-1 of the banking law) is the purchaser, the property shall be placed back on the market for sale or other occupancy within 180 days of the execution of the deed of sale or within 90 days of construction, renovation, or rehabilitation of the property, provided that such construction, renovation or rehabilitation proceeded diligently to completion, whichever comes first, provided that this court grants an extension upon a showing of good cause; and it is further

ORDERED that the Referee, after receiving the proceeds of the sale, shall pay (from the proceeds) the taxes, assessments, sewer rents, or water rates, which are, or may, become liens on the property, in accordance with their priority according to law with such interest or penalties which may have lawfully accrued thereon to the date of payment; and it is further

ORDERED that the Referee shall deposit the balance of the proceeds from the sale in his or her own name as Referee in an FDIC-insured bank where the Referee has an account for that purpose and shall make the following payments in accordance with RPAPL 1354:

1. The Referee's statutory fees for conducting the sale, which are \$1,100. Plaintiff shall compensate the Referee in the sum of \$350 for each adjournment or cancellation made on less than two business days' notice, unless the Referee caused the delay.
2. All taxes, assessments and water rates that are liens upon the property and monies necessary to redeem the property from any sales for unpaid taxes, assessments or water rates and any other amounts due in accordance with RPAPL 1354(2). The purchaser shall be responsible for interest and penalties accrued *after* the sale. The Referee shall not be responsible for the payment of penalties or fees pursuant to this appointment. The purchaser shall hold the Referee harmless from any such penalties or fees assessed;
3. The expenses of the sale and the advertising expenses as shown on the bills presented and certified by the Referee to be correct, copies of which shall be annexed to the report of sale.
4. The Referee shall also pay to the Plaintiff or its attorneys the following:
 - a. Amount Due from the Referee's Report: \$137,397.78 as of August 14, 2018, together with interest at the statutory rate from that date until the date of entry of this judgment, and then with interest from the date of entry of this judgment at the statutory rate until the date the deed is transferred; and plaintiff may add to the amount due any and all inspection fees, maintenance charges, common

charges, taxes insurance premiums or other advances necessary to preserve the property provided that receipts are provided to the Referee;

- b. Costs and Disbursements: \$395.00 to Plaintiff for costs and disbursements in this action with interest at the statutory judgment rate from the date of entry of this judgment;
- c. Attorneys' Fees: \$2,500 is hereby awarded to Plaintiff as additional reasonable legal fees with interest at the statutory rate from the date of entry of this judgment.

5. Surplus monies from the sale shall be paid into Court by the Referee within five days after receipt in accordance with RPAPL 1354(4); and it is further

ORDERED that if Plaintiff is the purchaser of the property, or in the event that the rights of the purchasers at the sale and the terms of sale under this judgment shall be assigned to or be acquired by Plaintiff, and a valid assigned is filed with the Referee, the Referee shall not require Plaintiff to pay in cash the entire amount bid at sale, but shall execute and deliver to Plaintiff or its assignee, a deed or deeds of the property sold upon the payment to said Referee of the amounts specified as 1, 2, and 3 above, and the Referee shall allow Plaintiff to pay the amounts specified in 2 and 3 above when it is recording the deed; that the balance of the bid, after deducting the amounts paid by Plaintiff shall be applied to the amount due to Plaintiff as specified in 4 above; that Plaintiff shall pay any surplus after applying the balance of the bid to the Referee, who shall deposit it in accordance with 5 above; and it is further

ORDERED that all expenses of recording the Referee's deed, including real property transfer taxes, which is not a lien upon the property at the time of sale, shall be paid by the plaintiff from the sale proceeds; and it is further

ORDERED that Plaintiff may seek to recover a deficiency judgment against defendants Alon Vaknin and Blake Vaknin a/k/a Blake A. Vaknin a/k/a Blake Mills Vaknin in accordance with RPAPL 1371 if applicable;

ORDERED that the property shall be sold in one parcel in "as is" physical order and condition, subject to any condition that an inspection of the property would disclose; any facts that an accurate survey of the property would show; any covenants, restrictions, declarations, reservations, easements, right of way, and public utility agreements of record, if any; any building and zoning ordinances of the municipality in which the liened property is located and possible violations of same; any rights of tenants or persons in possession of the subject property; prior liens of record, if any, except those liens addressed in RPAPL 1354, any equity of redemption of the United States of America to redeem the property within 120 days from the date of sale, any rights pursuant to CPLR 317, 2003 and 5015 or any appeal of the underlying action or additional litigation brought by any defendant or its successor or assignee contesting the validity of this foreclosure; and it is further

ORDERED that the purchaser be let into possession of the property upon production in hand of the Referee's Deed or upon personal service of the Referee's deed in accordance with CPLR 308; and it is further

ORDERED that the liens of Plaintiff other than the common charge liens that are at issue in this matter are also foreclosed as though Plaintiff was named as a defendant in this action; and it is further

ORDERED that defendants in this action and persons claiming through them and any person obtaining an interest in the property after the Notice of Pendency are barred and

foreclosed of all right, claim, lien, title, and interest in the property after the sale of the property;
and it is further

ORDERED that within **14 days** after completing the sale and executing the proper conveyance to the purchaser, the Referee shall file with the clerk a report under oath of the disposition of the proceeds of the sale and upload the report to NYSCEF if it is an e-filed case; and it is further

ORDERED that if the purchaser or purchasers at said sale default upon the bid or terms of sale, the Referee may place the property for resale without prior application to this Court unless Plaintiff's attorney elects to make such an application; and it is further

ORDERED that Plaintiff shall serve a copy of this judgment with notice of entry upon all the parties entitled to service, including the Referee appointed herein; and it is further

ORDERED that when the Referee files a report of sale, she or he shall also file a Foreclosure Action Surplus Monies Form; and it is further

ORDERED that Plaintiff shall file a written report with the Court within 5 months from the date of this judgment stating whether the sale has occurred and, if applicable, the outcome of the sale; and it is further

ORDERED that the Referee shall e-mail Thomas Maser (tmmaser@nycourts.gov) to inform the Court about the auction date; and it is further

ORDERED that, without further order of the Court, the referee shall be entitled to an additional fee of \$950 for conducting and attending a closing with a purchaser other than plaintiff, plus, if such a closing is scheduled for the referee's conference room, then the referee shall be entitled to a reasonable fee for use thereof, without further order of the Court.

A description of the premises is annexed hereto as Schedule A. The property is commonly known as 300 Albany Street, Unit 7I, New York, New York, 10280, Block 16, Lot 2472.

4/5/19

DATE

HON. ARLENE P. BLUTH

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED
<input type="checkbox"/>	SETTLE ORDER	
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	

<input type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
<input type="checkbox"/>	SUBMIT ORDER	
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

SCHEDULE A

THE Condominium Unit (the "Unit") known as Unit Number 7I in the building (the "Building") known as Hudson View West and by the Street Number 300 Albany Street, Borough of Manhattan, City, County and State of New York, said Unit being designated and described as Unit Number 7I in a certain declaration dated August 3, 1986 made by Hudson View Towers Associates and Battery Park City Authority pursuant to Article 9-B of the Real Property Law of the State of New York (the "Condominium Act") establishing a "qualified leasehold condominium" (as such term is defined in the Condominium Act) covering the Building and the land (the "Land") upon which the Building is situate (which Land is more particularly described in Exhibit A annexed hereto and by this reference made a part hereof) which declaration was recorded in the New York County Office of the Register of The City of New York on December 4, 1986 in Reel 1151P Page 2467 (which declaration is hereinafter referred to as the "Declaration"). This unit is also designated as Tax Lot 2472 in Block 16 of the Borough of Manhattan on the Tax Map of the Real Property Assessment Department of the City of New York and on the Floor Plans of the Building, certified by Conklin Rossant, on September 9, 1986 and filed with the Real Property Assessment Department of The City of New York on November 20, 1986 as Condominium Plan Number 360 and also filed in the New York County Office of the Register of the City of New York on December 4, 1986 as Map Number 4521;

TOGETHER with an undivided 1.5385 percent leasehold interest in the Common Elements (as such term is defined in the Declaration)

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

- BEGINNING at the corner formed by the intersection of the southerly side of Albany Street with the westerly side of South End Avenue;
- RUNNING THENCE south 77 degrees 31 minutes 29 seconds west along the southerly side of Albany Street, 133.58 feet;
- THENCE south 12 degrees 28 minutes 31 seconds east, 122 feet;
- THENCE north 77 degrees 31 minutes 29 seconds east, 128.53 feet to the westerly side of South End Avenue;
- THENCE along the westerly side of South End Avenue the following 2 courses and distances:
 - 1) Northerly along a curve bearing to the left having a radius of 1244.14 feet and a central angle of 5 degrees 9 minutes 54 seconds, a distance of 112.15 feet to a point of tangency.
 - 2) North 12 degrees 28 minutes 31 seconds west, 10 feet to the point or place of BEGINNING.

C

25x10

TOGETHER with the benefits of and subject to the burdens of an easement of pedestrian and vehicular ingress and egress as set forth, limited and delineated in a Declaration of Easement made by Battery Park City Authority dated as of March 23, 1984 recorded March 28, 1984 in Reel 778 page 44 over the following described parcel:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York and more particularly bounded and described as follows:

BEGINNING at a point in the southerly line of Albany Street, distant 108.58 feet westerly from the corner formed by the intersection of the westerly line of South End Avenue with the southerly line of Albany Street;

- 1) RUNNING THENCE south 12 degrees 28 minutes 31 seconds east, 122.00 feet;
- 2) THENCE south 77 degrees 31 minutes 29 seconds west, 182.00 feet;
- 3) THENCE north 12 degrees 28 minutes 31 seconds west, 122.00 feet to the southerly line of Albany Street;
- 4) THENCE north 77 degrees 31 minutes 29 seconds east along the southerly line of Albany Street, 25.00 feet;
- 5) THENCE north 12 degrees 28 minutes 31 seconds east, 97.00;
- 6) THENCE north 77 degrees 31 minutes 29 seconds east;
- 7) THENCE north 12 degrees 28 minutes 31 seconds west, 97.00 feet to the southerly line of Albany Street;
- 8) THENCE north 77 degrees 31 minutes 29 seconds east along the southerly line of Albany Street, 25.00 feet to the point or place of BEGINNING.