

Emigrant Bank v Alibayof
2019 NY Slip Op 31069(U)
April 8, 2019
Supreme Court, New York County
Docket Number: 850038/2018
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. 850038/2018

EMIGRANT BANK, F/K/A EMIGRANT SAVINGS BANK, AS
ASSIGNEE OF EMIGRANT MORTGAGE COMPANY, INC.,

MOTION DATE _____

Plaintiff,

MOTION SEQ. NO. 001

- v -

RONNY ALIBAYOF, JASON ROSENTHAL AS EXECUTOR OF
THE ESTATE OF MICHAL ALIBAYOF A/K/A MICHAL ALIBAYOV,
DECEASED, JONATHAN ALIBAYOF, SAMANTHA ALIBAYOF,
FLEET NATIONAL BANK, AMERICAN EXPRESS CENTURION
BANK, AMERICAN EXPRESS BANK FSB, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD, UNITED STATES OF
AMERICA (SOUTHERN DISTRICT), NEW YORK STATE
DEPARTMENT OF TAXATION AND FINANCE, JOHN DOE #1
THROUGH JOHN DOE #20

DECISION AND ORDER OF
REFERENCE

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 34, 35, 36, 37, 38,
39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the Summons, Complaint, and Notice of Pendency filed in this action on February
7, 2018, the Notice of Motion dated November 9, 2018, the affirmation of Plaintiff's Counsel
and the exhibits annexed thereto, the affidavit of Greg Williamson, Assistant Treasurer of
Emigrant Bank, together with the exhibits attached thereto, and all prior papers filed in this
action and prior proceedings had herein; and

Upon proof that each of the defendants herein has been duly served with the Summons
and Complaint in this action and required notices; and

Upon the answer of defendant Jason Rosenthal as executor of the estate of Michal
Alibayof a/k/a Michal Alibayov by his attorneys, Lugara PLLC,

And the court having held mandatory settlement conferences pursuant to
CPLR 3408 where defendant mortgagor did not appear or fulfill prior representations to reinstate

the loan and the Court released the case from the settlement part (NYSCEF Doc. No. 31); and

And it appearing that the time to answer the complaint by defendants RONNY ALIBAYOF, JONATHAN ALIBAYOF, SAMANTHA ALIBAYOF, FLEET NATIONAL BANK, AMERICAN EXPRESS CENTURION BANK, AMERICAN EXPRESS BANK FSB, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, UNITED STATES OF AMERICA (SOUTHERN DISTRICT), NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, JOHN DOE #1 THROUGH JOHN DOE #20 has expired; and

AND it appearing to the satisfaction of this court that this action was brought to foreclose a mortgage on real property located at 310 East 84th Street, New York, New York, 10028, Block 1546, Lot 47; it is hereby

ORDERED that the motion for summary judgment against Jason Rosenthal as executor of the estate of Michal Alibayof a/k/a Michal Alibayov is granted without opposition and that defendant's answer is stricken; and the branch of the motion for default judgment against the remaining defendants is granted without opposition; and it is further

ORDERED that Edward Lehner with an address of 180 Cabrini Boulevard, New York, NY 10033 (212) 928-4402, is hereby appointed Referee in accordance with RPAPL § 1321 to compute the amount due to Plaintiff for principal, interest and other disbursements advanced as provided for in the note and mortgage upon which this action is brought, and to examine whether the mortgaged property can be sold in parcels; and it is further

ORDERED that the Referee may take testimony pursuant to RPAPL § 1321; and it is further

ORDERED that by accepting this appointment the Referee certifies that she/he 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, pursuant to CPLR 8003(a), and in the discretion of the court, a fee of \$350 shall be paid to the Referee for the computation of the amount due and upon the filing of her/his report and the Referee shall not request or accept additional compensation for the computation unless it has been fixed by the court in accordance with CPLR 8003(b); 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 plaintiff shall forward all necessary documents to the Referee within 30 days of the date of this order and shall *promptly* respond to every inquiry made by the referee (promptly means within two business days); and it is further

ORDERED that plaintiff must bring a motion for a judgment of foreclosure and sale within 30 days of receipt of the referee’s report; and it is further

ORDERED that if plaintiff fails to meet these deadlines, then the Court may *sua sponte* vacate this order and direct plaintiff to move again for an order of reference and the Court may *sua sponte* toll interest depending on whether the delays are due to plaintiff’s failure to move this litigation forward; and it further

ORDERED that “Johnny Doe” is being added to the caption as a tenant, and that “John Doe #2” through John Doe #20” be removed as party defendants in this action as no occupants

reside at the property and the caption of this action be amended to reflect these changes; and it is further

ORDERED that the caption shall read as follows:

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

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Emigrant Bank f/k/a Emigrant Savings Bank, as
assignee of Emigrant Mortgage Company, Inc.,

Plaintiff(s),

v.

Ronny Alibayof, Jason Rosenthal as executor of
the estate of Michal Alibayof a/k/a Michal
Alibayov, deceased, Jonathan Alibayof,
Samantha Alibayof, Fleet National Bank,
American Express Centurion Bank, American
Express Bank FSB, New York City
Environmental Control Board, United States of
America (Southern District), New York State
Department of Taxation and Finance, "Johnny
Doe,"

Defendant(s).

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and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and 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 and added 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 (ww.nycourts.gov/supctmanh)].

ORDERED that Plaintiff shall serve a copy of this Order with notice of entry on all parties and persons entitled to notice, including the Referee appointed herein; and it

Next Conference: July 30, 2019 at 2:15 p.m. If a motion for a judgment of foreclosure and sale has been made prior to the conference, then an adjournment may be obtained; consult the foreclosure rules of this Part in order to obtain an adjournment. If a conference is necessary, come prepared to explain the reasons for the delay.

4.8.19

DATE

ARLENE P. BLUTH, J.S.C.
HON. ARLENE P. BLUTH

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE