

40 Broad St. Portfolio, LLC v LM Realty 24C, LLC

2019 NY Slip Op 31076(U)

April 10, 2019

Supreme Court, New York County

Docket Number: 850254/2017

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. 850254/2017

40 BROAD STREET PORTFOLIO, LLC,

MOTION DATE 03/14/2019

Plaintiff,

MOTION SEQ. NO. 003

- v -

LM REALTY 24C, LLC, BOARD OF MANAGERS OF THE SETAI
CONDOMINIUM RESIDENCES AT 40 BROAD STREET, NEW
YORK STATE DEPARTMENT OF TAXATION AND FINANCE,

**DECISION, JUDGMENT OF
FORECLOSURE AND SALE**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51

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

Upon the Summons, Complaint, and Notice of Pendency filed in this action on November 2, 2017, the Notice of Motion dated February 21, 2019, the affirmation by plaintiff's counsel, together with the papers and exhibits annexed thereto, all in support of Plaintiff's motion for a Judgment of Foreclosure and Sale; and

Upon proof that each of the defendants herein has been duly served with the Summons and Complaint in this action, and has voluntarily appeared either personally or by an attorney or has not served any answer to the Complaint or otherwise appeared, nor had their time to do so extended; and Plaintiff having established to the court's satisfaction that a judgment against defendants is warranted; and

Upon plaintiff's showing pursuant to RPAPL 1321(2) that defendants are not absent and compliance with CPLR 3215(g)(3)(iii); and

A Referee having been appointed to compute the amount due to Plaintiff upon the bond/note and mortgage set forth in the Complaint and to examine whether the mortgaged

property can be sold in parcels; and

Upon reading the report of the Referee Elaine Shay, who was appointed to calculate the amount due to plaintiff, which found the amount due to be \$331,678.53 as of January 1, 2019 and that interest accrues daily at \$93.15 and that the property may not be sold in parcels;

Upon proof of due notice of this motion upon all parties entitled to receive such notice; and upon all the prior proceedings and papers filed herein, it is hereby

ORDERED and ADJUDGED that the motion by plaintiff to confirm the Referee's report and for a judgment of foreclosure and sale is granted without opposition; and it is further

ORDERED that the mortgaged property described in the complaint and as described in this judgment, or such part thereof as may be sufficient to discharge the mortgage debt, the expense of sale and the costs of this action as provided in the RPAPL 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 with an address at 800 Third Avenue Suite 2800, New York, New York, 10022, (212) 520-2690 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*; 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/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 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 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 \$331,678.53 with daily interest at \$93.15 from January 1, 2019 until the date of entry of this judgment (as

calculated by the Clerk of the Court), together with interest at the contract rate of 12% per annum upon the principal from the date of entry until the deed is transferred;

b. Costs and Disbursements: \$_____ (to be filled in by the Clerk upon presentation of proper papers therefor);

c. Attorneys' Fees are hereby severed, and plaintiff shall file a note of inquest for same.

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 defendant LM REALTY 24C, LLC, in accordance with RPAPL 1371 if applicable;

ORDERED that if the property is 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 mortgaged 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 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 mortgaged 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 elect to make such an application; and it is further

ORDERED that Plaintiff shall serve a copy of this judgment with notice of entry upon the owner of the equity of redemption, any tenants named in this action, and any other parties entitled to service, including the Referee appointed herein; and it is further

ORDERED that nothing herein shall be deemed to relieve Plaintiff of any obligation imposed by RPAPL 1307 or 1308 to secure and maintain the property until ownership of the property has been transferred and the deed duly recorded; 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 also upload this document to NYSCEF; and it is further

ORDERED that Plaintiff shall file a written report with the Court (via NYSCEF) 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: 40 Broad Street, Unit 24C, New York, New York 10004, Block 24, Lot 1101.

4.10.19

DATE

HON. ARLENE P. BLUTH

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER


CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE

	Foreclosure Search
	Title No.: 116848-NY
Schedule A – Legal Description	

The Condominium Unit (hereinafter called the "Unit") in the building (hereinafter called the "Building") known as The Setai Condominium Residences at 40 Broad Street and by the street number 40 Broad Street, New York, New York, 10004, Borough of Manhattan, City, County and State of New York said Unit being designated and described as Unit No. 24C in that certain declaration dated as of June 18, 2008, made by Grantor, Declarant, pursuant to Article 9-B of the Real Property Law of the State of New York (hereinafter called the "Condominium Act"), establishing condominium ownership of the Building and the land (hereinafter called the "Land") upon which the Building is situate, which declaration was recorded in the New York County Office of the Register of the City of New York (the "City Register's Office") on 06/24/2008 as CRFN 2008000253168, (which declaration, and any amendments thereto, are hereinafter collectively called the "Declaration"). The Unit is also designated as Tax Lot 1101 in Block 24 of the Borough of Manhattan on the Tax Map of the Real Property Assessment Bureau of The City of New York and on the Floor Plans of the Building, certified by HH Building Consulting & Architecture, P.C. on 06/18/2008, as Condominium Plan No. 1912 and also filed in the City Register's Office on 06/24/2008, as Condominium Plan No. 1912.

Together with an undivided 0.24701% percentage interest in the Common Elements (as such term is defined in the Declaration) of the Setai Condominium Residences at 40 Broad Street.

DESCRIPTION OF THE LAND:

BEGINNING at a point in the easterly line of New Street, distant 87 feet 11 5/8 inches southerly from the corner formed by the intersection of the southerly line of Exchange Place with the easterly line of New Street;

RUNNING THENCE easterly along a line forming an angle of 79 degrees 52 minutes 50 seconds on its southerly side with the easterly line of New Street, said line being along the southerly face of the southerly wall of the building on premises adjoining to the north, 43 feet 4 3/8 inches;

THENCE still easterly along a line forming an angle of 179 degrees 20 minutes 05 seconds on its northerly side with the preceding course, said line being along the southerly face of the southerly wall of the building on premises adjoining to the north, 102 feet 7 1/2 inches to the westerly line of Broad Street;

THENCE southerly along the westerly line of Broad Street, 40 feet 6 1/4 inches to an angle point therein;

THENCE still southerly along the westerly line of Broad Street forming an angle of 183 degrees 02 minutes 25 seconds on its westerly side with the preceding course, 41 feet 5 1/4 inches;

THENCE westerly along a line forming an angle of 89 degrees 51 minutes 10 seconds on its northerly side with the preceding course and through an old party wall 84 feet 5 1/4 inches;

THENCE still westerly along a line forming an angle of 186 degrees 20 minutes 40 seconds on its southerly side with the preceding course and part of the way through said old party wall, 74 feet 3 1/2 inches to easterly line of New Street; and

THENCE northerly along the easterly line of New Street, 126 feet 4 7/8 inches to the point or place of **BEGINNING**.

TOGETHER WITH the benefits of that certain Air Shaft Agreement made by and among Broad Street Realty, Inc., as former owner of the Land, Dixon International Holdings (U.S.A.), Inc. and Tulabro Realty Corporation N.V. and Carlyle Real Estate Limited Partnership XI, dated May 25, 1982, recorded June 3, 1982 in Reel 624 Page 1610, as modified by Modification of Air Shaft Agreement made by and among Broad Street Realty, Inc., Dixon International Holdings (U.S.A.), Inc. and Tulabro Realty Corporation N.V. and Mazal American Partners, dated as of September 12, 1985, recorded October 22, 1985 in Reel 974 Page 1715.

EXHIBIT 1 TO COMPLAINT

Premises known as: 40 Broad Street, Unit 24C, New York, NY 10004

Known and designated on the tax map of New York County as: 40 Broad Street, Unit 24C, New York, NY 10004

District
Section
Block 24
Lot 1101