

Consumers Fed. Credit Union v Freidman
2019 NY Slip Op 31342(U)
May 6, 2019
Supreme Court, New York County
Docket Number: 850147/2018
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. 850147/2018

CONSUMERS FEDERAL CREDIT UNION,

MOTION DATE 04/15/2019

Plaintiff,

MOTION SEQ. NO. 001

- v -

EVGENY FREIDMAN, EAST 65TH STREET OWNERS
LLC, ELLEN M. WALKER AND ETHAN GERBER, TRUSTEES OF
136 EAST 65TH STREET IRREVOCABLE TRUST, ELLEN M.
WALKER AND EVERETT ABITBOL, TRUSTEES OF THE LINDY
FUNDING TRUST, CITIBANK, N.A., CAPITAL ONE TAX
MEDALLION FINANCE N/K/A CAPITAL ONE EQUIPMENT
FINANCE CORP., STERLING NATIONAL BANK, SIGNATURE
FINANCIAL LLC, WORKERS COMPENSATION BOARD OF NEW
YORK STATE, NEW YORK STATE DEPARTMENT OF TAXATION
AND FINANCE, BETHPAGE FEDERAL CREDIT UNION, COHEN
CLAIR LANS GREIFER & THORPE LLP, BANCO POPULAR
NORTH AMERICA, BST & CO. CPAS, LLP, JUDITH E. WHITE,
NYC DEPARTMENT OF ENVIRONMENTAL PROTECTION, NYC
DEPARTMENT OF FINANCE, JOHN DOE, JANE DOE

DECISION AND ORDER OF
REFERENCE

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 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 - DEFAULT

Upon the Summons, Complaint, and Notice of Pendency filed in this action on May 25, 2018, the Notice of Motion dated March 12, 2019, together with all the papers filed in support of the motion and the exhibits annexed 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 the court having held a mandatory settlement conference pursuant to CPLR 3408 and releasing the case from that part on December 18, 2018 (NYSCEF Doc. No. 29);

And it appearing to the satisfaction of this court that this action was brought to foreclose a mortgage on real property located at 165 East 65th Street, New York, New York 10065, it is hereby

ORDERED that the motion for a default judgment by plaintiff is granted without opposition as against all defendants except for defendant Sterling National Bank; and plaintiff is granted summary judgment against Sterling National Bank as this defendant answered (NSYCEF Doc. No. 32) pursuant to plaintiff's "for such other and further relief clause" in the notice of motion and this defendant's affirmative defenses are severed and dismissed; and it is further

ORDERED that Elaine Shay, 800 Third Avenue, Suite 2800 New York, NY 10022, 212-520-2690, 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 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

Next Conference: September 10, 2019 @ 2:15 p.m. If plaintiff has moved for a judgment of foreclosure and sale before the conference, then plaintiff can seek an adjournment. Please consult the part's rules for information about how to obtain an adjournment. An appearance is

required if a motion for a JFS has not been made; counsel appearing for plaintiff must come prepared to explain the delay or interest may be tolled.

5/6/19

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