

Metropolitan Life Ins. Co. v Steiner
2019 NY Slip Op 31694(U)
June 12, 2019
Supreme Court, New York County
Docket Number: 850050/2017
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT:	<u>HON. ARLENE P. BLUTH</u>	PART	<u>IAS MOTION 32</u>
	<i>Justice</i>		
-----X			
	METROPOLITAN LIFE INSURANCE COMPANY,	INDEX NO.	<u>850050/2017</u>
	Plaintiff,	MOTION DATE	<u>06/06/2019</u>
	- v -	MOTION SEQ. NO.	<u>001</u>

MARLENE STEINER, BOARD OF MANAGERS OF THE BRIDGE TOWER CONDOMINIUM, UNITED STATES OF AMERICA O/B/O INTERNAL REVENUE SERVICE, WORKER'S COMPENSATION BOARD OF NEW YORK STATE, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, JOHN DOE 1 TO JOHN DOE 25, SAID NAMES BEING FICTITIOUS, THE PERSONS OR PARTIES INTENDED BEING THE PERSONS, PARTIES, CORPORATIONS OR ENTITIES, IF ANY, HAVING OR CLAIMING AN INTEREST IN OR LIEN UPON THE MORTGAGED PREMISES DESCRIBED IN THE COMPLAINT

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49

were read on this motion to/for JUDGMENT - SUMMARY

The motion by plaintiff for summary judgment is granted.

Background

This foreclosure action concerns an apartment located at 401 East 60th Street in Manhattan. In 2006, defendant Steiner executed a note for \$1 million secured by the subject property. Plaintiff claims that Steiner failed to make various payments in 2015 and 2016.

In opposition, Steiner claims there is an issue of fact as to what she owes and what her obligations are under the terms of the mortgage. Steiner also claims that plaintiff has engaged in dual tracking by making the instant motion and by pursuing loss mitigation options with Steiner. Steiner contends that plaintiff has not notified her or her counsel whether her loss mitigation application has been approved or denied.

In reply, plaintiff denies that it is engaged in dual tracking and insists that Steiner has failed to provide all the information requested by plaintiff. Plaintiff concludes that it cannot conduct a review for a loan modification package without having all the necessary information.

Discussion

The Court grants the motion. As an initial matter, the purpose of the instant motion is to appoint a referee to compute the amount plaintiff is due—therefore, how much Steiner owes is not an issue of fact. And the Court finds that plaintiff is not engaged in dual tracking. Plaintiff submitted evidence showing that Steiner has not submitted a full loss mitigation application for review (NYSCEF Doc. No. 49, exh A).

Simply because Steiner is trying to seek loss mitigation does not implicate the doctrine of dual tracking. Under that interpretation, a borrower could delay a case indefinitely by continually submitting loss mitigation applications. Dual tracking does not exist where plaintiff is not actively considering the merits of a loss mitigation application.

Accordingly, it is hereby

ORDERED that the motion by plaintiff for summary judgment against defendant Marlene Steiner is granted and her answer, affirmative defenses and counterclaim are severed and dismissed; and it is further

ORDERED that plaintiff is granted a default judgment against the non-appearing defendants; and it is further

ORDERED that Jeffrey Miller, 32 Broadway, 13th Floor,
NY NY 10004 212-227-4200, 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 is further

ORDERED that John Doe 1 through 25 be removed from the caption, and the caption shall read as follows:

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

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METROPOLITAN LIFE INSURANCE
COMPANY,
Plaintiff,

v.

MARLENE STEINER, BOARD OF MANAGERS
OF THE BRIDGE TOWER CONDOMINIUM,
UNITED STATES OF AMERICA O/B/O
INTERNAL REVENUE SERVICE, WORKER'S
COMPENSATION BOARD OF NEW YORK
STATE, NEW YORK STATE DEPARTMENT
OF TAXATION AND FINANCE,
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 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 (www.nycourts.gov/supctmanh)); and it is 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: November 26, 2019 at 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.

6/12/19
DATE


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

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE