

10WEA Realty, LLC v LM Realty 10C, LLC
2019 NY Slip Op 31791(U)
June 14, 2019
Supreme Court, New York County
Docket Number: 850159/2018
Judge: Nancy M. Bannon
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. NANCY M. BANNON

PART

IAS MOTION 42EFM

Justice

-----X

10WEA REALTY, LLC,

Plaintiff,

- v -

LM REALTY 10C, LLC, L&M CONSULTING GROUP, INC.,
BOARD OF MANAGERS OF ONE RIVERSIDE PARK
CONDOMINIUM, NEW YORK STATE DEPARTMENT OF
TAXATION AND FINANCE, CITY OF NEW YORK
ENVIRONMENTAL CONTROL BOARD, JOHN DOE #1
THROUGH JOHN DOE #10

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24

were read on this motion to/for

JUDGMENT - DEFAULT

In this action, the plaintiff mortgagee, 10WEA Realty, LLC (10WEA), seeks to foreclose a purchase money mortgage given to nonparty 50 Riverside Blvd LLC (50 Riverside) by the defendant LM Realty 10C, LLC (the mortgagor), to secure its repayment of a \$2,500,000.00 loan from 50 Riverside. The original mortgage note, dated December 4, 2015, provided for a maturity date of July 1, 2016. By modification agreement dated July 1, 2016, the maturity date was changed to December 31, 2016. The original mortgage note, as modified, was assigned by 50 Riverside to the defendant L&M Consulting Group, Inc. (L&M), on May 5, 2017. L&M assigned the note to the plaintiff on December 13, 2017. By mortgage note dated December 13, 2017, the mortgagor gave the plaintiff a purchase money mortgage securing repayment of \$1,000,000.00 to the plaintiff. Each of the mortgages at issue in this case covered the premises known as 50 Riverside Boulevard, Unit 10C, New York, New York 10069, Block: 1171, Lot: 2565 (the premises).

The mortgages were consolidated pursuant to a consolidation, extension, and modification agreement dated December 13, 2017 (the CEMA). The CEMA was executed in conjunction with a consolidated note (the Consolidated Note). Pursuant to the Consolidated Note, the mortgagor promised to pay \$3,000,000.00 to the plaintiff by June 12, 2018. The Consolidated Note further provided that there shall be default interest at a rate of 16.5% per annum in the event of the mortgagor's default, and that upon such default, the entire loan amount may be accelerated. On December 20, 2017, the mortgagor executed an amendment (the Amendment) to the Consolidated Note which required it to pay quarterly interest, with the first payment due on March 13, 2018. The Amendment provided that failure to pay any amount, including an interest amount, on or before its due date would result in the mortgagor's default.

The mortgagor failed to make its first payment on March 13, 2018, or any payments thereafter. The plaintiff now moves pursuant to CPLR 3215 for leave to enter a default judgment against all of the defendants, foreclosing any interest they may have in the mortgagor's share in the premises, and for an order of reference appointing a referee to compute and report on the issue of damages to be assessed against the mortgagor. The motion is granted, without opposition.

In support of its motion, the plaintiff submits a copy of the summons and complaint and the affidavits of service of process upon all of the defendants. The plaintiff also submits an attorney's affirmation, explaining that none of the defendants answered the complaint or otherwise appeared in the action, and an affidavit of Alexander Orsa, the plaintiff's managing member, who has knowledge of the plaintiff's business records. The plaintiff also includes, with its motion papers, a copy of the mortgages and notes, including the assignments, the CEMA, the Consolidated Note, and the Amendment, which identify the plaintiff as the mortgagee and obligee. In his affidavit, Orsa avers that the mortgagor executed and tendered the CEMA and Consolidated Note to the plaintiff on December 13, 2017, and the Amendment on December 20, 2017, that the plaintiff was in possession of the mortgage on the premises and Consolidated Note and Amendment when this action was commenced, and that, beginning on March 13, 2018, and for each month thereafter, the mortgagor failed to pay any of its obligations to the plaintiff. No defendant has submitted opposition to the motion.

The plaintiff thus satisfied the requirements of CPLR 3215(f), which provides that, on a motion for leave to enter a default judgment, the movant must file proof of service of the summons and complaint upon the nonappearing defendants, proof of the facts constituting the claim, and proof of the default (see Rivera v Correction Officer L. Banks, 135 AD3d 621, 622 [1st Dept 2016]). Moreover, the plaintiff moved for this relief on less than one year after the defendants defaulted in this action by failing to answer the amended complaint. See CPLR 308(2); 320(a), 3215(c); Gerschel v Christensen, 128 AD3d 455, 457 (1st Dept 2015). In addition, the plaintiff satisfied the notice requirements for this motion, as articulated in CPLR 3215(g).

Accordingly, and upon the foregoing papers, it is

ORDERED that the plaintiff's motion is granted, without opposition, to the extent that it is granted leave to enter a default judgment of foreclosure against LM Realty 10C, LLC, with the full amount of damages assessed against them to be determined by a referee, and to enter a default judgment against the defendants L&M Consulting Group, Inc., Board of Managers of One Riverside Park Condominium, New York State Department of Taxation and Finance, City of New York Environmental Control Board, and John Doe #1 through John Doe #10, foreclosing them from asserting any interest in the mortgagor's share in the subject real property located at 50 Riverside Boulevard, Unit 10C, New York, New York 10069 (Block: 1171, Lot: 2565); and it is further,

ORDERED that a Judicial Hearing Officer (JHO) or Special Referee shall be designated to hear and report to this Court on the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose:

1. the issue of the amount due to the plaintiff from LM Realty 10C, LLC, for unpaid obligations under the note and mortgage; and

and it is further,

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119M, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon which the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the "References" link under "Courthouse Procedures"), shall assign this matter to an available JHO/Special Referee to hear and report as specified above, and it is further

ORDERED that counsel for plaintiff shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or email, an Information Sheet (which can be accessed at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part, and it is further,

ORDERED that the plaintiff shall serve a proposed accounting within 24 days from the date of this order and the defendants shall serve objections to the proposed accounting within 20 days from service of plaintiff's papers and the foregoing papers shall be filed with the Special Referee Clerk at least one day prior to the original appearance date in Part SRP fixed by the Clerk as set forth above, and it is further,

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part, and it is further

ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4320[a]) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issues specified above shall proceed from day to day until completion, and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts (22 NYCRR 202.44).

This constitutes the Decision and Order of the court.

<u>6/14/2019</u>			
DATE		NANCY M. BANNON J.S.C. HON. NANCY M. BANNON	
CHECK ONE:	☐	CASE DISPOSED	☒ NON-FINAL DISPOSITION
	☒	GRANTED	☐ GRANTED IN PART
	☐	☐ DENIED	☐ OTHER
APPLICATION:	☐	SETTLE ORDER	☐ SUBMIT ORDER
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT
			☐ REFERENCE