

LCP Jerry LLC v Hello Newman, Inc.

2019 NY Slip Op 32226(U)

July 24, 2019

Supreme Court, New York County

Docket Number: 850105/2015

Judge: Joel M. Cohen

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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. JOEL M. COHEN PART IAS MOTION 3EFM

Justice

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INDEX NO. 850105/2015

LCP JERRY LLC,

MOTION DATE 05/29/2019

Plaintiff,

MOTION SEQ. NO. 005

- v -

HELLO NEWMAN, INC., DORIS KORNISH, PHILIP HARTMAN, MO PITKIN HOLDINGS LLC, MONTY KARP REALTY LLC, PIZZAMONIUM, INC., TWO BOOTS OF 42ND STREET LLC, SWEET JANE LLC, PIONEER THEATER LLC, LARRY TATE OF NEW YORK INC., GELSIMINA INC., 37A RESTURANT INC., NEW YORK CITY DEPARTMENT OF FINANCE, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, ROBERT ANDRIANI, CAROL ANDRIANI, SONDRA WINTER, BARBARA WINTER, MATTHEW HANDAL, TRACY HANDAL, KATIE HANDAL, ADMINISTRATOR OF THE SMALL BUSINESS ADMINISTRATION AN AGENCY OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA, KNUCKLEKNEE LLC, JANE HARTMAN,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223

were read on this motion to

VACATE JUDGMENT, RELIEVE REFEREE AND CANCEL NOTICE OF PENDENCY

Upon the foregoing documents:

Plaintiff, LCP Jerry LLC, seeks an Order vacating the Notice of Pendency filed on March 6, 2015 in connection with the real property known as 113 East 2nd Street, New York, New York 10009 (Block: 429, Lot: 19) ("the Property"). Plaintiff also seeks to relieve Rubin Ferziger, Esq. (the "Referee") of his duties as Referee and any obligations and requirements thereunder. Finally, Plaintiff seeks to vacate and set aside the

judgment of foreclosure and sale with prejudice. This motion is unopposed. For the following reasons, this motion is Granted.

By way of background, this action was commenced to foreclose a Mortgage, Consolidation, Modification and Extension Agreement (the "Mortgage"), which encumbers the Property. The Mortgage was taken out by Defendant Hello Newman, Inc. in favor of HSBC Bank, USA National Association ("HSBC"), dated August 4, 2005, in the principal sum of \$1,878,346.91. The Mortgage was recorded on November 16, 2005 and, on January 20, 2015, HSBC assigned the mortgage to Plaintiff pursuant to an Assignment of Mortgage (the "AOM") (NYSCEF 215).

Plaintiff commenced this action by filing a Summons and Verified Complaint for a Foreclosure action on March 6, 2015. Additionally, a Notice of Pendency (the "NOP") was contemporaneously e-filed through NYSCEF on March 6, 2015. Pursuant to an Order Granting Summary Judgment, Appointing Referee to Compute Amount Due and Other Relief (the "Referee Order") dated May 9, 2016, the Honorable Jeffrey K. Oing appointed the Referee to compute the amount due and owing to Plaintiff and to determine if the Property should be sold in one parcel. (NYSCEF 220).

Pursuant to a Judgment of Foreclosure and Sale dated August 22, 2016, Judge Oing ordered a sale of the Property to pay Plaintiff's Note and Mortgage. Accordingly, a foreclosure sale was scheduled for October 19, 2016. On October 17, 2016 Defendant Hello Newman, Inc. filed for Chapter 11 bankruptcy relief which resulted in the stay of the instant foreclosure action.

On September 24, 2018, the Hon. Shelley C. Chapman, United States Bankruptcy Judge, Southern District of New York, ordered the sale of the Property.

(NYSCEF 222). Pursuant to a Chapter 11 Plan that the Bankruptcy Court confirmed on January 16, 2019, the Property was sold. Thereafter, after renegotiations, the Plaintiff agreed on a settlement amount, which was paid by the Debtor's Trustee to the Plaintiff on or about March 28, 2019 to satisfy the Note and Mortgage.

In light of the settlement, Plaintiff now seeks to: i) vacate the Judgment of Foreclosure and Sale dated August 22, 2016; (ii) discharge Rubin Ferziger, Esq. from his duties as Referee in this matter; (iii) cancel the Notice of Pendency filed in this action on March 6, 2015; and (iv) discontinue the action without prejudice.

Pursuant to the plain language of CPLR§ 6514(a), "the court, upon motion of any person aggrieved and upon such notice as it may require, shall direct any county clerk to cancel a notice of pendency, if ... the action has been settled, discontinued or abated". Therefore, due to the settlement, the Notice of Pendency shall be cancelled, and the Referee is relieved of his duties in this matter.

Therefore, is it:

ORDERED, that Plaintiff's Motion is Granted; and it is further

ORDERED that the County Clerk of New York County is directed, upon payment of the proper fees, if any, to cancel the Notice of Pendency filed with the New York County Clerk's Office on March 6, 2015, in connection with the real property commonly known as 113 East 2nd Street, New York, New York 10009 (Block: 429, Lot: 19) (the "Property") and the Clerk of the County of New York is hereby directed to enter upon the margin of the record the same a Notice of Cancellation referring to this order; and it is further

ORDERED that Rubin Ferziger, Esq. (the "Referee") who was appointed herein to sell the Property pursuant to the Judgment of Foreclosure and Sale, dated August 22, 2016 be, and is hereby, relieved of his duties as Referee of any and all obligations and requirements thereunder; and it is further

ORDERED that the Judgment of Foreclosure and Sale, be vacated and set aside with prejudice without further costs to either party against the other; and it is further

ORDERED that the above entitled action be discontinued with prejudice and without any further costs to any party; and it is further

ORDERED that the Clerk of the County of New York be served with a copy of this order with Notice of Entry.

This constitutes the Decision and Order of the Court.

7/24/2019
DATE


JOEL M. COHEN, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION OTHER

APPLICATION: GRANTED SETTLE ORDER SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE