

Empire State Bank v 321 E. 84th St. Owners, Inc.

2019 NY Slip Op 32656(U)

September 5, 2019

Supreme Court, New York County

Docket Number: 850107/2018

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. 850107/2018

EMPIRE STATE BANK,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 001

- v -

321 EAST 84TH STREET OWNERS, INC., MARINO
INSTITUTE OF CONTINUING LEGAL EDUCATION,
INC., MARINO BAR REVIEW, LLC, MARINO LEGAL
EDUCATION, LLC, BLACK'S LAW LEGAL PUBLISHING
INC., NEW YORK CITY ENVIRONMENTAL CONTROL
BOARD, EMILY MARINO aka EMILY GRUFFERMAN aka
EMILY GRUFFERMAN-MARINO, JOHN DOE #1

**- DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 50, 51

were read on this motion to/for

DISMISSAL

The motion to dismiss by defendant Emily Marino aka Emily Grufferman aka Emily Grufferman-Marino is denied. The cross-motion by plaintiff for summary judgment and to appoint a referee to compute is granted.

Background

This foreclosure action arises out of a property owned by Marino located at 321 East 84th Street in Manhattan. Marino claims that she has completed renovations at the property and it now has three units, one of which she resides in. Marino contends that she never received any notice about the instant foreclosure until she received a copy of the complaint. She argues that the case should be dismissed because she never received the RPAPL 1303 and 1304 notices that are condition precedents to filing a foreclosure action.

In opposition and in support of its cross-motion, plaintiff claims that it was not required to serve a notice pursuant to RPAPL 1303(1)(a) because the building contains more than four units. Plaintiff contends that the Certificate of Occupancy demonstrates that there are seven units in this property. Plaintiff argues that it complied with RPAPL 1303(1)(b) by posting a notice at the building (as is permitted under RPAPL 1303(1)(4)). Plaintiff also claims that it did not have to send an RPAPL 1304 notice because the borrower is a corporation (defendant 321 East 84th Street Owners, Inc.).

Discussion

The Court grants plaintiff's cross-motion and denies Marino's motion to dismiss. RPAPL 1303(1) provides that: "The foreclosing party in a mortgage foreclosure action, involving residential real property shall provide notice to: (a) any mortgagor if the action relates to an owner-occupied one-to-four family dwelling; and (b) any tenant of a dwelling unit in accordance with the provisions of this section."

The documentary evidence submitted by plaintiff shows that the building has more than four units (*see* NYSCEF Doc. No. 41 [Certificate of Occupancy]; NYSCEF Doc. No. 42 [HPD printout showing the building has seven units]). Marino did not provide sufficient evidence to counter these records. While Marino may, in fact, have renovated the property reduce the number of units that does not compel the Court to dismiss the case. When plaintiff started the case, all the relevant evidence suggested that it was a seven-unit building. Moreover, plaintiff was entitled to post the notice at the building (*see* RPAPL1303[1][4]) and plaintiff insists it complied with this statutory requirement. And Marino does not deny that the notices were posted; she simply says she didn't receive a copy.

Marino's contention about RPAPL 1304 also fails because the property is owned by a corporate entity. RPAPL 1304(6)(i) defines a home loan as one in which "The borrower is a natural person." Therefore, Marino was not entitled to receive an RPAPL 1304 notice.

Accordingly, it is hereby

ORDERED that the motion by defendant Emily Marino aka Emily Grufferman aka Emily Grufferman-Marino to dismiss is denied and the cross-motion by plaintiff for a summary judgment against this defendant and for a default judgment against all non-appearing defendants is granted; and it is further

ORDERED that the answer and affirmative defenses of defendant Emily Marino aka Emily Grufferman aka Emily Grufferman-Marino are severed and dismissed; and it is further

ORDERED that Ron Zezima, Esq. with an address of 271 North Avenue, # Suite 908, New Rochelle, NY 10801 914-633-5600 is hereby appointed Referee in

accordance with RPAPL § 1321 to compute the amount due to Plaintiff and to examine whether the premises 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 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 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 himself or paying funds to himself 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" be removed as a party defendant in this action; and it is further

ORDERED that the caption shall read as follows:

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

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EMPIRE STATE BANK,

Plaintiff,

v.

321 EAST 84TH STREET OWNERS,
INC.,MARINO INSTITUTE OF CONTINUING
LEGAL EDUCATION, INC.,MARINO BAR
REVIEW, LLC,MARINO LEGAL
EDUCATION, LLC,BLACK'S LAW LEGAL
PUBLISHING INC.,NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD,
EMILY MARINO aka EMILY GRUFFERMAN
aka EMILY GRUFFERMAN-MARINO,

Defendant(s).

-----X
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 substituted pursuant hereto; 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: January 28, 2020 @ 2:15 p.m. If a motion for judgment of foreclosure and sale has been filed, plaintiff may seek an adjournment of the conference. Please consult this

part's rules for information on how to obtain an adjournment. If a motion has been made, then a conference is required to explore the reasons for the delay.

9/5/19

DATE

ARLENE P. BLUTH, J.S.C.

HON. ARLENE P. BLUTH

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: