

**Board of Mgrs. of the Croft Bldg. Condominium v  
Dechabert**

2019 NY Slip Op 32703(U)

September 11, 2019

Supreme Court, New York County

Docket Number: 153754/2019

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. 153754/2019

THE BOARD OF MANAGERS OF THE CROFT BUILDING
CONDOMINIUM,

MOTION DATE 06/27/2019

Plaintiff,

MOTION SEQ. NO. 001

- v -

JAN DECHABERT, NEW YORK CITY DEPARTMENT OF
FINANCE PARKING BUREAU, JOHN DOE #1-10, JANE DOE #1-
10

DECISION AND ORDER OF
REFERENCE

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14,
15, 16, 17, 18, 19

were read on this motion to/for Summary Judgment and Appoint Referee

Plaintiff's motion (1) for summary judgment against defendant Jan DeChabert (2) to
appoint a referee to compute the amount due to plaintiff (3) to strike the affirmative defenses set
forth in DeChabert's answer and (4) for default judgment against the remaining defendants for
failure to appear is granted without opposition.

Background

This action was brought to foreclose a common charge lien on the property located at
71 Nassau Street, Unit 7A, New York, New York. To date, plaintiff alleges that defendant
DeChabert owes a total of \$48,653.39. DeChabert is the only defendant <sup>of the moving papers,</sup> ~~that~~ <sup>who</sup> has interposed an
answer. The answer asserts thirteen affirmative defenses.<sup>1</sup>

<sup>1</sup> All of defendant DeChabert's affirmative defenses are presented as bare legal conclusions without any factual
support.

HON. ARLENE P. BLUTH

Plaintiff brings this motion for summary judgment on its cause of action to foreclose its lien for unpaid charges and on its cause of action against DeChabert for breach of contract.

On its first cause of action, plaintiff alleges that DeChabert was obligated to pay common charges pursuant to Article II of the condo bylaws (NYSCEF Doc. No. 12). When DeChabert failed to remit common charges, plaintiff filed a Notice of Lien for unpaid common charges (NYSCEF Doc. No. 3).

On its breach of contract claim, plaintiff alleges that defendant agreed to be bound by the condo's bylaws which stated defendant was obligated to pay common charges together with late charges, special assessments and interest if applicable. Defendant breached the bylaws by failing to remit the common charges and other sums.

#### **Discussion**

Upon the Summons and Complaint filed in this action on April 11, 2019, Notice of Pendency filed on June 4, 2019, the Notice of Motion dated June 7, 2019, the affirmation of plaintiff's counsel, and the exhibits annexed hereto, and all prior papers filed in this action and prior proceedings had herein; and

Upon proof that defendants Jan DeChabert and the New York City Department of Finance Parking Bureau have been duly served with the Summons and Complaint in this action and required notices;

And it appearing to the satisfaction of this court that this action was brought to foreclose a common charge lien on the property located at 71 Nassau Street, Unit 7A, New York, New York (Block 79, Lot 1127), it is hereby

ORDERED that the motion for summary judgment by plaintiff against defendant Jan DeChabert is granted without opposition and the affirmative defenses asserted in defendant Jan DeChabert's answer are severed and dismissed; and plaintiff's motion for a default judgment against defendant New York City Department of Finance Parking Bureau is granted; and it is further

ORDERED that **Elaine Shay with an address of 800 Third Avenue, 28<sup>th</sup> floor, New York, New York 10022** <sup>212-520-2690</sup> is hereby appointed Referee in accordance with RPAPL § 1321 to compute the amount due to Plaintiff and to examine whether the 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

HON. ARLENE BLUTH

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; and it

Next Conference: December 12, 2019 at 2:15 p.m. If a motion for a judgment of foreclosure and sale has been made prior to the conference, then an adjournment may be obtained; consult the foreclosure rules of this Part in order to obtain an adjournment. If a conference is necessary, come prepared to explain the reasons for the delay.

9/11/19  
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED  DENIED
- SETTLE ORDER
- INCLUDES TRANSFER/REASSIGN

- NON-FINAL JUDGMENT
- GRANTED IN PART  OTHER
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT  REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

**HON. ARLENE P. BLUTH**