

Jy's Ode to Murray Tepper L.P. v Garage 53 LLC

2019 NY Slip Op 32818(U)

September 18, 2019

Supreme Court, New York County

Docket Number: 850047/2019

Judge: Arlene P. Bluth

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: <u>HON. ARLENE P. BLUTH</u>	PART	IAS MOTION 32
<i>Justice</i>		
-----X	INDEX NO.	<u>850047/2019</u>
JY'S ODE TO MURRAY TEPPER L.P.,	MOTION DATE	<u>N/A</u>
Plaintiff,	MOTION SEQ. NO.	<u>001</u>

- v -

GARAGE 53 LLC, 1018 & 310 GARAGE LEASE CO.
LLC, BANKUNITED, N.A., BOARD OF MANAGERS OF THE
THREE TEN CONDOMINIUM, JOHN DOE # 1 THROUGH
JOHN DOE #99

**DECISION + ORDER ON
MOTION, ORDER OF
REFERENCE**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 37, 38

were read on this motion to/for APPOINT - REFEREE

The motion for summary judgment and the appointment of a referee is granted.

Plaintiff seeks to foreclose on the garage unit located at 310 East 53rd Street in Manhattan. Plaintiff claims that defendants Garage 53, LLC and 1018 & 310 Garage Lease Co., LLC (the "Borrowers") executed a note for \$2.45 million and that the Borrowers defaulted by failing to make a timely payment of all amounts due on the maturity date of the loan (December 10, 2018). In opposition, the Borrowers claim that plaintiff lacks standing and failed to meet its prima facie burden for summary judgment.

The Court grants the motion—plaintiff attached the note to the complaint (*see* NYSCEF Doc. No. 3). That is sufficient to establish plaintiff's standing to prosecute this action (*see Bank of New York Mellon v Knowles*, 151 AD3d 596, 596-97, 57 NYS3d 473 [1st Dept 2017]).

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment against defendants Garage 53 LLC and 1018 & 310 Garage Lease Co. LLC is granted and their answer (NYSCEF Doc. No. 12) and affirmative defenses are severed and dismissed and plaintiff is awarded a default judgment against non-appearing defendants; and it is further

ORDERED that Tom Kleinberger, Esq. 411 5th Ave, NY NY 10016
917-326-5523 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 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 further

ORDERED that the caption be amended to remove John Doe #1 through #99 and BankUnited, N.A., and the caption shall read as follows:

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

-----X
JY'S ODE TO MURRRAY TEPPER L.P.,

Plaintiff,

v.

GARAGE 53 LLC, 1018 & 310 GARAGE
LEASE CO. LLC, BOARD OF MANAGERS
OF THE THREE TEN CONDOMINIUM

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 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 (ww.nycourts.gov/suptmanh)]; 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; and it is further

Next Conference: March 3, 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.

9/18/19
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 checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> SUBMIT ORDER
		<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> OTHER
		<input type="checkbox"/> REFERENCE