

**11 W. 126th St. Lender 1 LLC v 11 W. 126th Holdings
LLC**

2019 NY Slip Op 33042(U)

October 7, 2019

Supreme Court, New York County

Docket Number: 850027/2018

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. 850027/2018

11 WEST 126TH STREET LENDER 1 LLC,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. ~~002~~ 001

- v -

11 WEST 126TH HOLDINGS LLC, RAVINDRANATH SURIA,
DAVID FINEHIRSH, 11 WEST 126TH STREET LENDER 2
LLC, NEW YORK CITY ENERGY EFFICIENCY
CORPORATION, JOHN DOE #1 THROUGH JOHN DOE
#12,

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

Defendant.

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ool ~~002~~ 42-79

The following e-filed documents, listed by NYSCEF document number (Motion ~~002~~) ~~001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013, 014, 015, 016, 017, 018, 019, 020, 021, 022, 023, 024, 025, 026, 027, 028, 029, 030, 031, 032, 033, 034, 035, 036, 037, 038, 039, 040, 041, 042, 043, 044, 045, 046, 047, 048, 049, 050, 051, 052, 053, 054, 055, 056, 057, 058, 059, 060, 061, 062, 063, 064, 065, 066, 067, 068, 069, 070, 071, 072, 073, 074, 075, 076, 077, 078, 079, 080, 081, 082, 083, 084, 085, 086, 087, 088, 089, 090, 091, 092, 093, 094, 095, 096, 097, 098, 099, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 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been made. They also argue that there has been no discovery in this case. Defendant Finehirsh also submits opposition in which he makes similar arguments that the instant motion is premature and discovery is needed.

In reply, plaintiff points out that there was stipulation of discontinuance filed in the NYCEEC action in which all claims asserted against plaintiff in that case were dismissed with prejudice. Plaintiff also observes that although NYCEEC is a defendant in this case, it has not appeared or raised the fraudulent conveyance issue as a defense.

The Court grants the motion. Although the opposition papers by the defendants claim that the motion is premature and discovery is needed, they do not cite a single unanswered discovery request they have made in this case. If discovery was necessary, then these defendants would have sought discovery soon after filing their answers. Moreover, no one sufficiently challenges plaintiff's claim that it is owed money on the mortgage and the building loan. A vague assertion that discovery is needed is not a valid defense to a motion seeking the appointment of referee.

And the fact is that NYCEEC discontinued its claims against plaintiff in its case and does not object to the instant motion by plaintiff here. Therefore, there is no reason to deny the motion because of the NYCEEC action. Although defendants speculated at oral argument that there was something fishy going on with the settlement between plaintiff and NYCEEC, they did not submit any substantive evidence justifying the denial of plaintiff's motion. Rather, the record on this motion shows that the loans extended by plaintiff were never paid.

Accordingly, it is hereby

ORDERED that the motion by plaintiff for a default judgment against the non-appearing defendants and for summary judgment against defendants 11 West 126th Holdings LLC;

Ravindranath Suria, and David Finehirsh is granted and their answers, affirmative defenses and any counterclaims are severed and dismissed; and it is further

ORDERED that Elaine Shay with an address of 800 Third Avenue, Suite 2800 New York, NY 10022, 212-520-2690, is hereby appointed Referee in accordance with RPAPL § 1321 to compute the amount due to Plaintiff and to examine whether the tax parcel 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 further

ORDERED that defendants John Doe #1 through John Doe #12 are removed from the caption, and the caption shall read as follows:

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

-----X
11 WEST 126TH STREET LENDER 1 LLC,

Plaintiff,

v.

11 WEST 126TH HOLDINGS LLC,
RAVINDRANATH SURIA, DAVID
FINEHIRSH, 11 WEST 126TH STREET
LENDER 2 LLC, NEW YORK CITY
ENERGY EFFICIENCY CORPORATION

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 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 (ww.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: March 10, 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.

10.7.19

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINANCIAL DISBURSEMENT

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

HON. ARLENE P. BLUTH