

JPMorgan Chase Bank, N.A v NERA Prop. Holding LLC
2019 NY Slip Op 33646(U)
December 12, 2019
Supreme Court, New York County
Docket Number: 850232/2018
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTYPRESENT: HON. ARLENE P. BLUTH

PART

IAS MOTION 32

Justice

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JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,

Plaintiff,

- v -

NERA PROPERTY HOLDING LLC, BORO FUEL OIL
COMPANY, INC., SHEMEN FUEL OIL CORP., NEW YORK
CITY DEPARTMENT OF HOUSING PRESERVATION AND
DEVELOPMENT, NEW YORK CITY ENVIRONMENTAL
CONTROL BOARD, JOHN DOESDefendant.
-----XINDEX NO. 850232/2018MOTION DATE N/AMOTION SEQ. NO. 001DECISION + ORDER ON
MOTION, ORDER OF
REFERENCEThe following e-filed documents, listed by NYSCEF document number (Motion 001) 33, 34, 35, 36, 37,
38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61

were read on this motion to/for

JUDGMENT - SUMMARY

The motion by plaintiff for summary judgment is granted.

Background

Plaintiff seeks to foreclose on a mortgage secured by property owned by defendant Nera Property Holding LLC ("Nera") located at 531 West 162nd Street in Manhattan. Plaintiff claims that Nera defaulted under the loan by *inter alia* failing to make the monthly payments starting on November 1, 2016 and by transferring the ownership of the premises to another entity without first obtaining consent from plaintiff.

In opposition, Nera complains that plaintiff lacks standing, the affidavit submitted by plaintiff is inadmissible hearsay and plaintiff cannot establish that the default notice was sent.

In reply, plaintiff claims the Smith affidavit lays the proper foundation for the admission of plaintiff's business records, plaintiff did not need to send notice of default if Nera failed to make a regular monthly payment and that it attached the note to the complaint.

Discussion

As an initial matter, the Court finds that because plaintiff attached the note to the complaint (NYSCEF Doc. Nos. 2-3), it has standing to prosecute this action (*Bank of New York Mellon v Knowles*, 151 AD3d 596, 596-97, 57 NYS3d 473 [1st Dept 2017]).

The Court also finds that the affidavit of Heather L. Smith (NYSCEF Doc. No. 45) properly laid the foundation for the admissibility of plaintiff's business records. She is an employee of plaintiff and is entitled to detail what documents plaintiff possesses. Moreover, the Court finds that Nera was not entitled to a default notice for failing to make monthly payments under the terms of the mortgage (NYSCEF Doc. No. 46, § 5.3).

Accordingly, it is hereby

ORDERED that the motion by plaintiff for summary judgment is granted and the answer and affirmative defenses of defendant Nera Property Holding LLC are severed and dismissed; and it is further

ORDERED that plaintiff is awarded a default judgment against the non-appearing defendants; and it is further

ORDERED that Elaine Shay, Esq. with an address of 800 Third Ave Suite 2800 NY 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 shall hold no hearing and take no testimony or evidence other than by written submission; the Court is the ultimate arbiter and the Referee's report is merely an advisory finding; 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 and to defendants who have appeared in this case 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 if defendant(s) have objections, they must submit them to the referee within 14 days of the mailing of plaintiff's submissions; and include these objections to the Court if opposing the motion for a judgment of foreclosure and sale; and it is further

ORDERED the failure by defendants to submit objections to the referee shall be deemed a waiver of objections before the Court on an application for a judgment of foreclosure and sale; 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 Charles Michael Hodgins, Alexander Acosta, John Compton, Walesca Pantoga, Foto Athanasiadics, Whitney Toure, and Melissa Pena be substituted for the John Doe Defendants, and the caption shall read as follows:

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

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JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION,

Plaintiff,

v.

NERA PROPERTY HOLDING LLC, BORO FUEL
OIL COMPANY, INC., SHEMEN FUEL OIL CORP.,
NEW YORK CITY DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT, NEW
YORK CITY ENVIRONMENTAL CONTROL
BOARD, CHARLES MICHAEL HODGINS,
ALEXANDER ACOSTA, JOHN COMPTON,
WALESKA PANTOGA, FOTO ANTHANASIADICS,

WHITNEY TOURE, MELISSA PENA,

Defendant(s).

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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 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: April 21, 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.

DATE

12/12/19

ARLENE P. BLUTH, J.S.C.

CHECK ONE:

☐ CASE DISPOSED
☒ GRANTED
☐ SETTLE ORDER
☐ INCLUDES
TRANSFER/REASSIGN

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES
TRANSFER/REASSIGN

☐ DENIED

☒ NON-FINAL DISPOSITION
☐ GRANTED IN PART
☐ SUBMIT ORDER
☒ FIDUCIARY APPOINTMENT

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☐ OTHER

☐ REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: