

**Board of Mgrs. of the Lincoln Sq.  
Condominium v Slavutsky**

2020 NY Slip Op 30050(U)

January 6, 2020

Supreme Court, New York County

Docket Number: 156918/2019

Judge: Margaret A. Chan

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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. MARGARET A. CHAN PART IAS MOTION 33EFM

Justice

-----X

BOARD OF MANAGERS OF THE LINCOLN SQUARE
CONDOMINIUM,

Plaintiff,

INDEX NO. 156918/2019

MOTION DATE 10/18/2019

MOTION SEQ. NO. 001

- v -

ELIZABETH SLAVUTSKY, NEW YORK CITY PARKING
VIOLATIONS BUREAU, NEW YORK STATE
DEPARTMENT OF TAXATION & FINANCE, YUHA GROUP
LLC, WORKERS COMPENSATION BOARD OF NEW YORK
STATE, INTERNAL REVENUE SERVICE, AGRI EXOTIC
TRADING, INC., COMMISSIONER OF LABOR STATE OF
NEW YORK, BOARD OF MANAGERS OF 100 WEST 93
CONDOMINIUM, JOHN DOE #1 THROUGH JOHN DOE
#10, THE LAST TEN NAMES BEING FICTITIOUS AND
UNKNOWN TO THE PLAINTIFF, THE PERSON OR
PARTIES INTENDED BEING THE PERSON OR PARTIES,
IF ANY, HAVING OR CLAIMING AN INTEREST IN OR LIEN
UPON THE PREMISES DESCRIBED IN THE COMPLAINT

DECISION + ORDER ON
MOTION

Defendants.

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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, 28, 29, 30

were read on this motion to/for JUDGMENT - DEFAULT

In this foreclosure action, plaintiff Board of Managers of the Lincoln Square
Condominium ("Lincoln Square") moves in motion sequence 001 for an order
directing: (1) entry of default judgment against non-appearing defendants Elizabeth
Slavutsky ("Slavutsky"), New York City Parking Violations Bureau ("NYCPVB"),
New York State Department of Taxation and Finance ("NYSDTF"), Yuha Group
LLC, the Internal Revenue Service ("IRS"), Agri Exotic Trading, Inc., Commissioner
of Labor - State of New York, Board of Managers of 100 West 93 Condominium, and
"John Does" 1 and 2 pursuant to CPLR 3215; (2) summary judgment against
appearing defendant New York State Workers Compensation Board ("NYSWCB")
pursuant to CPLR 3212; (3) the appointment of a referee to compute and report the
amount due to plaintiff pursuant to Real Property Actions and Proceedings Law
(RPAPL) § 1321, or alternatively, pursuant to CPLR 4311 and 4317; and (4) the
striking of defendant "John Does" 3 through 10 pursuant to CPLR 1021 (NYSCEF
#15 - Notice of Motion). Plaintiff's motion is unopposed. The Decision and Order is
as follows:

Plaintiff claims that defendant Elizabeth Slavutsky purchased the premises known as 111 West 67<sup>th</sup> Street, Unit 21N in the city, county, and state of New York by deed dated June 10, 2004 (NYSCEF #18 – Deed). The deed contained a recitation that Slavutsky's title was subject to the Declaration and By-Laws of Lincoln Square (*id.*). Plaintiff claims that pursuant to the governing documents of Lincoln Square, if a common charge is not paid on the date due, then such assessment shall become delinquent and, together with late fees and interest, shall constitute a lien on the "Member Home Owner" and the Board of Managers shall be entitled to legal fees in collecting same (NYSCEF #19 – Lincoln Square By-Laws at Art 6, §§ 6.4, 6.6).

Plaintiff claims that as of January 4, 2019, Slavutsky was indebted to it in the amount of \$47,674.02 for unpaid assessments and fees (NYSCEF #20 – Notice of Default). Due to Slavutsky's failure to pay, plaintiff filed a lien on April 16, 2019, at the City Register of the City of New York in the amount of \$48,162.46 pursuant to RPAPL § 339-z (NYSCEF #21 – Lien). The Lincoln Square By-Laws permit plaintiff to foreclose on a lien for unpaid common charges or to recover a money judgment for unpaid common charges (NYSCEF #19 at Art 6, § 6.7). Due to Slavutsky's failure to pay, plaintiff initiated this lawsuit.

Plaintiff's first cause of action is for a judgment of foreclosure and sale on the Slavutsky's apartment unit and that all persons claimed under them or any party to the filing of the Notice of Pendency of this action be barred and foreclosed from all right, title, and equity or redemption of the premises (NYSCEF #1, ¶35). Plaintiff's second cause of action is for legal costs, including attorneys' fees, as provided for by the Lincoln Square By-Laws (*id.*, ¶¶36-38). Plaintiff's third cause of action is effectively for breach of contract, and plaintiff seeks a money judgment including arrears, interest, costs, and legal fees incurred by plaintiff (*id.*, ¶¶39-45).

Defendants, other than Slavutsky, are all possible judgment creditors or holders of interest in the subject premises via subordinate mortgages (NYSCEF #1, ¶30).

The summons and verified complaint in this action were filed on July 15, 2019 (NYSCEF #1). Slavutsky was served by nail and mail service at 111 West 67<sup>th</sup> Street, Unit 21N on July 30, 2019 (NYSCEF #23 – Affidavits of Service). The Doe defendants were likewise served by nail and mail service at the same location on July 30, 2019 (*id.*). NYCPVB was served at its office on July 23, 2019 (*id.*). The NYSWCB was served at its office on July 25, 2019 (*id.*). The IRS was served at its Brooklyn office on July 24, 2019 (*id.*). NYSDTF was served at its office on July 24, 2019 (*id.*). Agri Exotic was served at its office in New Jersey on July 24, 2019 (*id.*). The Commissioner of Labor – State of New York was served at its office on July 25, 2019 (*id.*). The Board of Managers of 100 West 93 Condominium was served at its office on July 26, 2019 (*id.*). Yuha Group was served at its office in New Jersey on

August 17, 2019 (*id.*). Plaintiff also submits an affidavit of additional service on all defendants in compliance with CPLR 3215(g) (NYSCEF #25).

NYSWCB filed a notice of appearance and waiver of service on all papers except notice of sale and notice of surplus monies on July 29, 2019 (NYSCEF #3). Yuha Group filed a notice of appearance on September 17, 2019 (NYSCEF #14). However, neither of these parties submitted an answer. The remaining defendants did not appear or answer in this matter.

As such, the time within which the defaulting defendants may answer or otherwise move to respond to the complaint has expired and has not been extended. The defaulting defendants have not appeared in this action by filing an answer to the complaint or submitting opposition to plaintiff's motion. Plaintiff here has proven service of the summons and complaint, the facts constituting the claim and that the defaulting defendants have no reasonable excuse or meritorious defense. Plaintiff's motion is timely filed.

Plaintiff's motion is, in large part, granted. The branch of plaintiff's motion for default judgment against the defaulting defendants, with the exception of the Doe defendants, is granted. Plaintiff has demonstrated compliance with CPLR 3215 by submitting a valid verified complaint, proof of plaintiff's claims, and proof of the default. Additionally, the branch of plaintiff's unopposed motion for summary judgment against defendant NYSWCB is granted. Plaintiff is entitled to foreclose on plaintiff's premises and sell it to recover on the unpaid common charges. Plaintiff is also entitled to legal fees, including attorneys' fees.

The branch of plaintiff's motion to appoint a referee is granted. An appointment of a referee pursuant to RPAPL § 1321 is appropriate here to determine the amount of charges outstanding and the amount on the prior incumbrances. All defendants who have or claim to have some interest in or lien upon the Slavutsky premises, or some part thereof, are subordinate to plaintiff's lien.

The branch of plaintiff's motion for default judgment against the Doe defendants is denied. While CPLR § 1024 permits a defendant to be designated as an unknown party, jurisdiction is not acquired over a Doe defendant unless the process is served in such a manner as to give that unidentified person notice that he or she is being summoned to court (*Lebowitz v Fieldston Travel Bureau, Inc.*, 181 AD2d 481, 482 [1st Dept 1992]). Plaintiff served notice on the Doe defendants at Slavutsky's apartment. It is unclear how this provides notice to the Doe defendants who possibly claim an interest in the lien at issue. As such, this branch of plaintiff's motion is denied.

Additionally, the branch of plaintiff's motion to "strike" Doe defendants 3-10 is denied as improper. CPLR 1021 governs the substitution of parties, such as when a party dies, or a successor corporation emerges. CPLR 1021 does not permit the court to "strike" a defendant. Plaintiff could have sought to amend its complaint or to discontinue this matter as to Doe defendants 3-10. Plaintiff's approach is perplexing as plaintiff's proposed order (NYSCEF #28) indicates that plaintiff wishes to discontinue this action as to Doe defendants 3-10.

In any event, this matter is dismissed as to Doe defendants 1 through 10 for lack of proper service. It is unclear how service upon the Doe defendants at Slavutsky's apartment provides notice of the instant lawsuit. There is thus no basis for this court to maintain jurisdiction over the unknown defendants and this matter is dismissed as to them.

Accordingly, it is ORDERED that the branch of plaintiff's motion for default judgment pursuant to CPLR 3215 is granted with respect to defendants Elizabeth Slavutsky, New York City Parking Violations Bureau, New York State Department of Taxation and Finance, Yuha Group LLC, the Internal Revenue Service, Agri Exotic Trading, Inc., Commissioner of Labor – State of New York, Board of Managers of 100 West 93 Condominium; it is further

ORDERED that plaintiff's motion for default judgment against Doe defendants 1 and 2 is denied; it is further

ORDERED that the branch of plaintiff's motion for summary judgment pursuant to CPLR 3212 is granted with respect to defendant New York State Workers Compensation Board; it is further

ORDERED that plaintiff is entitled to foreclose on its common charge lien filed on April 26, 2019, under CRFN: 2019000121629 and that the claims of defendants are subordinate to its claim; it is further

ORDERED that plaintiff is entitled to legal fees, including attorneys' fees and costs, to be calculated by the appointed referee; it is further

ORDERED that *Elaine Shay, Esq.*, with an address of 800 Third Avenue, Suite 2800 New York, NY 10022, 212-520-2690 is hereby appointed Referee in accordance with this order, to hear, and determine the amount due to the plaintiff for principal, interest, water and sewer rents, insurance premiums, if any, and such other charges that may be due under the lien upon which this action was brought, and to examine and determine whether the premises should be sold in one or more parcels; it is further

ORDERED that the Referee may take testimony; 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; 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); 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; it is further

ORDERED that the parties shall forward all necessary documents to the Referee within 30 days of the date of service of this order and shall promptly respond to every inquiry made by the referee (promptly means within two business days); it is further

ORDERED that plaintiff shall serve a copy of this order with entry upon all parties, including the Referee, within 5 days of entry; it is further

ORDERED that the branch of plaintiff's motion to strike Doe defendants 3 through 10 is denied as improper; it is further

ORDERED that this matter is dismissed as to Doe defendants 1 through 10 for lack of proper service; and it is further

ORDERED that the Clerk of the Court enter judgment as written.

This constitutes the Decision and Order of the Court.

1/6/2020  
DATE  
MARGARETA CHAN, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART	<input checked="" type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE	