

106E101 Holdings LLC v 106 E. 101 St. I LLC

2020 NY Slip Op 30560(U)

February 26, 2020

Supreme Court, New York County

Docket Number: 850197/2019

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. 850197/2019

106E101 HOLDINGS LLC,

MOTION DATE 02/18/2020

Plaintiff,

MOTION SEQ. NO. 001

- v -

106 EAST 101 ST. I LLC, ESTHER SIROL, CARLOS HEINTZ, TRUSTEE OF THE ESTHER SIROL IRREVOCABLE TRUST, MANZELLE ORANGE, THE BANK OF NEW YORK AS COLLATERAL AGENT, THE BANK OF NEW YORK MELLON, AS COLLATERAL AGENT AND CUSTODIAN FOR THE NYCTL 1998-2 TRUST, FRANK DISILVESTRO, ROBERT GRANDOTTO, JOHN DOE

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

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29

were read on this motion to/for ORDER OF REFERENCE

The motion for summary judgment and for an order of reference is granted without opposition. The Court observes that the parties agreed via stipulation to adjourn the initial return date of this motion from December 19, 2019 to February 18, 2020 (NYSCEF Doc. No. 28). Although counsel for Esther Sirol submitted a letter requesting another adjournment and explaining that there is a purported criminal investigation regarding the retention of rental income from the property (NYSCEF Doc. No. 29), that does not justify granting another adjournment. Defendant had nearly two months to file opposition, seek leave to file an answer or take some other action to prevent the motion from being submitted unopposed. Instead, defendant submitted a letter the day before the return date and, unsurprisingly, plaintiff declined to agree to a further extension. Therefore, the Court has no choice but to grant the motion.

The Court also observes that the original complaint did not contain, as a separate defendant, The Esther Sirol Irrevocable Trust. However, this entity suddenly appeared on the caption contained in plaintiff's moving papers for this motion; obviously the Court cannot simply add a party not contained in the summons and complaint.

Upon the foregoing documents, it is

ORDERED that plaintiff's motion for a default judgment against all defaulting defendants is granted; and it is further

ORDERED that Roberta Ashkin with an address of 300 East 42nd Street, Floor 14, New York, NY 10017 (646) 779-8520 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 defendant NYCTL 1998-2 Trust and the Bank of New York Mellon, as Collateral Agent and Custodian for the NYCTL 1998-2 Trust (NYSCEF Doc. No. 19), defendant

Frank Disilvestro and the John Doe defendants are removed from the caption and the caption

shall read as follows:

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

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106E101 HOLDINGS LLC,
Plaintiff,

v.

106 EAST 101 ST. I LLC, ESTHER SIROL,
CARLOS HEINTZ, TRUSTEE OF THE ESTHER
SIROL IRREVOCABLE TRUST, MANZELLE
ORANGE, ROBERT GRANDOTTO

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 (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: June 16, 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 ^{NOT} been made, then a conference is required to explore the reasons for the delay.

2/26/2020

DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE