

Connectone Bank v 2310 Bedford LLC

2021 NY Slip Op 30053(U)

January 5, 2021

Supreme Court, Kings County

Docket Number: 503195/20

Judge: Lawrence S. Knipel

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part Comm 6 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 5th day of January, 2021.

P R E S E N T:

HON. LAWRENCE KNIPEL,

Justice.

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CONNECTONE BANK,

Plaintiff,

- against -

Index No. 503195/20

2310 BEDFORD LLC, MORDECHAI LEVI, RATZI LEFKOWITZ, O&A WOOD FLOOR SERVICES LTD., NEW YORK STATE DEPT. OF TAXATION & FINANCE, NEW YORK CITY DEPT. OF FINANCE, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT and "JOHN DOE" NOS. 1-25,

Defendants.

The Names of the "John Doe" Defendants Being Fictitious and Unknown to Plaintiff, the Persons And Entities Intended Being Those Who Have Possessory Liens or Other Interests in, the Premises Herein Described.

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The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed _____
Opposing Affidavits (Affirmations) _____
Reply Affidavits (Affirmations) _____

20-38

42-45, 47-52

56-57

Upon the foregoing papers in this action to foreclose a mortgage on the commercial property at 2310 Bedford Avenue in Brooklyn (Property), plaintiff Connectone Bank (Connectone) moves (in motion sequence [mot. seq.] one) for an order: (1) granting it summary judgment against defendants 2310 Bedford LLC (2310 Bedford or Borrower) and Mordechai Levi (Levi or Guarantor), pursuant to CPLR 3212; (2) striking defendants' answer and affirmative defenses; (3) granting it a default judgment against the non-appearing defendants, Ratzi Lefkowitz, O&A Wood Floor Services, Ltd., New York State Dept. of Taxation & Finance, New York City Dept. of Finance, New York City Environmental Control Board, New York City Department of Housing Preservation and Development (Defaulting Defendants), pursuant to CPLR 3215; (4) appointing a referee to compute the amount due to it for principal and interest, pursuant to RPAPL § 1321; (5) holding the Borrower and Guarantor liable for any deficiency that may remain after the sale of the Property at public auction; (6) holding Guarantor liable under the guaranty for all losses that it incurred; and (7) amending the caption to delete the "John Doe" defendants.

Connectone submits an affidavit from Neil Minardi (Minardi), a Vice President of Connectone, who attests that on or about March 14, 2016, Connectone loaned 2310 Bedford the sum of \$900,000.00. The loan was secured by a Consolidation Extension and Modification Agreement (CEMA), which consolidated a prior mortgage and a gap mortgage on the Property. Minardi attests that the loan was further secured by an Assignment of Leases and Rents and a security interest. Minardi also attests that "[i]n

order to induce Plaintiff to make the Loan . . .” Levi, as Guarantor, executed and delivered a March 14, 2016 guaranty of the loan. Copies of the loan documents, including the guaranty, are submitted with Connectone’s instant summary judgment motion. According to Minardi, 2310 Bedford defaulted under the loan documents by failing to make the monthly payments that were due on December 1, 2019, and by transferring the Property to defendant Ratzki Lefkowitz without authorization.

On February 7, 2020, Connectone commenced this foreclosure action by filing a summons, a verified complaint and a notice of pendency against the Property. On March 20, 2020, defendants 2310 Bedford (the Borrower) and Levi (the Guarantor) collectively answered the complaint and asserted the following affirmative defenses: (1) failure “to serve the predicate notice required by the subject Note, Mortgage and other instruments to properly declare a default . . .”; (2) failure “to comply with the notice requirements of the applicable statutes and law to properly declare a default . . .”; (3) lack of standing; (4) “[t]he amount claimed is in dispute”; (5) lack of personal jurisdiction; (6) failure to serve defendants with “mediation instructions and rules . . .”; and (7) the transfer of the Property was made by a third party without authority and is a nullity. All of the other defendants failed to answer or otherwise respond to the complaint.

2310 Bedford and Levi, in opposition to Connectone’s summary judgment motion, submit an affidavit from Joel Lefkowitz (Lefkowitz), manager of 2310 Bedford, who attests that he and Levi, “the 100% owner of the membership interest” in 2310 Bedford, are the only ones with authority to act on behalf of 2310 Bedford.

Lefkowitz explains that “[d]uring 2019 Bedford’s specific goal became to refinance the property . . .” and “at the time (2019) it appeared that my wife, Ratzi Lefkowitz, would be able to obtain a better rate for a refinance tha[n] anyone for [the] LLC.” Lefkowitz explains “[t]his is why *we executed* the October 28, 2019 Deed to Ratzi Lefkowitz on which plaintiff claims a default” and “I now understand this was improper and could be a breach of the mortgage” (emphasis added). Lefkowitz asserts that “we tried to correct the problem . . .” by transferring the Property back to 2310 Bedford by a January 29, 2020 deed, however, Connectone had already sent a notice of default. Lefkowitz contends that the October 29, 2019 deed to his wife is a “void instrument” because his wife had no authority to transfer the Property on behalf of 2310 Bedford. Lefkowitz also contends that 2310 Bedford’s alleged payment default in December 2019 “is now paid.” Defendants submit similar affidavits from Ratzi Lefkowitz and Levi.

Essentially, defendants oppose Connectone’s summary judgment motion on the grounds that: (1) the transfer of the Property is void, and thus, does not provide a basis on which to declare a default, and (2) 2310 Bedford’s payment default was cured.

Connectone, in reply, asserts that defendants acknowledge and admit that: (1) they executed the loan documents and received a \$900,000.00 loan from 2310 Bedford; (2) they did not make the payment due on December 1, 2019 and thereafter; and (3) Lefkowitz authorized the transfer of the Property to his wife, Ratzi Lefkowitz, in violation of the loan documents. Connectone asserts that 2310 Bedford’s default was not cured by “one late partial payment made after the default and acceleration letter was

issued.” Connectone argues that “[i]t is well settled that after a default, and after a loan is accelerated, a tender of less than the full repayment is insufficient.”

Discussion

Summary judgment is a drastic remedy that deprives a litigant of his or her day in court and should, thus, only be employed when there is no doubt as to the absence of triable issues of material fact (*Kolivas v Kirchoff*, 14 AD3d 493 [2005]; *see also Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). “The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment, as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Manicone v City of New York*, 75 AD3d 535, 537 [2010], quoting *Alvarez*, 68 NY2d at 324; *see also Zuckerman*, 49 NY2d at 562; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). If it is determined that the movant has made a prima facie showing of entitlement to summary judgment, “the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493 [1989]).

Generally, to establish prima facie entitlement to judgment as a matter of law in an action to foreclose a mortgage, a plaintiff must produce the mortgage, the unpaid note, and evidence of default (*see Deutsche Bank Natl. Trust Co. v Karibandi*, AD3d , 2020 NY Slip Op 06244, *1 [2d Dept 2020]; *Christiana Trust v Moneta*, 186 AD3d 1604, 1605 [2d Dept 2020]; *Deutsche Bank Trust Co. Ams. v Garrison*, 147 AD3d 725, 726 [2d

Dept 2017)).

Here, Connectone has produced the loan documents and sufficient evidence that 2310 Bedford breached the terms of the mortgage both by transferring the Property to Ratzi Lefkowitz and by failing to make the required payments. Indeed, defendants admit that they intentionally transferred the Property to Ratzi Lefkowitz in an effort to obtain a better refinance rate, which constituted a breach of the mortgage. Defendants have failed to identify any issue of fact that would preclude the relief that Connectone seeks. Accordingly, it is hereby

ORDERED that Connectone’s motion (in mot. seq. one) is only granted to the extent that: (1) summary judgment is granted to Connectone as against 2310 Bedford and Levi; (2) a default judgment is granted as against the Defaulting Defendants; (3) the appointment of a referee to compute the amount due to Connectone for principal and interest is warranted; (4) 2310 Bedford and Levi are liable for any deficiency that may remain after the sale of the Property at public auction; (5) Levi is liable under the guaranty for all losses that Connectone incurs; and (7) the caption is amended to delete the “John Doe” defendants.

This constitutes the decision and order of the court. An order of reference shall be settled on notice.

E N T E R,

J. S. C.

Justice Lawrence Knipel