

MFX Capital LLC v Bleecker Holdings LLC
2021 NY Slip Op 31175(U)
April 8, 2021
Supreme Court, Kings County
Docket Number: 511786/18
Judge: Lawrence S. Knipel
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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 8th day of April, 2021.

P R E S E N T:

HON. LAWRENCE KNIPEL,

Justice.

-----X
MFX CAPITAL LLC,

Plaintiff,

- against -

Index No. 511786/18

BLEECKER HOLDINGS LLC, MICHAEL ISRAEL,
SHOLOMO EHRENREICH and NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD,

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

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

87-96

Opposing Affidavits (Affirmations) _____

100-101

Reply Affidavits (Affirmations) _____

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Upon the foregoing papers in this action to foreclose a \$2.2 million commercial mortgage on the property at 147 Bleecker Street in Brooklyn (Property), plaintiff MFX Capital LLC (MFX) moves (in motion sequence [mot. seq.] four) for an order (1) confirming the November 21, 2019 Referee's Report of Sale of the Property (Report of Sale), pursuant to RPAPL 1355, and (2) awarding MFX a \$1,534,753.50 deficiency

judgment against defendants Bleecker Holdings LLC (Bleecker) and Michael Israel (Israel), with interest from November 21, 2019, pursuant to RPAPL 1371.

On February 25, 2019, the Referee issued a Referee's Report of Amounts Due, which determined that \$3,000,280.18 was due to MFX as of February 13, 2019 (exclusive of attorneys' fees), plus interest as of February 13, 2019.

On June 17, 2019, this court issued a Judgment of Foreclosure and Sale in favor of MFX, which ratified and confirmed the February 25, 2019 Referee's Report of Amounts Due. The June 17, 2019 Judgment of Foreclosure and Sale awarded MFX a total of \$3,012,135.18, which consisted of \$3,000,280.18 due under the mortgage, \$10,500.00 in reasonable attorneys' fees and \$1,355.00 in costs and disbursements. The Judgment of Foreclosure and Sale ordered that the Referee sell the Property in one parcel at public auction. The Judgment of Foreclosure and Sale further ordered, adjudged and decreed:

“that if the proceeds of such sale be insufficient to pay the amount reported due to the plaintiff with interest and costs as aforesaid, Plaintiff may recover of defendant[s] Bleecker Holdings LLC and Michael Israel the whole deficiency or so much thereof as the Court may determine to be just and equitable of the residue of the mortgaged debt remaining unsatisfied after the sale of the mortgaged property and the application of the proceeds thereof, provided a motion for deficiency judgment shall be made as prescribed by Section 1371 of the Real Property Actions and Proceeding Law within ninety (90) days of the delivery of the deed by the Referee, and the amount thereof is determined and awarded by an order of this Court as provided in said action . . .”

On November 21, 2019, the Property was sold at public auction by the Referee to

MFX's nominee for \$1,000.00 (the highest bid), in accordance with the June 17, 2019 Judgment of Foreclosure and Sale.

On February 11, 2020, MFX filed the instant motion to confirm the Referee's Report of Sale and for a deficiency judgment against Bleecker and Israel. MFX asserts that the total due is \$3,184,753.50, which includes \$171,568.32 in interest from February 13, 2019 through February 10, 2020 ($\$742.72 \times 231$), a Referee's fee of \$750 and a \$300 allowance.

MFX submits a February 7, 2020 Report of Value prepared by Kevin Clark, President of Realty Advisors Group LLC (Realty Advisors), which "evaluates the fair market value of the Property using the Income Approach and the Comparable Sales Approach factoring in the building's condition, deferred maintenance and accrued property level charges, penalties and fines of record . . ." Realty Advisors reported that, under the Income Approach, the fair market value of the Property is \$1,766,926.00. Realty Advisors reported that, under the Comparable Sales approach, the value of the Property is \$1,411,926.00. Realty Advisors' Report of Value concludes that the reasonable market value for the Property on November 21, 2019 (the date of the foreclosure auction) was \$1,650,000.00.

MFX asserts that "[b]ased upon a fair and reasonable value of the Property on November 21, 2019, of \$1,650,000, there is a deficiency of \$1,534,753.50 ($\$3,184,753.50 - \$1,650,000.00$)." MFX further asserts that "[e]ven if the fair market value of the

Property is set at the full amount of the value under the Income Approach method of \$1,766,926.00, there is still a net deficiency of \$1,417,827.50 (\$3,184,753.50 - \$1,766,926).”

Defendants Bleecker and Israel, in opposition, argue that the Report of Value prepared by Realty Advisors “is legally impermissible hearsay which should not be used to enter a 7 figure judgment . . .” In addition, Israel submits an affidavit asserting that MFX’s “improper and unfair” motion be denied because he agreed that he would not oppose the foreclosure “so long as Plaintiff did not go after me individually.” Notably, defendants do not provide any documentary evidence to support this assertion.

MFX, in reply, notes that “[s]ubstantively, Defendants do not contest that branch of Plaintiff’s motion seeking to confirm the Referee’s Report [of Sale]” and only oppose that branch of MFX’s motion seeking a deficiency judgment. MFX disputes that the Report of Value prepared by Realty Advisors is hearsay. MFX asserts that “[b]y submitting a detailed appraisal, plaintiff has met its burden of establishing prima facie, the mortgaged premises’ fair market value as of the date of the foreclosure auction. MFX further argues that “Defendants fail to submit any contrary evidence, and therefore, this Court could adopt the values submitted in the Report without conducting a hearing on the fair and reasonable market value of the property.” Alternatively, MFX asserts that “this Court should permit Plaintiff to submit additional evidence or conduct a hearing on the deficiency issue[,]” pursuant to RPAPL 1371 (2), “which directs the Court to ‘determine,

upon affidavit or otherwise as it shall direct, the fair and reasonable market value of the mortgaged premises.”

MRX asserts that Israel’s claim that it agreed not to seek a deficiency judgment against him should be rejected “as it is not supported by a single e-mail or other writing between the parties.” MRX notes that “Defendants could have opposed Plaintiff’s underlying motion seeking a judgment of foreclosure and sale, which contained Plaintiff’s request to seek a deficiency judgment against Mr. Israel.”

MRX’s motion to confirm the Referee’s Report of Sale is granted without opposition. MRX’s right to seek a deficiency judgment against Bleecker and Israel was preserved in the June 17, 2019 Judgment of Foreclosure and Sale, and defendants provide no documentary evidence that MFX agreed to waive its right to a deficiency judgment. Since defendants Bleecker and Israel dispute the accuracy of the Report of Value prepared by Realty Advisors, a hearing is appropriate and warranted regarding the fair market value of the Property on the date of the November 21, 2019 public auction.

Accordingly, it is

ORDERED that MFX's motion (in mot. seq. four) is granted and the Report of Sale is hereby confirmed; and it is further

ORDERED that the branch of MFX's motion for a \$1,534,753.50 deficiency judgment against Bleecker and Israel is granted as well.

This constitutes the decision and order of the court.

E N T E R,

J. S. *e.*

HON. LAWRENCE KNIPEL
ADMINISTRATIVE JUDGE