

Thadani v 1700 Group LLC

2021 NY Slip Op 31809(U)

May 28, 2021

Supreme Court, New York County

Docket Number: 153702/2020

Judge: Arthur F. Engoron

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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. ARTHUR F. ENGORON PART IAS MOTION 37EFM

Justice

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SUNDER THADANI, LOVINA THADANI,

Plaintiff,

- v -

1700 GROUP LLC, RICHARD GHERARDI, WILLIAM
LANDBERG

Defendant.

-----X

INDEX NO. 153702/2020

MOTION DATE 02/26/2021

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents and for the reasons set forth hereinbelow, this Court (1) severs the instant claims by plaintiffs, Sunder Thadani and Lovina Thadani, as against defendants 1700 Group LLC and Richard Gherardi from their instant claims as against defendant William Landberg; and (2) grants plaintiffs' instant motion, pursuant to CPLR 3215, for a default judgment against defendants 1700 Group LLC and Richard Gherardi, only, jointly and severally.

Background

Plaintiffs, Sunder Thadani and Lovina Thadani, assert the following. On or about April 24, 2018, pursuant to, inter alia, a Promissory Note (which defendant Richard Gherardi executed, NYSCEF Doc. 17), Guaranty (which defendant Richard Gherardi executed), and Mortgage(s) (which defendant William Landberg executed), plaintiffs loaned \$70,000.00 ("the Loan") to defendant 1700 Group, LLC to purchase real property in East Hampton, New York ("the Property"). The Loan provided the following: (1) it had a six-month term; (2) it would accrue interest at 14% per year; and (3) plaintiffs would receive 20% of the sale profits when the Property was "flipped" or sold. Plaintiffs received information that defendant William Landberg would guarantee the Loan. Pursuant to the Promissory Note, defendants would repay the Loan "at the earlier of October 23, 2018 or the date three days after the land and improvements located [on the Property are] sold." The Promissory Note failed to memorialize defendants' agreement to pay the aforesaid 20% to plaintiffs. (NYSCEF Doc. 1.)

On October 23, 2018, the Loan matured, and defendants 1700 Group, LLC and Gherardi failed to repay any amount on the Loan. Around that time, "it became apparent" that defendants (1) had no intention of selling the Property; (2) were renting out the Property for \$5,000.00 monthly; and (3) were "pocketing" said proceeds arising out of the Property. Between October 23, 2018

and October 21, 2019, plaintiffs repeatedly demanded, unsuccessfully, that defendants repay the Loan and interest thereon. (NYSCEF Doc. 1.)

On or around October 21, 2019, defendant 1700 Group, LLC and its principals agreed to give and file on plaintiffs' behalf, an \$83,888.33 mortgage on the Property ("the Original Thadani Mortgage," NYSCEF Doc. 18). Defendant Landberg, as the alleged "Manager" of defendant 1700 Group, LLC, executed the Original Thadani Mortgage. However, neither defendants nor plaintiffs ever filed or recorded the Original Thadani Mortgage. (NYSCEF Doc. 1.)

On December 13, 2019, unbeknownst to plaintiffs, nonparty Recovco Mortgage Management, LLC ("Recovco") commenced a foreclosure action on the Property, captioned Recovco Mortgage Management, LLC v 1700 Group, Index No. 652310/2019, in Suffolk County Supreme Court ("the Foreclosure Action"). On or around that same date, Recovco filed a lis pendens thereon. Defendants failed to inform plaintiffs of the Foreclosure Action and lis pendens. (NYSCEF Doc. 1.)

On January 24, 2020, also unbeknownst to plaintiffs, defendants filed a different mortgage with the Suffolk County Clerk that they dated October 21, 2019 ("the Fraudulent Mortgage," NYSCEF Doc. 19). The Fraudulent Mortgage differs from the Original Thadani Mortgage, as (1) it secures only a \$70,000.00 interest in the Property; (2) defendant Gherardi rather than defendant Landberg executed it; and (3) it does not contain an acknowledgement page. (NYSCEF Doc. 1.)

On June 1, 2020, plaintiffs commenced the instant action, seeking a judgment (1) on plaintiffs' first cause of action, for breach of the Promissory Note, against all defendants, in the amount of \$70,000.00, plus interest at 16% per year from October 23, 2018, plus attorney's fees and costs; (2) on plaintiffs' second cause of action, for breach of personal guaranty, as against defendant Gherardi, in the amount of \$70,000.00, plus interest at 16% per year from October 23, 2018, plus attorney's fees and costs; (3) on plaintiffs' third cause of action, for "fraud/alteration or substitution of the Original Thadani Mortgage," against all defendants, in the amount of \$83,888.33, plus interest at 14% per year, plus attorney's fees, costs, "additional interest," and punitive damages; and (4) on plaintiffs' fourth cause of action, for fraud/fraudulent conveyance, against all defendants, in the amount of \$83,888.33, plus interest at 14% per year, plus attorney's fees, costs, additional interest, and punitive damages (NYSCEF Doc. 1).

Pursuant to various stipulations, plaintiffs extended defendants Gherardi and Landberg's time to answer or otherwise respond to the instant complaint to October 31, 2020 (NYSCEF Documents 4-5, and 7). Pursuant to the February 1, 2021 affirmation of Lisa Pashkoff, Esq., plaintiffs' attorney, "in hopes of amicably settling this action," plaintiffs extended, via email dated November 16, 2020, all defendants' time to answer the instant complaint to November 20, 2020 (NYSCEF Doc. 9, at 5).

Plaintiffs now move (1), pursuant to CPLR 3215, for a default judgment as against defendants 1700 Group, LLC and Richard Gherardi ("the defaulting defendants"), only; (2) to sever the instant claims as against the defaulting defendants from those as against remaining defendant William Landberg; and (3) for an inquest and assessment on damages "or other disposition of the

action against any remaining defendant who has appeared and/or answered the complaint (NYSCEF Doc. 8).

Discussion

Plaintiffs have made out prima facie cases for breach of the contract as against the defaulting defendants, breach of personal guaranty as against defendant Gherardi, and fraud/alteration or substitution of the Original Thadani Mortgage as against the defaulting defendants (plaintiffs' first through third causes of action) by submitting the following, among other documents: a copy of the Promissory Note (NYSCEF Doc. 17); a copy of the Original Thadani Mortgage (NYSCEF Doc. 18); a copy of the Fraudulent Mortgage (NYSCEF Doc. 19); and the February 1, 2021 affirmation of Lisa Pashkoff, Esq., plaintiffs' attorney (NYSCEF Doc. 9)

Additionally, plaintiffs have established that they are entitled to a default judgment against the defaulting defendants, only, by complying with CPLR 3215(f) and (g) by submitting the following, among other documents: copies of the subject summons and verified complaint (NYSCEF Doc. 16); copies of the subject affidavits of service (NYSCEF Documents 2-3); and the January 28, 2021 affidavit of facts of plaintiff Sunder Thadani (NYSCEF Doc. 15).

To date, the defaulting defendants have failed to answer the instant complaint and/or oppose or otherwise respond to the instant motion, and their time to do so has expired.

Therefore, this Court will (1) sever plaintiffs' instant claims as against the defaulting defendants from their instant claims as against defendant Landberg; and (2) grant plaintiffs' instant motion for a default judgment against the defaulting defendants, only.

Conclusion

Thus, for the reasons stated hereinabove, this Court (1) hereby severs the instant claims by plaintiffs, Sunder Thadani and Lovina Thadani, as against defendants 1700 Group LLC and Richard Gherardi from those as against defendant William Landberg; and (2) hereby grants the instant motion, pursuant to CPLR 3215, by plaintiffs for a default judgment against defendants 1700 Group LLC and Richard Gherardi, only, jointly and severally, on plaintiffs' first through third causes of action, in the amount of \$153,888.33 (\$70,000.00 plus \$83,888.33), plus interest thereon at 15% per year (midway between 14% interest per year on the \$83,888.33 and 16% interest per year on the \$70,000.00) from April 21, 2019 (CPLR 5001(b)) until the date of entry of this Decision and Order, plus statutory interest thereafter, plus costs and disbursements. This Court hereby dismisses plaintiffs' fourth cause of action without prejudice, solely as duplicative. Plaintiffs have failed to justify or argue for punitive damages and/or to explain the "additional interest" that they reference in the instant complaint. Accordingly, the Clerk is hereby directed to enter judgment in favor of plaintiffs and against defendants 1700 Group LLC and Richard Gherardi, only, jointly and severally, in the amount of \$153,888.33, plus interest thereon at 15% per year from April 21, 2019 until the date of entry of this Decision and Order, plus statutory interest thereafter, plus costs and disbursements.

Plaintiffs' request for contractual attorney's fees pursuant to the April 24, 2018 Promissory Note (NYSCEF Doc. 17) is hereby severed, and plaintiffs may obtain an inquest into said attorney's

fees by presenting the Clerk with a Note of Issue with Notice of Inquest, a copy of this Decision and Order, and the payment of any necessary fees.

Additionally, plaintiffs may obtain an inquest into damages against defendant William Landberg by presenting the Clerk with a Note of Issue with Notice of Inquest, a copy of this Decision and Order, and the payment of any necessary fees.



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5/28/2021

DATE

ARTHUR F. ENGORON, 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