

Atlantic Ave. Capital LLC v 980 Atl. Holdings LLC

2021 NY Slip Op 33244(U)

November 9, 2021

Supreme Court, Kings County

Docket Number: Index No. 500917/19

Judge: Lawrence 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 9th day of November, 2021.

P R E S E N T:

HON. LAWRENCE KNIPEL,

Justice.

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ATLANTIC AVENUE CAPITAL LLC,

Plaintiff,

- against -

Index No. 500917/19

980 ATLANTIC HOLDINGS LLC, TRANSIT WIRELESS, LLC, CHASKIEL STRULOVICH, "JOHN DOE #1" through "JOHN DOE #60"

inclusive, the true names of said defendants being unknown to plaintiff, the parties being intended to be those persons having or claiming an interest in the mortgaged premises described in the complaint by virtue of being tenants, occupants, owners, judgment creditors, or lienors of any type or nature, and/or their heirs, successors or assigns in all or part of said premises,

Defendants.

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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) _____

66-67, 69-71

72-73

74

Upon the foregoing papers in this action to foreclose a leasehold mortgage on the commercial properties at 976/984 Atlantic Avenue, 534 Grand Avenue and 971/973 Pacific

Street in Brooklyn (Rental Properties), plaintiff Atlantic Avenue Capital LLC (Atlantic or plaintiff) moves (in motion sequence [mot. seq.] three) for an order, pursuant to Administrative Order (AO) 262, section 4b, determining that the April 19, 2021 “Commercial Mortgagor’s Declaration of COVID-19-Related Hardship” filed by individual defendant Chaskiel Strulovich (Strulovich) on behalf of the corporate defendant 980 Atlantic Holdings, LLC (980 Atlantic) (Hardship Declaration) (NYSCEF Doc No. 65) is invalid.

On January 14, 2019, Atlantic commenced this action to foreclose a \$2,700,000.00 leasehold mortgage on the Rental Properties, which secure a September 19, 2016 note executed by 980 Atlantic and guaranteed by individual defendant Strulovich in favor of Prospect Place Capital LLC (Prospect). In 2018, Prospect accelerated the loan based on 980 Atlantic’s failure to pay installments due on September 22, 2017, and failure to pay all amounts due under the mortgage on or before the December 19, 2017 maturity date of the loan. On or about December 14, 2018, Prospect assigned the loan, the guaranty and an Assignment of Rents to Atlantic. On or about March 5, 2019, 980 Atlantic and Strulovich collectively answered the complaint. By a January 24, 2020 order, this court granted Atlantic summary judgment and an order of reference.

On April 19, 2021, during the COVID-19 pandemic, Strulovich filed the Hardship Declaration on behalf of the corporate defendant 980 Atlantic, which asserts that:

“My business owns, whether directly or indirectly, *ten or fewer commercial units*. My business is resident in New York State, independently owned and operated, not dominant in its field,

and employs fifty or fewer persons. *My business is experiencing financial hardship and is unable to pay the mortgage in full because of one or more of the following:*

“1. Significant loss of revenue during the COVID-19 pandemic.

“2. Significant increase in necessary expenses related to providing personal protective equipment to employees or purchasing and installing other protective equipment to prevent the transmission of COVID-19 within the business.

“3. Moving expenses and difficulty in securing an alternative commercial property mak[ing] it a hardship for the business to relocate to another property during the COVID-19 pandemic.

“4. One or more of the business’s tenants has defaulted on a significant amount of their rent payments since March 1, 2020.

“To the extent that the business has lost revenue or had increased expenses, any public assistance the business has received since the start of the COVID-19 pandemic does not fully make up for the business’s loss of revenue or increased expenses. I understand that the business must comply with all other lawful terms under my commercial mortgage agreement. I further understand that lawful fees, penalties or interest for not having paid the mortgage in full as required by the commercial mortgage agreement may still be charged or collected and may result in a monetary judgment. I also understand that the mortgage lender or other foreclosing party may pursue a foreclosure action against the business on or after May 1, 2021, if I do not fully repay any missed or partial payments and lawful fees” (emphasis added).

On October 7, 2021, Atlantic filed the instant motion for an order determining that defendants’ Hardship Declaration is invalid. Essentially, Atlantic challenges the representations made in defendants’ Hardship Declaration regarding the size of defendants’

real estate business holdings and the actual impact of the COVID-19 pandemic on defendants' alleged payment default.

Atlantic's counsel submits an affirmation asserting that Strulovich is the "majority owner" of 980 Atlantic, which is a "small part of Strulovich's real estate business." Atlantic's counsel submits Strulovich's April 22, 2020 affidavit that he submitted in another New York action, in which Strulovich specifically attests that:

"I am the majority member/owner of the following co-defendants: CS Construction Group LLC, 945 Park Pl LLC, 1078 Dekalb LLC, 74 Van Buren LLC, 454 Central Avenue LLC, **980 Atlantic Holdings LLC**, 720 Livonia Development LLC, Penn Condominium LLC, Throop Home, LLC, The Bushwick Partners LLC, Brooklyn Ventures LLC, The Howard Day House LLC, Bayshore, Inc, 31 Brooklyn LLC, 119 Holdings LLC, Gold Cliff LLC, 908 Bergen Street LLC, 901 Bushwick Avenue LLC, Gates Equity Holdings LLC, 853 Lexington LLC, 348 St. Nicholas LLC, 762 Willoughby LLC, 855 Dekalb Avenue LLC, The Bridge Tower LLC, 619 Holdings LLC, Grand Suites LLC, Catalpa Development, LLC, Slope Offices LLC, 482-484 Seneca LLC, 1266 Pacific LLC, Myrtleino Holdings, LLC, 259 Berry LLC, 261 Berry LLC, 1642 Equities LLC, 1217 Bedford LLC, Penn & Marcy LLC, CAS Management Company, 741 Lexington LLC, and CSY Holdings LLC . . ." (see NYSCEF Doc No. 69 [emphasis added]).

Atlantic's counsel asserts that Strulovich "is a majority owner of numerous entities through which he owns and manages residential and commercial real estate[,]"¹ rather than the small business owner he purports to be in the Hardship Declaration. Atlantic's counsel

¹ Atlantic's counsel also annexes Strulovich's June 12, 2017 declaration that he submitted in a federal court action in which he identified additional entities that he controlled at that time.

affirms that he reviewed the public records and “I found that many of the properties are still owned by [Strulovich’s] entities” which confirmed that “Strulovich[’s] real estate business (and 980 Atlantic Holdings, LLC indirectly) in the aggregate contain more than ten properties.”

Atlantic’s counsel also asserts that, contrary to the assertions made in defendants’ Hardship Declaration, “[t]he outbreak of Covid in 2020 did not cause the default here.” Atlantic’s counsel references the mortgage (NYSCEF Doc No. 3) and notes that defendants defaulted by failing to pay the installment due in September 2017 and failing to pay the entire balance due on or before the December 19, 2017 maturity date, well before the onset of the COVID-19 pandemic. Atlantic’s counsel argues that “[t]here being no connection between the default and Covid, the defendants are not entitled to relief under the Hardship statute.”

Atlantic also submits an affidavit from Robert Schuck (Schuck), a member of Atlantic, who attests that 980 Atlantic “is not an owner” and is only “a lessee at the property” who “granted a leasehold mortgage[,]” and thus, is “not qualified” to file a hardship declaration. Schuck further attests that Atlantic has been collecting rent from 980 Atlantic’s subtenants pursuant to the Assignment of Rents.

Defendants, in opposition, submit an attorney affirmation asserting that “no property listed by plaintiff is owned by Strulovich individually, he at most had or has an interest in the entity that owns the property as of the date of the document plaintiff references.” Defense counsel further claims that “[p]laintiff also fails to sustain the

argument that for purposes of the hardship, 980 Atlantic is not an owner.” Sturlovich also submits an affidavit attesting that the underlying loan was accelerated in January 2018, “requiring the entire outstanding amount of the loan to be repaid in full immediately . . .” and the original lender, Prospect, “began to collect rents from 980 Atlantic’s sub-tenants under the Assignment of Leases and Rents.” Sturlovich asserts that “[d]ue to that action, and the pandemic, 980 Atlantic was left with no cash flow, and could [not] borrow or otherwise secure funds to address this Property or loan.” Sturlovich also argues that “COVID need not have been the cause for the hardship (or default) . . .”

Atlantic, in reply, reiterates that “Covid didn’t cause the default” and “the subtenants kept paying rent, just directly to plaintiff.” Atlantic asserts that defendants present “no real explanation as to how Covid created a hardship for defendant.”

AO 262/21 provides, in relevant part:

“4. Challenging a Hardship Declaration

* * *

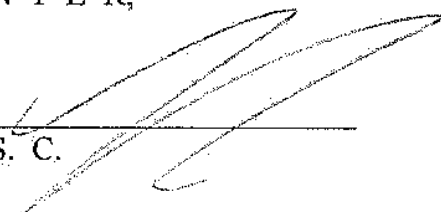
- “b. Pending Action – Upon motion by the plaintiff on notice to the defendant, a court must schedule a hearing to determine the validity of the Hardship Declaration. If, after the hearing, the court finds the Hardship Declaration to be valid, the stay shall continue. If the court finds that the Declaration is invalid, the matter may proceed in the normal course . . .”

Thus, under the circumstances presented here, where Atlantic has challenged defendants' Hardship Declaration, a hearing is required to determine whether this foreclosure action is stayed. Accordingly, it is hereby

ORDERED that plaintiff's motion (mot. seq. three) for an order determining that defendants' Hardship Declaration is invalid is held in abeyance pending the outcome of a hearing before this court on Dec. 6th, 2021, *not 10am.* to determine the validity of defendants' Hardship Declaration in accordance with AO 262/21.

This constitutes the decision and order of the court.

E N T E R,



J. S. C.

HON. LAWRENCE KNIPEL
ADMINISTRATIVE JUDGE