

**Marathon CRE 2018-FL1 Issuer, Ltd. v 257-263 W
34th St. LLC**

2022 NY Slip Op 30258(U)

January 3, 2022

Supreme Court, New York County

Docket Number: Index No. 655493/2021

Judge: Jennifer G. Schechter

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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. JENNIFER SCHECTER PART 54

Justice

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INDEX NO. 655493/2021

MARATHON CRE 2018-FL1 ISSUER, LTD.,

MOTION SEQ. NO. 001

Plaintiff,

- v -

257-263 W 34TH STREET LLC, SORABH MAHESHWARI, JUSTIN EHRLICH, CHAIM LEBOWITZ, ISSAC LAUFER, SUKENIK, SEGAL & GRAFF, P.C., ROBERT ETTINGER, P.E., P.C., E&W WHOLESALE ELECTRICAL INC., JOHN DOES

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 68, 69, 70, 71, 72, 73, 74

were read on this motion to/for MISCELLANEOUS

Plaintiff is entitled to the appointment of a receiver under the Mortgage and the Loan Agreements. Defendants' contention that the appointment of a receiver would serve no useful purpose is rejected (see CSFB 2004-C3 Bronx Apts LLC v Sinckler, Inc., 96 AD3d 680, 681 [1st Dept 2012]). Accordingly, it is

ORDERED that the motion by plaintiff Marathon CRE 2018-FL1 Issuer, Ltd. (Plaintiff) for the appointment of a receiver for the property known as and located at 257-263 W 34th Street, New York, New York (Block 784, Lot 8) (the Mortgaged Property), which is owned by defendant 257-263 W 34th Street LLC (the Mortgage Borrower), is GRANTED, and that Leslie Feifer, Esq. (the Receiver), Fiduciary ID # 120609, 300 Garden City Plaza, 5th Floor, Garden City, NY 11530, 516-393-8229, lfeifer@jaspanllp.com, be and is hereby appointed with the usual powers and direction as Receiver for the benefit of Plaintiff of all the rents and profits now due and to become due during the pendency of this action and issuing out of the Mortgaged Property, as more particularly described in the Mortgages; and it is further

ORDERED that the Receiver is authorized to take charge and enter into possession of the Mortgaged Property; and it is further

ORDERED that before entering upon her duties, said Receiver shall be sworn faithfully and fairly to discharge the trust committed to her, and said Receiver execute to The People

of The State of New York and file with the Clerk of the Court a bond with sufficient sureties to be in the sum of \$10,000 conditioned for the faithful performance of her duties as such Receiver; and it is further

ORDERED that the Receiver file an oath with the County Clerk; and it is further

ORDERED that the Receiver is: (i) authorized and directed to demand, collect and receive from the tenants, subtenants or any person in possession of the Mortgaged Property, or any part thereof, or from any other person or persons liable therefor, all rents or other monies thereof now due and unpaid, or hereafter to become due until discharged by an order of this Court or until the delivery of the Referee's Deed as may hereafter be authorized by a judgment of this Court; (ii) authorized to institute and maintain all legal proceedings and to take such actions and effect such measures necessary for the protection of the Mortgaged Property, or to recover possession of the whole or any part thereof, and to institute and prosecute suits for the collection of rents or other monies now due or hereafter to become due, and summary or other proceedings for the removal of any tenant, subtenant, or any other person or persons therefrom, but not to employ counsel therefor except upon further order of the Court; and (iii) directed to allow access to Plaintiff to the Mortgaged Property for appraisals and due diligence including, but not limited to, inspection of the financial books and records of defendant Borrower; and it is further

ORDERED that defendant Mortgage Borrower and its agents, officers, employees, members and contractors are hereby directed to forthwith deliver and turn over to the Receiver: (i) any rents which come into their possession from and after the date hereof; (ii) the proceeds and control of all bank accounts containing tenant security deposits, rental payments and other funds relating to the upkeep and maintenance of the Mortgaged Property; and (iii) possession of any and all documents, books, records and property which relate to the management, operation, occupancy, insurance, maintenance, or service of or construction upon the Mortgaged Property, or refer to the Mortgaged Property in any way, including, but not limited to: (a) all tapes, microfilm, computer disks, or other computer or electronic records; (b) all codes, passwords or other information necessary to access computerized data; (c) all rent, lists, leases, subleases and rental or occupancy agreements with the tenants and subtenants in possession of the Mortgaged Property or any part or parts thereof; (d) all tenants' and subtenants' money deposits or other property given to secure tenants' and subtenants' obligations under leases or subleases; (e) all lists pertaining to current maintenance and rent arrears; (f) all service, maintenance, and other contracts and agreements; (g) all lists of vendors and records of transactions with vendors; (h) all books of account, payroll records, accounts receivable and account payable lists, budgets and other financial records; (i) all monies on deposit with vendors, service companies, utility companies or others; (j) employment and union agreements and records relating to past and present employees; (k) keys; (l) all permits and licenses necessary for the operation of the Mortgaged Property; (m) all bank and bank account records; (n) all similar

agreements, documents and instruments; and (o) all related correspondence and notices; and it is further

ORDERED that defendant Mortgage Borrower shall turn over all documents relating to any past or present litigation concerning the Mortgaged Property to the Receiver, and shall cooperate with the Receiver in its taking over of such litigation; and it is further

ORDERED that the tenants, subtenants, or other persons either in possession of the Mortgaged Property or any part thereof or liable for the payment of rents or other monies thereof, are directed to attorn to the Receiver and to pay over to the Receiver all rents or other monies of said premises now due, past due, or that may hereafter become due; and that the defendants and their agents, officers, employees and attorneys are enjoined and restrained from collecting or disposing of any rents or other monies of the Mortgaged Property and for disposing of, or leasing all or any portion of, or modifying or terminating any leases for space at, the Mortgaged Property and from interfering in any manner with the property or its operation, management or possession, or with the Receiver's management thereof; and that all tenants, subtenants, or other persons liable for the rents or other monies, are enjoined and restrained from paying any rent or other monies for such Mortgaged Property to the defendants, their agents, officers, employees or attorneys, or to any person other than the Receiver; and it is further

ORDERED that the Receiver is authorized and directed: (a) to rent or lease, at the prevailing market rates and terms for like space, any part of the Mortgaged Property as may be or become vacant or available for terms not exceeding two (2) years, but only with the written consent of Plaintiff; (b) to keep the Mortgaged Property insured against loss or damage by fire and other hazards, and to procure liability insurance, as may be necessary in the amounts and form required by the Mortgages; (c) to keep the Mortgaged Property in good repair and expend such sums as may be necessary therefor out of the proceeds of his collections therefrom, such expenses not to exceed \$2,000 for each item of repair without further authorization by the Court or by written consent of Plaintiff or Plaintiff's attorneys; (d) to make or continue contracts for, among other things, the services of a watchman or other security service to protect the Mortgaged Property; (e) to pay when due all such taxes, which are liens, or may become liens during the receivership, upon the Mortgaged Property; (f) if requested by Plaintiff, to retain a qualified environmental consulting firm to perform any site assessments as may be reasonably necessary or appropriate to evaluate the risks of contamination and risks to public health and the environment that may exist in connection with the Mortgaged Property (including but not limited to testing of soil, water and building materials when necessary) or to facilitate the sale of the Mortgaged Property; and (g) to pay all other normal operating charges thereon without further application to or authorization by the Court; and (i) to apply and use the rents, income, receipts, revenues, issues and profits issuing from the Mortgaged Property toward all other maintenance and operating charges and disbursements incurred in connection with the operation and maintenance of the Mortgaged Property, and any balance remaining after such applications,

toward the amounts due to the Plaintiff on the total accelerated debt secured by the Mortgages at the default rate of interest provided therein; and it is further

ORDERED that the Receiver shall not appoint any property manager, attorney, appraiser, accountant, agent, auctioneer or other secondary appointment without the prior written approval of the Court; and it is further

ORDERED that the Receiver shall not incur obligations in excess of the monies in the Receiver's hands without further order of this Court or the written consent of Plaintiff or Plaintiff's attorneys; and it is further

ORDERED that the Receiver register with any municipal department as required by applicable law; and it is further

ORDERED that the Receiver shall promptly deposit all monies received by the Receiver at the time the Receiver receives the same in a separate account under the Receiver's name, as Receiver, in and such account shall have the name of this action and no withdrawals shall be made therefrom except as directed by the Court or upon a draft or check signed by the Receiver and countersigned by the Surety on the bond, or as further ordered by this Court. The Receiver shall furnish to the representatives of the Plaintiff monthly statements showing all receipts and expenditures, together with a photocopy of the monthly statement received from the above-named depository; and said depository shall send monthly statements showing all deposits into and withdrawals from said account to the Receiver and also to Plaintiff's attorneys, Cole Schotz P.C.; and it is further

ORDERED that in compliance with CPLR 6404, the Receiver shall keep a written account, which shall be open for inspection in the Receiver's office at all reasonable times to the Plaintiff, to the record owner of the Mortgaged Property, to any party against whom a deficiency judgment may be sought, and also to any person whose rights are affected by this litigation, which account shall detail and itemize all receipts and expenditures, and shall indicate at all times the name and address of the depository of all receivership funds; and it is further

ORDERED that the Receiver or any party hereto may, at any time, upon proper notice to all parties who are entitled thereto, apply to this Court for further or other instructions or authority necessary to enable the Receiver to fulfill his or her duties; and it is further

ORDERED that in the event Plaintiff advances any monies on Defendants' behalf for the repairs, maintenance, taxes, insurance, curing of violations, or any other expense necessary to the preservation and protection of the Mortgaged Property by Receiver, to the extent that the funds collected by Receiver are insufficient, shall be added to and included in any judgment of foreclosure and sale; and it is further

ORDERED that this Receivership shall automatically terminate upon the settlement of this action, or the closing of title pursuant to a Referee’s Terms of Sale, in either event subject to the Receiver’s final accounting and formal discharge; and it is further

ORDERED that the Receiver shall prepare a monthly accounting in the form of a Management Report, which shall be e-filed by no later than the 15th day of the month following each calendar month of the Receivership; and it is further

ORDERED that the Receiver named herein shall comply with CPLR 6401-6404, RPAPL § 1324, § 35-a of the Judiciary Law and 22 NYCRR Part 36.

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1/3/2022
DATE

JENNIFER SCHECTER, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
		<input type="checkbox"/>	DENIED	<input type="checkbox"/>
				<input type="checkbox"/>
				OTHER