

Bank Leumi USA v FPG Maiden Lane, LLC
2022 NY Slip Op 30470(U)
February 9, 2022
Supreme Court, New York County
Docket Number: Index No. 657252/2020
Judge: Barry R. Ostrager
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

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Bank Leumi USA,

Plaintiff,

- v -

FPG Maiden Lane, LLC, Maiden Rental Holdings, LLC, Maiden Rental Holdings II, LLC, Maiden Rental Holdings III, LLC, Fortis Property Group, LLC, Joel Kestenbaum, City Safety Compliance Corp., HD Supply Construction Supply Ltd., New York Concrete Washout, Neat Heat Climate Control LLC, TPE DBA Plumbing Exchange, Pizzarotti LLC, Cuetes Corp., Extech Building Materials, United Rentals (North America) Inc., Able Rigging Contractors Inc., Abbey Associates LLC, Gryphon Contracting Corp., BPRT Construction of NY LLC, Pearlgreen Corporation, Roman Labor Services Corp., Dura-Lift Inc., Pizzarotti IBC, LLC, Diamond Coring & Cutting Inc., Alboro National LLC, Horizon Interiors Inc., Silvercup Scaffolding I LLC, Quality Facility Solutions Corp., Aish Mechanical Corp., DHS Fraco, LLC, Swing Staging LLC, MCWI Inc., Guma Construction Corp., Hill West Architects, LLP, ADD Mechanical Inc., Berry's Cooling & Heating, LLC, Rent A Unit NY Inc., New Jersey Boom and Erectros, 1 Seal USA LLC, Primaview LLC, AGM Deco Inc., Expressive Lighting Inc., A&D Entrances Inc., Centrifugal Electric LLC, Ray Builders Inc., RC Structures Inc., Doria Inc., New York State Department of Taxation & Finance, New York City Department of Finance, JOHN DOE "1" through "10" and JANE DOE "1" through "10", the last 10 names being fictitious and unknown to plaintiff, the persons or parties intended being the persons or parties, if any, having or claiming an interest in or lien upon the mortgaged premises described in the Verified Complaint,

Defendants.

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HON. BARRY R. OSTRAGER

The Court heard oral argument via Microsoft Teams on February 9, 2022 on the motion by plaintiff Bank Leumi USA ("Bank Leumi") seeking an order: (a) granting Bank Leumi summary judgment in its favor on both the First Cause of Action sounding in foreclosure and the Second

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DECISION + ORDER ON MOTION

Cause of Action for attorney's fees; (b) dismissing all affirmative defenses and counterclaims asserted by the various defendants; (c) appointing a Referee to compute the amounts due on the mortgage; (d) granting Bank Leumi a default judgment re the Non-Answering Defendants; and (e) amending the caption of this action to delete Defendants sued herein as "John Doe No. 1 through 10" and "Jane Doe No. 1 through 10". Also heard at that time was the cross-motion by defendant Able Rigging Contractors Inc. ("Able") (a) pursuant to CPLR §3212, granting Able summary judgment on Able's First Affirmative Defense against plaintiff Bank Leumi; (b) pursuant to CPLR § 3211(a)(1), dismissing plaintiff's First Cause of Action against defendant Able; and (c) for sanctions pursuant to 22 NYCRR 130-1.1 In accordance with the proceedings on the record on February 9, 2022, the motion by Bank Leumi is granted in part and denied in part, and the cross-motion by Able is denied without prejudice, as follows.

The Court grants plaintiff Bank Leumi's motion to the extent of finding that the Non-Answering Defendants are in default and also permits the amendment of the caption. The motion and Able's cross-motion are otherwise denied based on issues of fact, many of which were identified in the Court's decision in the related action *FPG Maiden Lane, LLC t al., v Bank Leumi USA, et al.*, Index No. 653584/20 (NYSCEF Doc. No. 78). As Bank Leumi acknowledges, not even electronic discovery has been completed. Under the circumstances, the Court denies plaintiff's motion for the drastic remedy of summary judgment in foreclosure without prejudice to renewal after the completion of the consolidated discovery in this action and the related action.

Accordingly, it is hereby

ORDERED that plaintiff's motion is granted to the extent of finding that the Non-Answering Defendants identified during the oral argument are in default, and any Affirmative Defenses, Counterclaims, and Crossclaims asserted by defendants City Safety Compliance Corp.,

HD Supply Construction Supply Ltd., New York Concrete Washout, Neat Heat Climate Control LLC, TPE DBA Plumbing Exchange, Cuetes Corp., Extech Building Materials, Abbey Associates LLC, Gryphon Contracting Corp., BPRT Construction of NY LLC, Pearlgreen Corporation, Roman Labor Services Corp., Dura-Lift Inc., Horizon Interiors Inc., Silvercup Scaffolding I LLC, Quality Facility Solutions Corp., Aish Mechanical Corp., DHS Fraco, LLC, MCWI Inc., Guma Construction Corp., ADD Mechanical Inc., Berry's Cooling & Heating, LLC, Rent A Unit NY Inc., New Jersey Boom and Erectros, 1 Seal USA LLC, Primaview LLC, AGM Deco Inc., Expressive Lighting Inc., A&D Entrances Inc., Centrifugal Electric LLC, RC Structures Inc., New York State Department of Taxation & Finance, New York City Department of Finance are stricken; and it is further

ORDERED that plaintiff's motion is granted to the extent of directing the County Clerk to amend the caption to delete any reference to the defendants sued herein as "John Doe No. 1 through 10" and "Jane Doe No. 1 through 10" upon plaintiff's e filing of Form EF-23, available on the NYSCEF Home Page, along with a copy of this Decision and directed to the County Clerk; and is further

ORDERED that plaintiff's motion is otherwise denied without prejudice to renewal upon the completion of discovery; and it is further

ORDERED that the cross-motion by defendant Able Rigging Contractors Inc. is denied based on issues of fact without prejudice to renewal upon the completion of discovery; and it is further

ORDERED that discovery shall proceed in this action and the related action pending under Index No. 653584/2020 pursuant to the existing schedule, with the Note of Issue remaining due on July 8, 2022; and it is further

ORDERED that a status conference is scheduled for May 10, 2022 at 11:00 a.m. via Microsoft Teams using the same appearances as today. Counsel shall promptly advise the Court in an efiled letter whether counsel consent to the appointment of a Special Master for discovery.

Dated: February 9, 2022

Barry R. Ostrager
BARRY R. OSTRAGER, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: