

Board of Mgrs. of the Alfred Condominium v Wu

2022 NY Slip Op 30494(U)

February 14, 2022

Supreme Court, New York County

Docket Number: Index No. 160791/2017

Judge: W. Franc Perry

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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. WILLIAM PERRY PART **23**

Justice

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INDEX NO. 160791/2017

THE BOARD OF MANAGERS OF THE ALFRED
CONDOMINIUM, ON BEHALF OF ALL UNIT OWNERS,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 005

- v -

GRACE WU, A/K/A GRACE HUIMEI HUANG WU, A/K/A
GRACE HUMEI HUANG, BANK OF AMERICA, N.A., JOHN
DOE NO. 1 THROUGH JOHN DOE NO. 10, THE NAMES
BEING FICTITIOUS AND UNKNOWN, THE PERSONS OR
PARTIES INTENDED BEING THE TENANTS,
OCCUPANTS, PERSONS OR ENTITIES, IF ANY, HAVING
OR CLAIMING ANY INTEREST IN OR LIEN UPON THE
PREMISES DESCRIBED IN THE COMPLA

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 59, 60, 61, 62, 63,
64, 65, 66, 67

were read on this motion to/for JUDGMENT - FORECLOSURE & SALE

On the Summons and Verified Complaint duly filed in this action on December 6, 2017,
the Decisions and Orders of the Hon. Franc Perry, dated June 26, 2018 and March 6, 2020, the
Notice of Pendency filed on December 10, 2020, and all proceedings thereof, and on reading and
filing the Affidavit of Kelly A. Ringston, Esq., counsel for plaintiff, dated December 10, 2020,
from which it appears that this action was brought to foreclose a condominium lien on real property
situated in the County of New York, State of New York, at 161 West 61st Street, New York, NY,
Unit 5C (Block: 1132, Lot: 1020) by reason of certain defaults as alleged in the Complaint; and

Upon proof that defendant Grace Wu a/k/a/ Grace Huimei Huang Wu a/k/a Grace Huimei
Huang was duly served with the Summons and Complaint in this action, and failed to serve an
answer to the Complaint nor had her time to do so extended, resulting in a an Order of Default

Judgment June 26, 2018; and that a Notice of Pendency containing all the particulars required to be stated therein was duly filed in the Office of the Clerk of the County of New York on December 10, 2020, and has not been amended to add new parties or to embrace real property not described in the original Complaint, and this matter having been referred to a Judicial Hearing Officer to assess damages due to the plaintiff upon the condominium lien set forth in the Complaint,

AND, on following an assessment of damages hearing held on February 25, 2019 before Judicial Hearing Officer Philip S. Strainere, and upon this Court's March 6, 2020 decision and order affirming the report of Judicial Hearing Officer in part, and rejecting it in part, it appears that the sum of \$67,950.46 in common charges is due to Plaintiff through April 30, 2014 and that plaintiff is due \$23,061.82 in attorneys' fees, costs and disbursements in connection with this action.


NOW, upon proof of due notice of this motion upon all parties who had not waived the same,

ON MOTION of Kelly A. Ringston., attorney for the plaintiff, it is

ORDERED, that the motion is granted; and it is further

ORDERED, ADJUDGED AND DECREED, that the above-described premises or such part thereof as may be sufficient to discharge the condominium lien debt, the expenses of the sale and the costs of this action as provided by the Real Property Actions and Proceedings Law be sold,

~~within 90 days of the date of this Judgment,~~ in one parcel, at public auction at Room 130 of New York County Supreme Court, 60 Centre Street, New York, New York 10007, on ^{May 4th, 2022,} ~~at~~ Wednesday afternoon at 2 P.M., by and under the direction of

 Joseph Bruno, Esq., who is hereby

appointed Referee for that purpose, that the said Referee shall set the date of sale and give public

notice of the time and place of sale in accordance with RPAPL 231 in the New York Law Journal, and it is further

ORDERED, ADJUDGED AND DECREED that by accepting this appointment, the Referee certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2 (c) (“Disqualifications from appointment”) and §36.2 (d) (“Limitations on appointments based upon compensation”); and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall immediately notify the Appointing Judge; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee is prohibited from accepting or retaining any funds for him/herself or paying funds to him/herself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee shall conduct the foreclosure sale only if Plaintiff, its successors and/or assignees, or its representative is present at the sale or the Referee has received a written bid and Terms of Sale from Plaintiff, its successors and/or assigns, or its representative; and it is further

ORDERED, ADJUDGED AND DECREED that if the Referee does not conduct the sale within 90 days of the date of the judgment, in accordance with CPLR 2004, the time fixed by RPAPL §1351(1) is extended for the Referee to conduct the sale as soon as reasonably practicable; and it is further

ORDERED, ADJUDGED AND DECREED that at the time of sale the Referee shall accept a written bid from the Plaintiff or the Plaintiff’s attorney, just as though Plaintiff were physically present to submit said bid; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee shall accept the highest bid offered by a bidder who shall be identified upon the court record, and shall require that the successful bidder immediately execute Terms of Sale for the purchase of the property, and pay to the Referee, in cash or certified or bank check, ten percent (10%) of the sum bid, unless the successful bidder is Plaintiff in which case no deposit against the purchase price shall be required; and it is further

ORDERED, ADJUDGED AND DECREED that, in the event the first successful bidder fails to execute the Terms of Sale immediately following the bidding upon the subject property or fails to immediately pay the ten percent (10%) deposit as required, the property shall immediately and on the same day be reoffered at auction; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee shall then deposit the down payment and proceeds of sale, as necessary, in ^{an FDIC-insured bank} ~~where the Referee has an~~ account for that purpose in his/her own name as Referee, in accordance with CPLR 2609; and it is further

ORDERED, ADJUDGED AND DECREED that after the property is sold, the Referee shall execute a deed to the purchaser, in accordance with RPAPL §1353 and the terms of sale, which shall be deemed a binding contract; and it is further

ORDERED, ADJUDGED AND DECREED that, in the event a party other than the Plaintiff becomes the purchaser at the sale, the closing of title shall be held no later than 30 days after the date of such sale unless otherwise stipulated by all parties to the sale; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee, on receiving the proceeds of such sale, shall forthwith pay therefrom, in accordance with their priority according to law, all taxes, assessments, sewer rents, or water rates, which are, or may become, liens on the property at

the time of sale, with such interest or penalties which may have lawfully accrued thereon to the date of payment; and it is further

ORDERED, ADJUDGED AND DECREED, that the Referee then deposit the balance of said proceeds of sale in her/his own name as Referee in an FDIC-insured bank where the Referee has an account for that purpose, and shall thereafter make the following payments in accordance with RPAPL §1354, as follows:

FIRST: The Referee’s statutory fees for conducting the sale, in accordance with CPLR 8003(b), not to exceed \$750.00 unless the property sells for \$50,000.00 or more, or in the event a sale was cancelled or postponed, Plaintiff shall compensate the Referee in the sum of \$ 350.00 for each adjournment or cancellation, unless the Referee caused the delay;

SECOND: All taxes, assessments, and water rates that are liens upon the property and monies necessary to redeem the property from any sales for unpaid taxes, assessments, or water rates that have not become absolute, and any other amounts due in accordance with RPAPL §1354(2). Purchaser shall be responsible for interest and penalties due on any real property taxes accruing after the sale. The Referee shall not be responsible for the payment of penalties or fees pursuant to this appointment. The Purchaser shall hold the Referee harmless from any such penalties or fees assessed;

THIRD: The expenses of the sale and the advertising expenses as shown on the bills presented and certified by said Referee to be correct, duplicate copies of which shall be annexed to the report of sale;

FOURTH: The Referee shall then pay to the Plaintiff or its attorney the sum of \$91,012.28, said amount being comprised of: (i) \$67,950.46 in common charges

attributable to 5C, the amount so reported due as aforesaid; and (ii) \$23,061.82, representing the total attorneys' fees, costs and disbursements incurred by plaintiff in this action and as reported due as aforesaid, together with interest thereon from June 25, 2018, the date of said Order of Default, to the date of entry of this Order, and thereafter at the statutory postjudgment rate to the date of transfer of title, together with the remaining costs and expenses of this action (including reasonable attorney's fees), and any monies advanced and paid by the Condominium pursuant to any provision of the Condominium's ByLaws, with appropriate interest thereon and late fees, not previously included in the computation, upon presentation to the Referee of receipts for said expenditures, pursuant to the Condominium's ByLaws as above provided. Copies of such receipts shall be annexed to the Referee's Report of Sale. Plaintiff shall timely move to confirm the Referee's Report of Sale pursuant to RAPL § 1355; and

FIFTH: Surplus monies arising from the sale shall be paid into court by the officer conducting the sale within five days after receipt in accordance with RPAPL §1354(4) and in accordance with local County rules regarding Surplus Monies; and it is further

ORDERED, ADJUDGED AND DECREED that if the Plaintiff is the purchaser of the property, or in the event that the rights of the purchasers at such sale and the terms of sale under this judgment shall be assigned to and be acquired by the Plaintiff, and a valid assignment thereof is filed with said Referee, said Referee shall not require Plaintiff to pay in cash the entire amount bid at said sale, but shall execute and deliver to the Plaintiff or its assignee, a deed or deeds of the property sold upon the payment to said Referee of the amounts specified in items marked "First",

“Second”, and “Third” above; that the Referee shall allow the Plaintiff to pay the amounts specified in “Second” and “Third” above when it is recording the deed; that the balance of the bid, after deducting the amounts paid by the Plaintiff, shall be applied to the amount due Plaintiff as specified in paragraph “Fourth” above; that Plaintiff shall pay any surplus after applying the balance of the bid to the Referee, who shall deposit it in accordance with paragraph “Fifth” above; and it is further

ORDERED, ADJUDGED AND DECREED that all expenses of recording the Referee’s deed, including real property transfer tax, which is not a lien upon the property at the time of sale, shall be paid by the purchaser, not by the Referee from sale proceeds, and that any transfer tax shall be paid in accordance with Tax Law §1404; and it is 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, the plaintiff may recover of the defendant Grace Wu the whole deficiency or so much thereof as the Court may determine to be just and equitable of the residue of the condominium lien debt remaining unsatisfied after the sale of the premises and the application of the proceeds thereof, provided a motion for a deficiency judgment shall be made as prescribed by Section 1371 of the Real Property Actions and Proceeding Law within 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 for in said action; and it is further

ORDERED, ADJUDGED AND DECREED that the subject premises is to be sold in one parcel in “as is” physical order and condition, subject to any condition that an inspection of the property would disclose; any facts that an accurate survey of the property would show; any covenants, restrictions, declarations, reservations, easements, right of way, and public utility agreements of record, if any; any building and zoning ordinances of the municipality in which the

property is located and possible violations of same; any rights of tenants or persons in possession of the subject property; prior liens of record, if any, except those liens addressed in RPAPL §1354; any equity of redemption of the United States of America to redeem the property within 120 days from the date of sale; and any rights pursuant to CPLR 317, 2003, and 5015, or any appeal of the underlying action or additional litigation brought by any defendant or its successor or assignee contesting the validity of this foreclosure; and it is further

ORDERED, ADJUDGED AND DECREED that the purchaser be let into possession of the property upon production in hand of the Referee's Deed or upon personal service of the Referee's Deed in accordance with CPLR 308; and it is further

ORDERED, ADJUDGED AND DECREED that the Defendants in this action and all persons claiming through them and any person obtaining an interest in the property after the filing of the Notice of Pendency are barred and foreclosed of all right, claim, lien, title, and interest in the property after the sale of the mortgaged property; and it is further

ORDERED, ADJUDGED AND DECREED that within 30 days after completing the sale and executing the proper conveyance to the purchaser, unless the time is extended by the court, the officer making the sale shall file with the clerk a report under oath of the disposition of the proceeds of the sale in accordance with RPAPL §1355(1) and follow all local County rules regarding handling of Surplus Monies; and it is further

ORDERED, ADJUDGED AND DECREED that if the purchaser or purchasers at said sale default(s) upon the bid and/or the terms of sale the Referee may place the property for resale without prior application to the Court unless Plaintiff's attorneys shall elect to make such application; and it is further

ORDERED, ADJUDGED AND DECREED that Plaintiff shall serve a copy of this Judgment with Notice of Entry upon the owner of the equity of redemption, any tenants named in this action, and any other parties or persons entitled to service, including the Referee appointed herein; and it is further

ORDERED, ADJUDGED AND DECREED that nothing herein shall be deemed to relieve Plaintiff of any obligation imposed by RPAPL §1307 and RPAPL §1308 to secure and maintain the property until such time as ownership of the property has been transferred and the deed duly recorded; and it is further

ORDERED, ADJUDGED AND DECREED that, when the Referee files a report of sale, he or she shall concurrently file a Foreclosure Actions Surplus Monies Form; and it is further

ORDERED, ADJUDGED AND DECREED that to ensure compliance herewith, Plaintiff shall file a written report with the court within six months from the date of entry of this judgment stating whether the sale has occurred and the outcome thereof.

Said property is commonly known as 161 West 61st St., Unit 5C, New York, New York 10022. The legal description of the property referred to herein is annexed hereto as Schedule A.

2/14/2022
DATE


W. FRANC PERRY, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED DENIED

NON-FINAL DISPOSITION

- GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE