

CPIF WTB, LLC v 44 Prime Manhattan Dev. LLC

2022 NY Slip Op 30708(U)

March 1, 2022

Supreme Court, New York County

Docket Number: Index No. 850027/2022

Judge: Francis A. Kahn III

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This opinion is uncorrected and not selected for official publication.

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IAS Part 32 of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse thereof, ~~60~~ " Centre Street, New York, New York on the 1

HON. FRANCIS A. KAHN ~~III~~ *MALCH*, 2022.

PRESENT: HON. _____ J.S.C.
JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----)
CPIF WTB, LLC, as successor in interest to)
CPIF LENDING, LLC,)

Index No. 850027/2022

Plaintiff,)

EX PARTE ORDER APPOINTING
RECEIVER IN MORTGAGE
FORECLOSURE ACTION

vs)

44 PRIME MANHATTAN DEVELOPMENT)
LLC; 44 HUDSON STREET JV LLC a/k/a 44)
HUDSON JV LLC; GRANT SHAPOLSKY;)
KUTNICKI BERNSTEIN ARCHITECTS)
PLLC; and said persons and parties having or)
claimed to have a right, title, or interest in the)
Mortgaged Property herein, their respective)
names are presently unknown to the Plaintiff,)

Defendants.)

UPON reading the Summons and Complaint, and all exhibits thereto, filed in the Office of the Clerk of New York County on January 28, 2022, and upon reading the *Ex Parte* Application of Plaintiff, CPIF WTB, LLC, as successor in interest to CPIF Lending LLC ("Plaintiff," or "Lender") to Appoint a Receiver and Memorandum of Law in Support, filed February 3, 2022, and the Affidavit of Kevin Quin, duly sworn to on January 28, 2022 ("Affidavit"), and all exhibits thereto, requesting the appointment of a Receiver (together, the "Application"), and for good cause shown; and

IT appearing to the satisfaction of the Court that this action was brought to foreclose a mortgage encumbering the personal and real property located at the premises commonly known

as 44 Hudson Street, New York, New York, as more particularly described in Exhibit 3 to the Complaint (the "Mortgaged Property"); and

IT further appearing that Plaintiff is the current holder of certain loan documents, including a Loan Agreement, Note, and that certain Amended, Restated and Consolidated Mortgage, Assignment of Leases and Rents, Assignment of Contracts, Security Agreement, and Fixture Filing dated as of September 24, 2018, including all amendments thereto (the "Mortgage") encumbering the Mortgaged Property, which Mortgage was executed by Defendant 44 Prime Manhattan Development LLC (the "Borrower"), by Defendant 44 Hudson Street JV LLC a/k/a 44 Hudson JV, by GS Realty Hudson LLC, by Defendant Grant Shapolsky, pursuant to which Borrower, *inter alia*, assigned all rents, income, issues, and profits of the Mortgaged Property (collectively the "Rents") to Plaintiff, and agreed that upon defaulting on its obligations to Plaintiff pursuant to the terms of the Mortgage, Plaintiff may revoke Mortgagor's right to collect and receive the Rents of the Mortgaged Property; and

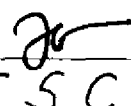
IT further appearing that the Mortgaged Property currently has no tenants and is producing no rents or profits; and

IT further appearing that the Mortgaged Property is in need of certain repairs and maintenance, as described in the Application; and

IT further appearing that the Mortgaged Property may be capable of being rented in the future and that such rentals, if they may exist, would produce income, and that any profits, if they may exist, may be applied to the reduction of the charges against the Mortgaged Property; and that a receiver is needed to enter into leases and collect rents from current and future tenants of the Mortgaged Property; and

IT further appearing that the appointment of a Receiver of the Mortgaged Property is necessary for the protection of Plaintiff.

NOW, on motion of Benesch, Friedlander, Coplan & Aronoff LLP, attorneys for Plaintiff, it is

 ORDERED that Daniel R. Milstein, of New York, New York (the "Receiver"), be and hereby is appointed as Receiver for the Mortgaged Property described in the Complaint, commonly known by the street address 44 Hudson Street, New York, New York, with the usual powers and directions of Receiver, for the benefit of the Plaintiff; and it is further

~~ORDERED that the Receiver is authorized, on terms that are acceptable to Plaintiff, to retain IVL Group, LLC as property manager for the Mortgaged Property to assist the Receiver with his duties and responsibilities under this Order; and it is further~~

~~ORDERED that because the Mortgaged Property is currently producing no rents, the Receiver shall be compensated for his services rendered under this Order at his hourly rate plus reimbursement of expenditures incurred by the Receiver in connection with such services, subject to further approval of this Court on notice to Plaintiff; upon the Receiver's qualification, Plaintiff shall fund \$25,000 into the receivership account for the purpose of paying the Receiver's fees and costs reasonably incurred hereunder, including the fees of IVL Group, LLC; at such time that the balance of the receivership account may drop to \$10,000 or below, the Receiver shall give notice of same to Plaintiff, and Plaintiff shall, absent further order of this Court, advance funds sufficient to return the receivership account balance to \$25,000; all funds advanced by Plaintiff pursuant to this Order shall constitute a demand obligation owing to Plaintiff by Borrower pursuant to the terms of, and secured by, the Mortgage and other Loan Documents, and accruing interest at the~~

~~default rate under the Note, and shall be secured by the Mortgaged Property with priority senior to~~

~~and superior to the claim of any other person or party hereto, and it is further~~

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

ORDERED that before entering upon his duties, the Receiver shall be sworn to fairly and faithfully discharge the duties committed to him and shall execute to the People of the State of New York and file with the Clerk of this Court an oath and an undertaking in the penal sum of \$0-, conditioned for the faithful discharge of his duties as such Receiver; and it is further

ORDERED that the Receiver be and hereby is directed to demand, collect, and receive from the occupants, tenants, and licensees in possession of said Mortgaged Property, or other persons liable therefore, inclusive of the Borrower, all the rents and license fees thereof now due and unpaid or hereafter to become fixed or due, and that said Receiver is hereby authorized to institute and carry on all legal proceedings necessary for the protection of said Mortgaged Property or to recover possession of the whole, or any part thereof, and/or apply to the Court to fix reasonable rental value and license fee value and to compel the tenants and occupants to attorn to the Receiver; and it is further

ORDERED that the Receiver may institute and prosecute suits for the collection of rent, license fees, and other charges now due or thereafter to become due or fixed, and summary proceedings for the removal of any tenants or licensees or other persons therefrom; and it is further

ORDERED that pursuant to the provisions of the General Obligations Law section 7-105, anybody holding any deposits or advances of rental as security under any lease or license agreement affecting space in the Mortgaged Property affected by this action shall turn same over to said Receiver within five (5) days after said Receiver shall have qualified; and thereupon the

said Receiver shall hold such security subject to such disposition thereof as shall be provided in an Order of this Court to be made and entered in this action; and it is further

ORDERED that anybody in possession of same shall turn over to the Receiver all rent lists, orders, unexpired and expired leases, agreements, correspondence, notices, and registration statements relating to rental space or facilities in the Mortgaged Property; and it is further

ORDERED that said Receiver is authorized from time to time to rent or lease any part of the Mortgaged Property for terms not exceeding two (2) years or such longer terms as may be required by the City and State of New York; and it is further,

ORDERED that said Receiver promptly deposit all monies received by him at the time he receives same in his own name as Receiver in AN FDIC INSURED BANK, and such account shall show the name of this action, and no withdrawals shall be made therefrom except as directed by the Court or on a draft or check signed by the Receiver and counter-signed by the Receiver's surety. The Receiver shall furnish the Plaintiff's attorneys with monthly statements of the receipts and expenditures of the Receivership, together with a photocopy of the monthly statements received from said depository; and it is further

ORDERED that the Receiver is authorized to keep said Mortgaged Property insured against loss by damage of fire and other casualty; to pay the taxes, assessments, water rates, sewer rents, vault rents, salaries of employees, supplies, and other charges; to comply with all the lawful requirements of any municipal department or other authority of the municipality in which the Mortgaged Property is situated; and to procure such fire, plate glass, liability, casualty, and other insurance as may be reasonably necessary; and it is further

ORDERED that the Receiver is authorized to conduct maintenance and make repairs and incidental alterations at the Mortgaged Property as may be necessary or useful to preserve and maintain the Mortgaged Property and its value; and it is further

ORDERED that the Receiver is prohibited from incurring obligations in excess of the monies in his hands without further Order of this Court or written consent of the Plaintiff's attorney; and it is further

ORDERED that notwithstanding anything to the contrary contained in this order, the Receiver shall not, without further, prior order of this Court, upon prior notice to Plaintiff, make improvements to the property at a cost in excess of \$2,000; and it is further

ORDERED that the tenants, licensees, or other persons in possession of said Mortgaged Property, if any, attorn to said Receiver and pay over to said Receiver all rents, license fees, and other charges of such Mortgaged Property now due and unpaid or that may hereafter become due; and that the Defendants be enjoined and restrained from collecting the rents, license fees, and other charges of said Mortgaged Property and from interfering in any manner with the Mortgaged Property or its possession or the Receiver's performance of his duties hereunder; and that all current or future tenants, occupants, employees, and licensees of the Mortgaged Property and other persons liable for the rents be and hereby are enjoined and restrained from paying any rent or license fees or other charges for such Mortgaged Property to the Defendants, their agents, servants or attorneys; and it is further

ORDERED that the Borrower turn over to the Receiver all rents collected from and after the date of this Order; and it is further

ORDERED that all persons now or hereafter in possession of said Mortgaged Property, or any part thereof, and not holding such possession under valid and existing leases or tenancies, do

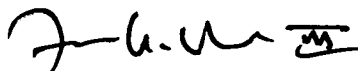
forthwith surrender such possession to said Receiver, subject to emergency laws, if any; and it is further

ORDERED that said Receiver, after paying the expenses of the management and care of the Mortgaged Property as provided herein, retain the balance of the monies which may come into his hands until the sale of the said Mortgaged Property under the judgment to be entered in this action and/or until further Order of this Court; and it is further

ORDERED that said Receiver, or any party hereto, may at any time, on proper notice to all parties who may have appeared in this action, apply to this Court for further or other instructions or powers necessary to enable said Receiver to properly fulfill his duties; and it is further

ORDERED that the appointee named herein shall comply with Section 35a of the Judiciary Law, Sections 6401-6404 of the CPLR, Section 1325 of the RPAPL, and Rule 36 of the Chief Judge; NOTWITHSTANDING ANY OTHER PROVISION OF THIS ORDER TO THE CONTRARY, EXCEPT WITH RESPECT TO THE RETENTION OF IVL GROUP, LLC, AS PROPERTY MANAGER TO ASSIST WITH THE RECEIVER'S DUTIES HEREUNDER, THE RECEIVER SHALL NOT APPOINT AN ATTORNEY, AGENT, APPRAISER, AUCTIONEER OR ACCOUNTANT WITHOUT PRIOR ORDER OF THIS COURT.

ENTER:



J.S.C.

HON. FRANCIS A. KAHN III
J.S.C.