

**Heitman Credit Acquisition XV, LLC v MP Bedford
Prop. LLC**

2022 NY Slip Op 30790(U)

March 15, 2022

Supreme Court, New York County

Docket Number: Index No. 850203/2020

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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HEITMAN CREDIT ACQUISITION XV, LLC,

Plaintiff,

- v -

MP BEDFORD PROPERTY LLC, MEADOW REAL
 ESTATE FUND II L.P., NEW YORK CITY DEPARTMENT
 OF FINANCE, CRIMINAL COURT OF THE CITY OF NEW
 YORK, JOHN DOE # 1, THROUGH JOHN DOE # 12,

Defendants.

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INDEX NO. 850203/2020

MOTION DATE 01/05/2022

MOTION SEQ. NO. 004

**DECISION + ORDER ON
 MOTION**

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 66, 67, 68, 69, 70, 71

were read on this motion for DEFAULT JUDGMENT.

Plaintiff Heitman Credit Acquisition XV, LLC (“Plaintiff” or “Lender”) moves for default judgment pursuant to CPLR § 3215 against Defendants New York City Department of Finance and the Criminal Court of the City of New York (the “Non-Appearing Defendants”) with respect to Counts 1 and 2 of the Verified Complaint brought pursuant to New York’s Real Property Actions and Proceedings Law (“RPAPL”), § 1301; (ii) an order pursuant to RPAPL § 1321, appointing a referee to compute the amount due to Plaintiff for principal, interest, and other fees and expenses, on the note and mortgage as set forth in the Verified Complaint; and (iii) an order amending the caption of this case to delete the reference to defendants “John Doe #1 through John Doe #12.” For the reasons described below, the motion is granted in part.

The borrower MP Bedford Property LLC consented to the entry of judgment on Plaintiff’s claim to foreclose the mortgage, and the guarantor Meadow Real Estate Fund II L.P. has been dismissed from this action by stipulation (NYSCEF 54). Likewise, the intervening

parties, Bedlock LLC, Jagendorf, LLC, Esther P. Evans L.L.C., Alpert Holdings L.L.C., Bedford-Wrand LLC and Bedford-WCR LLC have been dismissed from this action by stipulation (NYSCEF 63).

Defendants New York City Department of Finance and the Criminal Court of the City of New York failed to timely appear, answer, or otherwise move with respect to the Complaint. Plaintiff has submitted unrebutted evidence demonstrating compliance with the requirements of CPLR 3215, including proof that the Non-Appearing Defendants were duly served with a copy of the Summons and Verified Complaint, Notice of Pendency, Notice to Defendant During the Coronavirus Emergency, and Notice of Electronic Filing on December 22, 2020, that these Defendants have failed to appear or respond, and the Verified Complaint setting forth the facts establishing Plaintiff's claim to foreclose on the mortgage and security agreement (*see* NYSCEF 1-11, 68, 69, 70).

Further, Plaintiff submitted documentary proof that its Mortgage was recorded on January 18, 2019 (*see* NYSCEF 6), prior to seven judgments Defendant Criminal Court of the City of New York docketed against the Property, and prior to six tax warrants that Defendant New York City Department of Finance docketed against the Property (NYSCEF 67 [Lynn Aff., ¶ 9]; NYSCEF 71 [Ex. C.]). Consequently, without any argument to the contrary, Plaintiff's mortgage lien has priority over the subsequently recorded judgment liens filed by the Non-Appearing Defendants, and each of those judgment liens will be extinguished by the judgment of foreclosure and sale (*Fleet Mortgage Corp. v Nieves*, 272 AD2d 435, 435 [2d Dept 2000] ["The appellant's notice of lien was recorded after the filing of both [plaintiff's] mortgage and the notice of pendency in this action . . . that lien is subordinate to [plaintiff's] mortgage and will be extinguished by the foreclosure sale except to the extent of any surplus."]).

Additionally, the request that the caption of this action be amended to excise therefrom the names of Defendants JOHN DOE #1 through JOHN DOE #12 is granted. Plaintiff submits that upon completion of service of process, it was determined that Defendants captioned JOHN DOE #1 through JOHN DOE #12 are not necessary party defendants.

Finally, Plaintiff requests an order of reference pursuant to RPAPL § 1321.; Although all defendants have either answered or failed to respond to the Complaint, there is a pending motion by nonparty Bedford Ash Restaurant LLC to intervene in this matter (Mot. Seq. 005). Accordingly, a decision on Plaintiff's request for an order of reference will be deferred pending a decision on that motion.

Non-Appearing Defendants may seek a vacatur of the instant default judgment if they can satisfy the requirements of CPLR § 5015, CPLR § 317, or any other relevant law.

Therefore, it is:

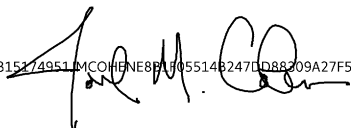
ORDERED that Plaintiff's motion for entry of a default judgment against the Non-Appearing Defendants pursuant to CPLR § 3215 is **granted**; it is further

ORDERED that Plaintiff's motion for an order appointing a referee to compute pursuant to RPAPL § 1321 is **deferred pending a decision on Mot. Seq. 005**; it is further

ORDERED that Plaintiff's motion for an order amending the caption by striking the names of John Doe defendants numbers one through twelve is **granted**.

This constitutes the Decision and Order of the Court.

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3/15/2022
DATE

JOEL M. COHEN, J.S.C.

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| CHECK ONE: | <input type="checkbox"/> | CASE DISPOSED | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION | |
| | <input type="checkbox"/> | GRANTED | <input type="checkbox"/> | GRANTED IN PART | <input type="checkbox"/> |
| | | | DENIED | | OTHER |
| APPLICATION: | <input type="checkbox"/> | SETTLE ORDER | | SUBMIT ORDER | |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | | FIDUCIARY APPOINTMENT | <input type="checkbox"/> |
| | | | | | REFERENCE |