

**Beltway Capital LLC v AIS Servs. LLC**

2022 NY Slip Op 31265(U)

April 8, 2022

Supreme Court, Kings County

Docket Number: Index No. 20972/08

Judge: Lawrence Knipel

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Foreclosure Resolution Part 3 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 8<sup>th</sup> day of April, 2022.

P R E S E N T:

HON. LAWRENCE KNIPEL,

Justice.

-----X

BELTWAY CAPITAL LLC,

Plaintiff,

-against-

AIS SERVICES LLC, et al.,

Defendants.

-and-

PARKWAY CURVE LLC,

Intervenor Defendant.

-----X

DECISION AND ORDER

Index No. 20972/08 (converted to e-filing)

Mot. Seq. No. 6-7

The following hard-copy-filed and e-filed papers read herein:

Papers Numbered/NYSCEF Doc No.:

Notice of Motion and Supporting Affirmation Annexed \_\_\_\_\_  
Notice of Cross Motion, Supporting Affirmation  
and Exhibits Annexed \_\_\_\_\_

1-2 (hard-copy filed)  
5-27

In this action to foreclose a mortgage on certain residential real property located at 1398 Pitkin Avenue in Brooklyn, New York (the "property"), the plaintiff's assignee, U.S. Bank National Association, as Indenture Trustee on behalf of and with respect to Ajax Mortgage Loan Trust 306-C, Mortgage-Backed Notes, Series 2016-C ("Ajax"), moves (in Seq. No. 6) for an order, in effect: (1) pursuant to 22 NYCRR Part 36, vacating the appointment of Albert Sontag ("Sontag") as the temporary receiver under the long-form order, dated May 10, 2010 (Schmidt, J.), as modified by the short-form order of the same judge, dated December 10, 2010 (as so modified, the "receivership order"), and appointing his successor thereunder; and (2) pursuant to CPLR 3025 (c), amending the caption to name Ajax as the plaintiff. Intervenor defendant Parkway Curve LLC, as the current property owner ("Parkway"), cross-moves

(in Seq. No. 7) for an order: (1) pursuant to CPLR 5015 (a) (4) and in the interest of substantial justice, vacating the receivership order; (2) pursuant to CPLR 2219 (a), requesting that the Court determine its pending motion (in Seq. No. 4) for leave to reargue its prior motion (in Seq. No. 3) for summary judgment dismissing the complaint (the “prior motion”), which prior motion was denied by order, dated April 25, 2018 (Knipel, J.) (the “prior order”), and, upon reargument, granting the prior motion and vacating the prior order; and (3) in effect, pursuant to CPLR 2001, striking a redundant note of issue filed by plaintiff’s assignor on November 9, 2020 (the “redundant NOI”) in light of the prior filing of a note of issue (together with a certificate of readiness) on December 8, 2017 (the “preexisting NOI”).

#### **Determination of Ajax’s Motion**

Ajax has failed to demonstrate that Sontag is unqualified or otherwise uneligible to act as a temporary receiver. “The office of receiver is one which involves a trust; he is not only an officer of the court but a fiduciary as well” (*Cohen v Hechtman*, 187 Misc 994, 995 [Sup Ct, NY County 1946]). To that end, the names of vetted fiduciaries appear on the “Part 36” list (22 NYCRR Part 36). Contrary to Ajax’s contention, Sontag (who is not a lawyer) need not be a lawyer to act as a temporary receiver so long as (and this is the case here) he remains on the Part 36 list (*see e.g. Grassetto, Tr. for Liquidation of Simod, S.P.A. v Sartore*, 73 Misc 3d 1201[A] [Sup Ct, NY County 2021] [noting the judicial appointment of an accountant from the Part 36 list]). The remaining branch of Ajax’s motion which is for the caption amendment is granted as more fully set forth in the decretal paragraphs below.

### Determination of Parkway's Cross Motion

Parkway has demonstrated no basis for the vacatur of the receivership order (*see* Real Property Law § 254 [10]; *CSFB 2004-C3 Bronx Apts. LLC v Sinckler, Inc.*, 96 AD3d 680, 681 [1st Dept 2012]; *Naar v I.J. Litwak & Co., Inc.*, 260 AD2d 613, 614 [2d Dept 1999]).<sup>1</sup>

Leave to reargue the prior motion is denied. Parkway has failed to show that the Court misapprehended any relevant facts or misconstrued the applicable law to the facts of the case (*see* CPLR 2221 [d] [2]).<sup>2</sup>

Lastly, the Court agrees with Parkway that the redundant NOI should be stricken, albeit pursuant to CPLR 2001 (rather than pursuant to CPLR 3402 [a] and/or 22 NYCRR § 202.21 [a]), as duplicative of the preexisting NOI.

### Conclusion

Accordingly, it is

**ORDERED** that Ajax's motion in Seq. No. 6 is *granted solely to the extent* that the plaintiff's name in the caption is amended to *delete* "Beltway Capital LLC" and to *substitute* in its place the following: U.S. Bank National Association, as Indenture Trustee on behalf of and with respect to Ajax Mortgage Loan Trust 306-C, Mortgage-Backed Notes, Series 2016-C; and *the remainder of its motion is denied*; and it is further

<sup>1</sup> *See* "1-4 Family Rider (Assignment of Rents)," page 3, ¶ H (providing, in relevant part, that "Lender shall be entitled to have a receiver appointed to take possession of and manage the Property and collect the Rents and profits derived from the Property without any showing as to the inadequacy of the Property as security.").

<sup>2</sup> Parkway's appeal from the prior order was automatically dismissed on December 1, 2018 for failure to perfect, pursuant to 1250.10 (a) of the Appellate Division rules.

**ORDERED** that Parkway's cross motion in Seq. No. 7 is *granted solely to the extent* that, pursuant to CPLR 2001, the *duplicative* note of issue, as filed with the Kings County Clerk on *November 9, 2020*, is *stricken*; and it is further

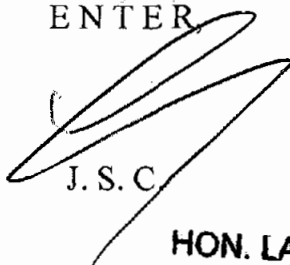
**ORDERED** that for the avoidance of doubt the *earlier*, note of issue, as filed with the Kings County Clerk on *December 8, 2017*, *remains in full force and effect*; and it is further

**ORDERED** that Parkway's motion in *Seq. No. 4* for leave to reargue its prior motion is *denied*, and the Part Clerk is directed to mark the "WebCivil Supreme - Motion Detail" for *Seq. No. 4* accordingly; and it is further

**ORDERED** that the plaintiff's counsel shall electronically serve a copy of this decision and order with notice of entry on Parkway's counsel and on Receiver Albert Sontag (at albertsontag18@gmail.com); and shall electronically file an affidavit of service thereof with the Kings County Clerk.

This constitutes the decision and order of the Court.

ENTER



J.S.C.

**HON. LAWRENCE KNIPEL  
ADMINISTRATIVE JUDGE**

2022 APR 13 AM 10:35  
KINGS COUNTY CLERK  
FILED