SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. FRANCIS KAHN, III** **PART** **32**

Justice

----------X

NAMDAR EAST VILLAGE HOLDINGS LLC,

Plaintiff,

- v -

219 AVE A NYC LLC A.K.A 219 AVE A. NYC LLC,158 FIRST AVE NYC LLC,75 SECOND AVENUE LLC,324 EAST 14TH STREET LLC, NEJATOLLAH SASSOUNI, SASSAN SASSOUNI, SUSAN SASSOUNI, CRIMINAL COURT OF THE CITY OF NEW YORK, CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD, JOHN DOE 1 THROUGH JOHN DOE 10

Defendant.

----------X

INDEX NO. 850009/2021

MOTION DATE

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 88, 89, 92, 93, 94, 95, 96, 101

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, the motion and cross-motion are determined as follows:

In this action, Plaintiff seeks to foreclose on a commercial consolidated and extended mortgage, dated June 18, 2019, encumbering four parcels of improved real property located at 219 Avenue A (Block 441, Lot 32), 158 First Avenue (Block 437, Lot 6), 324 East 14th Street (Block 455, Lot 19) and 75 Second Avenue (Block 460, Lot 39). The mortgage was given by Defendants 219 Ave. A NYC LLC, 158 First Ave NYC LLC, 324 East 14th Street LLC and 75 Second Avenue LLC ("LLC Defendants"). The mortgage secures a consolidated, amended and restated note, of the same date as the mortgage, which memorializes loans with an original principal amount of $11,500,000.00. The note and mortgage were executed on behalf of the LLC Defendants by Defendants Nejatollah Sassouni and Sassan Sassouni as Managers thereof. Concomitantly with these documents, Defendants Nejatollah Sassouni, Sassan Sassouni and Susan Sassouni ("Sassouni Defendants") executed an unconditional personal guaranty of the note.

Plaintiff[1] commenced this action wherein it is alleged Defendants defaulted in repayment of the note, payment of real estate taxes and insurance. Plaintiff also joined Defendant City of New York Environmental Control Board ("ECB") as an alleged subordinate lien holder and

[1] While this motion was *sub judice* Plaintiff's motion to substitute Namdar East Village Holdings LLC as Plaintiff was granted without opposition (NYSCEF Doc No 103).

seeks to extinguish same. Sassouni and LLC Defendants answered jointly and raised twenty-one affirmative defenses, including standing and under RPAPL §1303, §1304 and §1306. The City of New York ("City") also answered on behalf of Defendant ECB and pled four affirmative defenses, including a claim of lien priority, as well as a counterclaim and crossclaim.

Now, Plaintiff moves for summary judgment against the appearing Defendants, to strike their answers, for a default judgment against the non-appearing Defendants and for an order of reference. Defendant City oppose the motion and cross-move for the appointment of a temporary receiver for the premises pursuant to CPLR §6401. Sassouni and LLC Defendants oppose the motion and cross-motion. Plaintiff opposes the cross-motion.

In moving for summary judgment, Plaintiff was required to establish *prima facie* entitlement to judgment as a matter of law though proof of the mortgage, the note, and evidence of Mortgagors' default in repayment (*see U.S. Bank, N.A. v James,* 180 AD3d 594 [1st Dept 2020]; *Bank of NY v Knowles*, 151 AD3d 596 [1st Dept 2017]; *Fortress Credit Corp. v Hudson Yards, LLC*, 78 AD3d 577 [1st Dept 2010]). Proof supporting a *prima facie* case on a motion for summary judgment must be in admissible form (*see* CPLR §3212[b]; *Tri-State Loan Acquisitions III, LLC v Litkowski*, 172 AD3d 780 [1st Dept 2019]). As Defendants raised lack of standing in their answer, Plaintiff was required to demonstrate same (*see eg Wells Fargo Bank, N.A. v Tricario*, 180 AD3d 848 [2nd Dept 2020]). Plaintiff was also required to show that it substantially complied with the notice requirement under paragraph 22 of the mortgage as well as conformed with RPAPL §1303, §1304 and §1306 as these affirmative defenses were also raised (*see Wells Fargo Bank, N.A. v Tricario,* supra at 850; *U.S. Bank, NA v Nathan*, 173 AD3d 1112 [2d Dept 2019]; *HSBC Bank USA, N.A. v Bermudez*, 175 AD3d 667, 669 [2d Dept 2019]).

Plaintiff's motion was supported with an affidavit of facts from Michael Alvandi ("Alvandi"), a principal of City Urban Realty an "affiliate" of Plaintiff. In his affidavit, Alvandi merely recounts the basic facts of the underlying loan transaction and attests to the truth of the statements in the affirmation of Plaintiff's counsel, Howard S. Koh, Esq. Neither Alvandi nor Koh demonstrated any personal knowledge of the transactions herein. Alvandi's uncorroborated assertion that he is the principal of an "affiliate" of Plaintiff failed to demonstrate his authority to act (*see US Bank v Tesoriero*, ___AD3d___, 2022 NY Slip Op 02830 [2d Dept 2022]; *US Bank N.A. v Cusati*, 185 AD3d 870 [2d Dept 2020]). Koh's affidavit, as attorney with no knowledge of the facts, is without evidentiary value (*see eg Winter v Black*, 95 AD3d 1208 [2d 2012]).

To the extent the affiants' knowledge is based upon the review of documents, those business records must be proffered in admissible form for statement regarding Defendants' loan transaction and default to be established (*see eg Wells Fargo Bank, N.A. v Yesmin*, 186 AD3d 1761, 1762 [2d Dept 2020]; *see also JPMorgan Chase Bank, N.A. v Grennan*, 175 AD3d 1513, 1517 [2d Dept 2019]["a review of records maintained in the normal course of business does not vest an affiant with personal knowledge"]). Both Alvandi and Koh failed to lay any evidentiary foundation for the admission of the proffered documents as business records under CPLR §4518 (*see eg Berkshire Bank v Fawer*, 187 AD3d 535 [1st Dept 2020]; *U.S. Bank N.A. v Kochhar*, 176 AD3d 1010 [2d Dept 2019]; *Bank of Am., N.A. v Brannon*, 156 AD3d 1 [1st Dept 2017]). Plaintiff's reliance on the verified complaint is unavailing as it also fails to establish a foundation for the admission of the records annexed thereto.

Accordingly, Plaintiff failed to demonstrate *prima facie* entitlement to summary judgment or the appointment of a referee to compute.

As to the branch of the motion to dismiss Defendants' affirmative defenses, CPLR §3211[b] provides that "[a] party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit". For example, affirmative defenses that are without factual foundation, conclusory or duplicative cannot stand (*see Countrywide Home Loans Servicing, L.P. v Vorobyov,* 188 AD3d 803, 805 [2d Dept 2020]; *Emigrant Bank v Myers*, 147 AD3d 1027, 1028 [2d Dept 2017]). When evaluating such a motion, a "defendant is entitled to the benefit of every reasonable intendment of its pleading, which is to be liberally construed. If there is any doubt as to the availability of a defense, it should not be dismissed" (*Federici v Metropolis Night Club, Inc.*, 48 AD3d 741, 743 [2d Dept 2008]).

As to Sassouni and LLC Defendants' affirmative defenses, the first alleging lack of personal jurisdiction was waived when Defendants failed to move to dismiss pursuant to CPLR §3211[a][8] within sixty [60] days of pleading this affirmative defense (*see* CPLR §3211[e]).

The second and eighteenth affirmative defenses which are directed to the legal sufficiency of Plaintiff's complaint is unnecessary as a general matter since dismissal cannot be effectuated without a motion pursuant to CPLR 3211[a][7] (*see Riland v Frederick S. Todman & Co.*, 56 AD2d 350 [1st Dept 1977]). Normally, this defense is nothing more than "'harmless surplusage,' and . . . a motion by the plaintiff to strike the same should be denied" (*Butler v Catinella*, 58 AD3d 145 [2d Dept 2008]). However, where all other affirmative defenses fail as a matter of law, it may be dismissed (*Raine v Allied Artists Productions, Inc.*, 63 AD2d 914, 915 [1st Dept 1978]).

The third, eighth and ninth affirmative defenses alleging failure to mitigate, documentary evidence and extrinsic evidence are incomprehensible and, therefore, inadequately pled.

The fourth, fifth and sixth affirmatives defenses alleging breach of contract, estoppel and usury are entirely conclusory and unsupported by any facts in the answer. As such, these affirmative defenses are nothing more than unsubstantiated legal conclusions which are insufficiently pled as a matter of law (*see Board of Mgrs. of Ruppert Yorkville Towers Condominium v Hayden,* 169 AD3d 569 [1st Dept 2019]; *see also Bosco Credit V Trust Series 2012-1 v. Johnson,* 177 AD3d 561 [1st Dept 2020]; *170 W. Vil. Assoc. v. G & E Realty, Inc.*, 56 AD3d 372 [1st Dept 2008]; *see also Becher v Feller*, 64 AD3d 672 [2d Dept 2009]; *Cohen Fashion Opt., Inc. v V & M Opt., Inc.*, 51 AD3d 619 [2d Dept 2008]). Moreover, the breach of contract claim fails to allege how any acts by Plaintiff constitute an excuse for Defendants' default in payment under the mortgage note.

The seventh affirmative defense based upon alleged violations of the Real Estate Settlement Procedures Act [12 USC §2614] and the Truth in Lending Act (15 USC §1601) are entirely conclusory and inadequately pled.

The tenth affirmative defense, based on Banking Law §§6-l, 6-m and 595-a, is without merit. The version of Banking Law §6-l in effect when the note was executed applied only to "high-cost home loans". A "home loan" was defined as one "in which . . . [t]he principal amount of the loan does not exceed the lesser of: (A) conforming loan size limit for a comparable dwelling as established from time to time by the federal national mortgage association; or (B) three hundred thousand dollars" (*see Lewis v Wells Fargo Bank, N.A.*, 134 AD3d 777, 779 [2d Dept 2015]). Here, since the principal amount of the note was far more than that amount, this statute is inapplicable (*id.*). The allegation of a violation of Banking Law §6-m also fails to state a claim. That section is applicable to a "home loan" where, *inter alia*, the borrower it a "natural person", "the debt is incurred by the borrower primarily for personal, family, or household purposes" and "[t]he loan is secured by a mortgage or deed of trust on real estate improved by a one to four family dwelling . . . which is or will be occupied by the borrower as the borrower's principal dwelling" (Banking Law §6-m[d][ii], [iii] and [iv]). The borrowers here are limited liability companies, the debt was commercial in nature and the borrowers do not reside at the premises.
The alleged violation of Banking Law §595-a does not reference any supporting facts or allege which regulations that were violated (*see Wells Fargo Bank, N.A. v Gaitan*, ____Misc3d____, 2014 NY Slip Op 33110[U][Sup Ct Queens Cty 2014]; *see also U.S. Bank N.A. v Echevarria*, 171 AD3d 979 [2d Dept 2019].

The eleventh affirmative defense based upon RPAPL §1302 fails as the statute in effect when this action was commenced was only applicable to high-cost home loan, as defined in section six-l of the banking law, which is inapplicable here.

The twelfth affirmative defense which assert the mortgagors were not served with a notice pursuant to RPAPL §1303[1][a] fails as the subject properties are not "owner-occupied" dwellings as the owners are limited liability companies.

The thirteenth affirmative defense alleges the tenants of a 1-4 family dwelling were not served with notice pursuant to RPAPL §1303. The notice required to be served on tenants in buildings subject to a foreclosure action is not limited to 1-4 family buildings. Notice is required to be serve irrespective of the size of the building, but the manner of service depends on whether the building has more or less than five units. In a building with more than five dwelling units service is made by posing a legible copy of the notice . . . outside of each entrance and exit of the building" (RPAPL §1303[4]). In building with less than five units notice must be "delivered to the tenant, by certified mail, return receipt requested, and by first-class mail to the tenant's address at the property if the identity of the tenant is known to the plaintiff, and by first-class mail delivered to "occupant" if the identity of the tenant is not known to the plaintiff" (*id.*). Here, Plaintiff annexed affidavits of service wherein the process server averred he made postings pursuant to RPAPL §1303[1][b] at 158 First Avenue, 219 Avenue A and 324 East 14th Street. However, Plaintiff proffered no proof in support of the motion as to the occupancy of each building nor any proof of service of the required notices at 57 Second Avenue. Thus, dismissal of this affirmative defense is not established.

As to the fourteenth affirmative defense, Plaintiff demonstrated RPAPL §1304 is inapplicable to this action. Compliance with this section is limited to "home loans" where, *inter*

alia, the "debt is incurred by the borrower primarily for personal, family, or household purposes" and "[t]he loan is secured by a mortgage [on] . . . a one to four family dwelling . . . which is or will be occupied by the borrower as the borrower's principal dwelling" (*see* RPAPL § 1304[6][a][1][ii] and [iii]). The undisputed facts of this case demonstrate that the debt in this case was for strictly for Victor's businesses, not for personal, family or household purposes (*see Bernstein v Dubrovsky,* 169 AD3d 410 [1st Dept 2019]; *Independence Bank v Valentine,* 113 AD3d 62 [2d Dept 2013]).

The fifteenth affirmative defense based upon a violation of RPAPL §1306 fails. Since RPAPL §1304 is inapplicable, compliance with RPAPL §1306 was not required (*see* RPAPL §1306[1]).

The sixteenth affirmative defense that a settlement conference pursuant to CPLR §3408 must be conducted is unavailing. "CPLR §3408 only mandates a settlement conference in a residential foreclosure action involving a 'home loan' as defined by RPAPL §1304, and when the 'defendant is a resident of the property subject to foreclosure'" as defined in CPLR §3408[a][1] (*Richlew Real Estate Venture v Grant* 131 AD3d 1223 [2d Dept 2015]; *see also* CPLR §3408; *JP Morgan Chase Bank, N.A. v Venture*, 148 AD3d 1269 [3d Dept 2017]). Here, RPAPL §1304 is inapplicable as the limited liability companies are not residents of the property.

The seventeenth affirmative defense which claims Plaintiff lacks standing to prosecute this action is meritless. It is undisputed that when this action was commenced, EV4 Associates LLC, the original lender, was the Plaintiff in direct privity with the Defendants (*see generally Wilmington Sav. Fund Socy., FSB v Matamoro*, 200 AD3d 79, 90-91 [2d Dept 2021]).

The twentieth affirmative defense alleges the action was commenced in violation of prohibitions established by "various executive orders, administrative orders, pro [sic] legislation". This affirmative defense is patently defective as it fails to specifically identify the orders and legislation at issue or any facts to support same.

The twentieth affirmative defenses claiming "the action was commenced in violation of prohibitions established by plaintiff failed [sic] to issue various notice which are a condition precedent to commenced [sic] this type of action during the ongoing pandemic" is similarly fatally flawed.

Sassouni and LLC Defendants' opposition to dismissal of the affirmative defenses was entirely conclusory and, by failing to raise specific legal arguments in rebuttal, all the affirmative defenses were abandoned (*see U.S. Bank N.A. v Gonzalez*, 172 AD3d 1273, 1275 [2d Dept 2019]; *Flagstar Bank v Bellafiore*, 94 AD3d 1044 [2d Dept 2012]; *Wells Fargo Bank Minnesota, N.A v Perez*, 41 AD3d 590 [2d Dept 2007]).

Defendant City's affirmative defenses are more complicated and are as follows: [1] the Complaint erroneously states that the City's liens are "subject and subordinate" to Plaintiff's

mortgage[2], [2] the Complaint fails to satisfy the requirements of section 202-a of the Real Property Actions and Proceedings Law, [3] the relief sought in the Complaint as against the City, extinguishment of its liens, is barred insofar as Plaintiff likely colluded with the mortgagor in a manner that prejudiced the City's rights, [4] the relief sought in the Complaint as against the City is barred insofar as Plaintiff has unclean hands.

The branch of the motion to dismiss City's first affirmative defense is denied. Plaintiff acknowledged in its motion that the City's ECB liens that pre-date the mortgage have priority. Until this Court determines the amount of those liens, this affirmative defense remains viable.

The City's second affirmative defense claims Plaintiff's complaint fails to satisfy the requisites of RPAPL §202-a. That section requires that the pleading in an action affecting real property contain certain specific and detained information concerning a city's interests the property (RPAPL §202-a). This statute does not state that pleading this information is a condition precedent to commencement of an action (*cf.* RPAPL §1306; *USA Residential Props., LLC v Jongebloed*, ___AD3d___, 2022 NY Slip Op 01835 [2d Dept 2022]). As such, this affirmative defense is nothing more than an unnecessary claim the complaint fails to state a claim since dismissal cannot be effectuated without a motion pursuant to CPLR 3211[a][7] (*see Riland v Frederick S. Todman & Co.*, supra; *Raine v Allied Artists Productions, Inc.* supra).

The City's third affirmative defense pleads that Plaintiff as well as Sassouni and LLC Defendants colluded to defeat City's liens. City asserts that it has judgment liens on the mortgaged properties in excess of $500,000.00 and that approximately $1.5 million in "penalties against the subject premises" have been "won". It is unclear from the affirmative defense whether these claims have been reduced to a judgment or not, but City admits that any judgments bases on these amount have not been docketed as liens on the property. City claims the fines were the result of "persistent and egregious pattern of hazardous violations at the subject properties" predominantly related to illegal occupancies and uses of the premises as short-term rentals as well as displacement of rent stabilized tenants. City asserts these violations were matter of public record in a previously commenced foreclosure action (*see EV 1st Avenue LLC v 219 Ave A NYC LLC, et al.*, NY Cty Index No. 850033/2019). Consequently, City pleads that by Plaintiff by issuing the loans herein "[d]espite these clear and public indications" and accepting five months of installment payments on the loan, constituted collusion that "thwarted the City's ability to enforce the Administrative Code, and derogated the City's rights, interests and liens in the subject properties".

Generally, "all interests in the property obtained *subsequent* to recording (and in most instances after execution) of the mortgage will always be junior, inferior and subordinate to the mortgage" (1 Bergman on New York Mortgage Foreclosures § 2.02 at 2-12). Only parties with actual liens or encumbrances on real property are necessary parties to a foreclosure action (RPAPL §1311). Similarly, claims to surplus monies may only be made by persons with a vested interest or estate in the land which is the subject of foreclosure (*see Shankman v Horoshko*, 291 AD2d 441 [2d Dept 2002]). General contract or creditor claims not reduced to a judgment are not liens or claims on the property or to the surplus funds (*see Warwick Sav. Bank*

[2] From the way it is pled, it is unclear if this affirmative defense related only to $67,000 of the City's ECB judgment liens that pre-date the mortgage, or all ECB liens on the property. However, the third and fourth affirmative defenses clearly raise the latter issue.

v Long Is. Chap. K. of C. Social Serv., Inc., 253 App Div 276, 277 [2d Dept 1938]; *Sadow v Poskin Realty Corp.*, 63 Misc 2d 499 [Sup Ct Queens Cty 1970]).

An exception exists for a so-called "super lien" granted to the Department of Housing Preservation and Development ("HPD") by New York City Administrative Code § 27-2144. The "super" moniker is derived from the unusual status of this lien which "is created when HPD's expenditures 'shall have been definitely computed as a statement of account by [HPD] and [HPD] shall cause to be filed in the office of the city collector an entry of the account stated'" (*Rosenbaum v City of New York*, 96 NY2d 468, 473 [2001]). A properly filed notice creates a "retroactively enforceable" lien that has priority over subsequent purchasers or mortgagees (*id.*; NYCAC §27-2144[b]). Here, such an occurrence is not pled.

Cases where actions taken by lienor subsequent to recording of encumbrance affect its initial priority exist. For instance, a senior lienor which enters into an agreement with the mortgagor which prejudices or destroys the interests a junior lienor may forfeit its priority, in whole or in part (*see Shultis v Woodstock Land Dev. Assoc.*, 188 AD2d 234, 236 [3d Dept 1993]; *see also Commodore Factors Corp. v Deutsche Bank Natl. Trust Co.*, 189 AD3d 766, 769 [2d Dept 2020]; *Fleet Bank v County of Monroe Indus. Dev. Agency*, 224 AD2d 964, 965 [4th Dept 1996]). Further, a conspiracy to impair or destroy a lien on real property is recognized provided the parties thereto act with fraudulent intent (*see Posner v Greenspan*, 261 AD 979 [2d Dept 1941]; *Johnson v Putnam Foundry & Machine Co.*, 167 AD 99 [2d Dept 1915]). However, if the parties simply perform legal acts or refrain from doing what they are not legally bound to do, collusive motive is irrelevant (*Posner v Greenspan*, supra; *Hyman v Fischer*, 184 Misc. 90 [Sup Queens Cty 1944]).

Here, City's third affirmative defense is defective as it has pled no intentional or fraudulent conduct by Plaintiff and Mortgagors in the making of the loan and securing the mortgage. At most, City alleges that Plaintiff knew or should have known of the violations in existence at the mortgaged premises and that they profited from Mortgagors' illegal use of the premises. If loaning money to and taking mortgages from property owners with violations imposed by the City on their real property were, in and of itself, enough to make all subsequent violations imposed by City retroactively superior to such a mortgage, it is likely that a notable portion of the real estate in New York City would be affected. To the extent City attempts to cast Plaintiff as an owner of the premises under the NYCAC, that argument is improper as it was not pled in the answer and raised for the first time in the opposition to Plaintiff's motion.

The fourth affirmative defense alleges Plaintiff's unclean hands bars foreclosure. "The doctrine of unclean hands is used only to bar the grant of equitable relief to a party who is 'guilty of immoral, unconscionable conduct and even then only when the conduct relied on is directly related to the subject matter in litigation and the party seeking to invoke the doctrine was injured by such conduct'" (*Wells Fargo Bank v Hodge*, 92 AD3d 775 [2d Dept 2012]). Absent an allegation that Plaintiff and Mortgagors acted with the intention of frustrating City's recovery on its liens, a claim of unclean hands is not stated on the facts presented (*see* Union Sav. Bank v 285 Lafayette Asso., NYLJ, May 20, 1992 at 21, col 1 [Sup Ct NY Cty]; *cf. Dolny v Borck*, 61 AD3d 817, 818 [2d Dept 2009]). Moreover, even if Plaintiff had a duty to investigate the alleged illegal uses at the mortgaged premises, this does not rise to the level of immoral or

unconscionable conduct (*see Filan v Dellaria*, 144 AD3d 967, 973 [2d Dept 2016]). Thus, this affirmative defense fails.

The counter claim against Plaintiff fails based upon the reasoning contained in the Court's dismissal of City's third affirmative defense.

The branch of Plaintiff's motion for a default judgment against the non-appearing parties is granted without opposition (*see* CPLR §3215; *SRMOF II 2012-I Trust v Tella*, 139 AD3d 599, 600 [1st Dept 2016]).

The branch of Plaintiff's motion to amend the caption is granted without opposition (*see generally* CPLR §3025; *JP Morgan Chase Bank, N.A. v Laszio*, 169 AD3d 885, 887 [2d Dept 2019]).

As to the branch of Defendant City cross-motion for the appointment of a temporary receiver, CPLR §6401 authorizes the appointment of a temporary receiver "where there is danger that the property will be removed from the state, or lost, materially injured or destroyed" (CPLR §6401[a]; *Rotary Watches (USA), Inc. v Greene*, 266 AD2d 527, 528 [2d Dept 1999]). The invocation of this equitable power is a "drastic remedy" (*Board of Mgrs. of Golfview Condominium I v Island Condo Mgt. Corp.*, 181 AD3d 915 [2d Dept 2020]) and "courts of equity [must] exercise extreme caution in appointing receivers *pendente lite* because such appointment results in the taking and withholding of possession of property from a party without an adjudication on the merits" (*Hahn v Garay*, 54 AD2d 629 [1st Dept 1976]). As such, "clear proof" of the statutorily specified hazards must be shown before this relief is granted (*see Groh v Halloran,* 86 AD2d 30, 33 [1st Dept 1982]).

Here, City demonstrated that the mortgaged premises are in poor, and some instances dilapidated, condition. Nevertheless, City's application for a receiver in this action is shortsighted. City has a nuisance abatement action pending against the owners of the mortgaged properties which appears to be in its early stages (*see City of New York v 219 Ave A NYC LLC, et al*, NY Cty Index No. 452503/2019). Despite the denial of Plaintiff's motion for summary judgment, based on the dismissal of the most consequential of City's affirmative defenses and its counterclaim, it seems likely that this action will terminate with a final judgment, and the receivership therewith (CPLR §6401[c]), well before City's tort action. Indeed, as the conditions that underly the application for appointment of a receiver are the very subject of the nuisance abatement proceeding, it would be prudent the application be made therein.

Accordingly, it is

ORDERED that the branches of Plaintiff's motion for summary judgment on its causes of action for foreclosure and the appointment of a referee to compute are denied, and it is

ORDERED that the branch of Plaintiff's motion to dismiss all the affirmative defenses pled by Sassouni and LLC Defendants is granted, and it is

ORDERED that the branch of Plaintiff's motion to dismiss the affirmative defenses pled by of Defendant City is granted, except as to the first affirmative defense, and it is

ORDERED that the branch of Plaintiff's motion to dismiss Defendant's City's counterclaim is granted as to Plaintiff, and it is

ORDERED that the branch of Plaintiff's motion for a default judgment against the defaulting parties is granted, and it is

ORDERED, that the Defendants John Doe #1 - John Doe #10 are stricken and the caption is amended as follows:

SUPREME COURT STATE OF NEW YORK
COUNTY OF NEW YORK
----------X
NAMDAR EAST VILLAGE HOLDINGS, LLC,

Plaintiff, Index No. 850009/2021

-against-

219 AVE A NYC LLC a/k/a 219AVE A. NYC LLC, 158 FIRST AVE NYC LLC, 75 SECOND AVENUE LLC, 324 EAST 14th STREET LLC, NEJATOLLAH SASSOUNI, SASSAN SASSOUNI, SUSAN SASSOUNI, CRIMINAL COURT OF THE CITY OF NEW YORK, CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD,

Defendants.
----------X

and it is

ORDERED that Defendants' cross-motion is denied in its entirety.

This matter is set down for a status conference on **July 27, 2022 @ 10:00 am** via Microsoft Teams.

5/10/2022
DATE

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

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE