

<b>Shaw Funding, LP v Cleveland St. LLC</b>
2022 NY Slip Op 32684(U)
August 5, 2022
Supreme Court, Kings County
Docket Number: Index No. 500838/19
Judge: Lawrence Knipel
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At an IAS Term, Commercial Part 6 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the ~~29<sup>th</sup> day of January, 2021.~~

8/5/22

P R E S E N T:

HON. LAWRENCE KNIPEL,  
Justice.

-----X

SHAW FUNDING, LP,  
Plaintiff,

- against -

CLEVELAND STREET LLC,  
ANTHONY MYERS, a/k/a ANTHONY D. MYERS, et al.,

Defendants.

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**DECISION AND ORDER**

Index No. 500838/19

Mot. Seq. No. 4

The following e-filed papers read herein:

NYSCEF No.:

Notice of Motion, Affirmations (Affidavits) in Support,  
and Exhibits Annexed \_\_\_\_\_  
Affirmation in Opposition \_\_\_\_\_  
Reply Affirmation \_\_\_\_\_

112-131  
134  
139

In this action to foreclose a mortgage on commercial real property, plaintiff Shaw Funding, LP (plaintiff) moves in Seq. No. 4 for leave, pursuant to CPLR 2221 (d) and (e), to reargue and/or renew its prior motion in Seq. No. 1 for summary judgment (the prior motion) and, upon reargument and/or renewal granting its prior motion. Defendants Cleveland Street LLC and Anthony Myers, also known as Anthony D. Myers (collectively, defendants), oppose, contending that plaintiff, as a no-longer active limited partnership, lacks the requisite authority to prosecute this action.

**Background**

On June 15, 2016, defendant Cleveland Street LLC (Cleveland) executed and delivered to plaintiff and nonparty Mission Dupree Ltd. (Mission) a mortgage note in the principal amount of \$950,000 (the note), secured by a mortgage on the underlying real property (the mortgage). Defendant Anthony Myers, also known as Anthony D. Myers (Myers), guaranteed Cleveland's obligations under the note.

Initially, plaintiff held a 68.5% interest in the note, whereas Mission held the remaining 31.5% interest in the note. By assignment, dated Sept. 13, 2016, Mission sold the entirety of its interest in the note and mortgage to plaintiff.

On Jan. 14, 2019, plaintiff commenced the instant action and, on the same date, filed a notice of pendency against the underlying real property. Plaintiff alleged (in ¶ 5 of its complaint) that it “has purchased [Mission’s] 31.5% interest of the loan,” and, as such, it “now has full 100% interest to enforce the . . . note and . . . mortgage.” Plaintiff further alleged (in ¶ 7 of its complaint) that it “has possession of the . . . note, which note is secured by . . . [the] mortgage.” A copy of the note and mortgage is annexed to the complaint. On Mar. 7, 2019, defendants joined issue. By order, dated Mar. 5, 2019, the Court (Vaughan, J.) appointed Bruno Codispoti, Esq., of Codispoti & Associates, P.C., 111 John Street, Suite 800, New York, NY 10038, as the temporary receiver for the underlying real property.

On Jan. 7, 2020, plaintiff served the prior motion. By order, dated Mar. 11, 2020, the Court denied plaintiff’s prior motion “without prejudice[,] as the plaintiff Shaw Funding is at present an inactive entity in New York State” (NYSCEF #111 [abbreviations spelled out]) (the prior order). Inasmuch as the prior order has not been served with notice of entry, the instant motion for, among other things, leave to reargue is timely.

### **Discussion**

Leave to reargue is granted and, upon reargument, the prior order is vacated and the prior motion is granted. Assuming that defendants’ characterization of plaintiff as an “inactive” limited partnership is correct,<sup>1</sup> their contention that plaintiff lacks the capacity to prosecute this action is without merit. Even if, as defendants posit, plaintiff ceased to operate on Dec. 31, 2017, it was considered to have been dissolved by operation of law on

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<sup>1</sup> See Defendants’ Affirmation in Opposition, dated Dec. 16, 2020 (NYSCEF #134), ¶ 2. According to defendants’ search of the website of the New York State Division of Corporations, plaintiff was classified as “inactive” on Mar. 10, 2020 (NYSCEF #107).

that date (*see* Partnership Law § 121-801 [“A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following: (a) at the time, if any, provided in the certificate of limited partnership; [or] (b) at the time or upon the happening of events specified in the partnership agreement. . . .”]). After plaintiff’s alleged dissolution, its affairs are to be wound up (*see* Partnership Law § 121-803 [a]). Plaintiff’s manager may wind up its affairs by, among other things, prosecuting actions on its behalf to collect outstanding debts, including those owed by defendants (*see* Partnership Law § 121-803 [b] [“Upon dissolution of a limited partnership, the persons winding up the limited partnership’s affairs may, *in the name of* and for and on behalf of the limited partnership . . . prosecute and defend suits, whether civil, criminal or administrative, settle and close the limited partnership’s business. . . .”] [emphasis added]). Thus, the instant action was properly commenced and may be maintained in plaintiff’s name, in accordance with Partnership Law § 121-803 (b), despite plaintiff’s alleged dissolution (*see A.B. Med. Servs., PLLC v Travelers Indem. Co.*, 26 Misc 3d 69, 72 [App Term, 9th & 10th Jud Dists 2009] [construing Limited Liability Law § 703 (b) which is nearly identical to Partnership Law § 121-803 (b)]; *see also Greater Bright Light Home Care Services, Inc. v Jeffries-El*, 151 AD3d 818, 820-821 [2d Dept 2017] [construing Business Corporation Law § 1106 (a) (4) which is analogous to Partnership Law § 121-803 (b)]).

Turning to the substance of plaintiff’s prior motion, the Court notes that “[t]o establish prima facie entitlement to judgment as a matter of law in an action to foreclose a mortgage, a plaintiff must produce the mortgage, the unpaid note, and evidence of default” (*Wells Fargo Bank, N.A. v Reed*, \_\_\_ AD3d \_\_\_, 2021 NY Slip Op 00202, \*1 [2d Dept 2021]). Here, plaintiff, by way of its prior motion, established its prima facie entitlement to judgment as a matter of law by submitting copies of the subject mortgage, the note, and evidence of defendants’ defaults. Defendants offered no opposition to plaintiff’s prima facie showing.

**Conclusion**

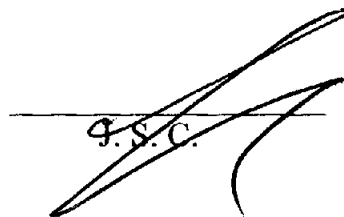
Accordingly, it is

ORDERED that plaintiff's motion in Seq. No. 4 is *granted to the extent* that leave to reargue is granted and, upon reargument, plaintiff's prior motion in Seq. No. 1 is granted as more fully set forth in the concurrently issued Order Granting Plaintiff Leave To Reargue Its Prior Motion For Summary Judgment And, Upon Reargument, Granting Plaintiff Summary Judgment And Other Relief; and the remainder of plaintiff's motion is denied; and it is further

ORDERED that plaintiff's counsel shall electronically serve a copy of this decision and order on defendants' counsel and, by federal express, on the temporary receiver, and shall electronically file an affidavit of service thereof with the Kings County Clerk.

This constitutes the decision and order of the Court.

ENTER,

A handwritten signature in black ink, appearing to be 'L. Knipel', written over a horizontal line. The signature is stylized and somewhat cursive.

**HON. LAWRENCE KNIPEL  
ADMINISTRATIVE JUDGE**