

NYCTL 2019-A Trust v Uptown Gambit, Inc.
2022 NY Slip Op 33027(U)
September 9, 2022
Supreme Court, New York County
Docket Number: Index No. 158623/2020
Judge: Francis A. Kahn III
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

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

Justice

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NYCTL 2019-A TRUST AND THE BANK OF NEW YORK MELLON, AS COLLATERAL AGENT AND CUSTODIAN, <p style="text-align: center;">Plaintiff,</p>	INDEX NO. <u>158623/2020</u> MOTION DATE _____ MOTION SEQ. NO. <u>001</u>
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- v -

UPTOWN GAMBIT, INC, NEW YORK STATE
 DEPARTMENT OF LABOR BY COMMISSIONER OF
 LABOR, NEW YORK STATE DEPARTMENT OF
 TAXATION AND FINANCE, NEW YORK CITY
 DEPARTMENT OF FINANCE, NEW YORK CITY
 ENVIRONMENTAL CONTROL BOARD, NEW YORK CITY
 PARKING VIOLATIONS BUREAU, NEW YORK CITY
 TRANSIT AUTHORITY TRANSIT ADJUDICATION
 BUREAU, JOHN DOE 1 THROUGH JOHN DOE 100,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46

were read on this motion to/for APPOINT - REFEREE.

Upon the foregoing documents, the motion is determined as follows:

This is an action to foreclose on a tax lien on real property owned by Defendant Uptown Gambit (“Uptown”). It is undisputed that Gambit defaulted in appearing or answering. Now, Plaintiff moves for a default judgment, an order of reference and to amend the caption. Defendant Uptown opposes the motion.

Generally, “[a]n applicant for a default judgment against a defendant must submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting defendant's failure to answer or appear” (*Deutsche Bank Natl. Trust Co. v Silverman*, 178 AD3d 898, 899 [2d Dept 2019]). Plaintiff has established *prima facie* its entitlement to a default judgment against Defendants with submission of the subject tax lien certificate, which was presumptive evidence of a valid and enforceable lien, proof that the outstanding balance due under the lien was not paid as well as evidence that constitutionally adequate notice of the sale of the tax lien justify judgment in Plaintiff's favor (*see eg NYCTL 2009-A Trust v Morris*, 164 AD3d 1249 [2nd Dept 2018]; *NYCTL 1998-2 Trustee v 2388 Nostrand Corp.*, 69 AD3d 594 [2nd Dept 2010]).

“To defeat a facially adequate CPLR 3215 motion, a defendant must show either that there was no default, or that it has a reasonable excuse for its delay and a potentially meritorious defense” (*Deutsche Bank Natl. Trust Co. v Silverman*, 178 AD3d 898, 901 [2d Dept 2020], *citing US Bank N.A. v Dorestant*, 131 AD3d 467, 470 [2d Dept 2015]). In opposition, Defendant Uptown failed to submit an

affidavit or any other evidence to excuse its default (*see NYCTL 1998-2 Trust v Alanis Realty LLC*, 176 AD3d 486 [1st Dept 2019]; *NYCTL 1998-2 Trust v Avila*, 29 AD3d 965 [2d Dept 2006]). Merely submitting an attorney's affirmation wherein personal knowledge of the facts was not demonstrated was insufficient. Absent rebutting the *prima facie* showing of a default, Defendant is precluded from raising any non-jurisdictional defenses, like standing (*see Deutsche Bank Natl. Trust Co. v Hall*, 185 AD3d 1006 [2d Dept 2020]). To the extent there is a disputed at to the amount owed, that does not defeat summary judgment as that issue is properly resolved after a reference pursuant to RPAPL 1321 (*see NYCTL 2009-A Trust v Tsafatinos*, 101 AD3d 1092 [2nd Dept 2012]; *NYCTL 1999-1 Trust v Stark*, 21 AD3d 402, 403, 800 NYS2d 198 [2nd Dept 2005] *see also Heywood Condominium v Rozencraft*, 148 AD3d 38 [1st Dept 2017]).

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]).

Accordingly, it is

ORDERED that the motion for a default judgment against the non-appearing parties is granted; and it is

ORDERED that **Hayley Greenberg 521 5th Avenue Suite 1700 New York NY 10175 - (212) 593-6111** is hereby appointed Referee in accordance with RPAPL § 1321 to compute the amount due to Plaintiff and to examine whether the property identified in the notice of pendency can be sold in parcels; and it is further

ORDERED that in the discretion of the Referee, a hearing may be held, and testimony taken; and it is further

ORDERED that by accepting this appointment the Referee certifies that he is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2 (c) ("Disqualifications from appointment"), and §36.2 (d) ("Limitations on appointments based upon compensation"), and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall immediately notify the Appointing Judge; and it is further

ORDERED that, pursuant to CPLR 8003(a), and in the discretion of the court, a fee of \$350 shall be paid to the Referee for the computation of the amount due and upon the filing of his report and the Referee shall not request or accept additional compensation for the computation unless it has been fixed by the court in accordance with CPLR 8003(b); and it is further

ORDERED that the Referee is prohibited from accepting or retaining any funds for himself or paying funds to himself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED that if the Referee holds a hearing, the Referee may seek additional compensation at the Referee's usual and customary hourly rate; and it is further

ORDERED that plaintiff shall forward all necessary documents to the Referee and to defendants who have appeared in this case within 30 days of the date of this order and shall *promptly* respond to every inquiry made by the referee (promptly means within two business days); and it is further

ORDERED that if defendant(s) have objections, they must submit them to the referee within 14 days of the mailing of plaintiff's submissions; and include these objections to the Court if opposing the motion for a judgment of foreclosure and sale; and it is further

ORDERED the failure by defendants to submit objections to the referee shall be deemed a waiver of objections before the Court on an application for a judgment of foreclosure and sale; and it is further

ORDERED that plaintiff must bring a motion for a judgment of foreclosure and sale within 30 days of receipt of the referee's report; and it is further

ORDERED that if plaintiff fails to meet these deadlines, then the Court may *sua sponte* vacate this order and direct plaintiff to move again for an order of reference and the Court may *sua sponte* toll interest depending on whether the delays are due to plaintiff's failure to move this litigation forward; and it further

ORDERED, that "John Doe" be removed as a party defendant in this action and the caption of this action be amended to reflect the removal of "John Doe" as a party defendant; and it is further

ORDERED that the caption shall read as follows:

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

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NYCTL 2019-A TRUST, and THE BANK OF NEW
YORK MELLON as Collateral Agent and Custodian for
the NYCTL 2019-A Trust,

Index No. 158623/2020

Plaintiff,

-against-

UPTOWN GAMBIT, INC.; NEW YORK STATE
DEPARTMENT OF LABOR BY COMMISSIONER
OF LABOR; NEW YORK STATE DEPARTMENT OF
TAXATION AND FINANCE; NEW YORK CITY
DEPARTMENT OF FINANCE; NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD;
NEW YORK CITY PARKING VIOLATIONS
BUREAU and NEW YORK CITY TRANSIT AUTHORITY
TRANSIT ADJUDICATION BUREAU,

Defendants

-----X

and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being removed pursuant hereto; and it is further

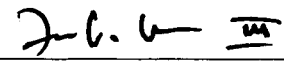
ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address (www.nycourts.gov/supctmanh)); and it is further

ORDERED that Plaintiff shall serve a copy of this Order with notice of entry on all parties and persons entitled to notice, including the Referee appointed herein.

All parties are to appear for a virtual conference via Microsoft Teams on **January 4, 2023, at 11:00 am**. If a motion for judgment of foreclosure and sale has been filed Plaintiff may contact the Part Clerk Tamika Wright (tswright@nycourt.gov) in writing to request that the conference be cancelled. If a motion has not been made, then a conference is required to explore the reasons for the delay.

9/9/2022

DATE



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

CHECK ONE:

CASE DISPOSED

NOT FILED DISPOSED

GRANTED

DENIED

HON. FRANCIS A. KAHN III

GRANTED IN PART

OTHER

J.S.C.

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE