

Columbia Condominium v IR 96th St. Holding LLC
2022 NY Slip Op 33191(U)
September 23, 2022
Supreme Court, New York County
Docket Number: Index No. 154633/2021
Judge: Francis A. Kahn III
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

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

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

Justice

-----X

INDEX NO. 154633/2021

THE COLUMBIA CONDOMINIUM BY ITS BOARD OF MANAGERS,

MOTION DATE

Plaintiff,

MOTION SEQ. NO. 001

- v -

IR 96TH ST HOLDING LLC, NEW YORK CITY
DEPARTMENT OF FINANCE, NEW YORK STATE
DEPARTMENT OF TAXATION & FINANCE, FARRIN B.
ULLAH, JOHN DOE, JANE DOE, ABC CORP.,

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

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, 42, 43, 44, 45, 46, 47, 48, 49 were read on this motion to/for JUDGMENT - SUMMARY

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

This is an action to foreclose on a lien for common charges encumbering a condominium unit located at 275 West 96th Street, Unit 25F, New York, New York. Plaintiff is the Board of Managers for The Columbia Condominium. Defendant IR 96th Street Holding LLC (“Holding”) is the record owner. Holding obtained title of the premises via a referee’s deed as the successful bidder at a public sale held after Plaintiff foreclosed on a prior lien for common charges. Defendant Farrin B. Ullah a/k/a Farrin Ullah a/k/a Entezari F. Ullah a/k/a Entezari Ullah a/k/a Farrin E. Ullah (“Ullah”) was apparently the former owner of the unit at issue and may have an ownership interest in Holding.

Plaintiff commenced this action to foreclose on its present lien for common charges. Defendant Holdings answered, via counsel, but pled no affirmative defenses. Defendant Ullah answered, *pro se*, and raised an affirmative defense and a single sentence counterclaim.

Now, Plaintiff moves for summary judgment against the appearing parties, a default judgment against the non-appearing parties, severing Defendant Ullah’s counterclaim, to appoint a referee to compute and to amend the caption. By order dated August 3, 2022, this motion was erroneously decided without opposition (NYSCEF Doc No 39). On consent, the Court vacated this order and restored the motion to the calendar (NYSCEF Doc No 40). Defendant Ullah opposes the motion and cross-moves for fourteen separate branches of relief, including to dismiss the motion and action, for an order stopping the Plaintiff from suing Ullah and “[p]enalizing” Plaintiff for harassing Ullah. Plaintiff opposes the cross-motion. Defendant Holding did not oppose either motion.

With respect to the cause of action for foreclosure of the lien for common charges, Real Property Law §339-aa provides that such a claim “may be foreclosed by suit authorized by and brought in the name of the board of managers, acting on behalf of the unit owners, in like manner as a mortgage of real property” (see *Board of Mgrs. of the Parkchester N. Condominium v. Alaska Seaboard Partners Ltd. Partnership*, 37 AD3d 332 [1st Dept 2007]). In a foreclosure action, a Plaintiff moving for summary judgment, must establish a *prima facie* case exists to foreclose (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]) with proof in evidentiary form (see CPLR §3212[b]; *Tri-State Loan Acquisitions III, LLC v Litkowski*, 172 AD3d 780 [1st Dept 2019]).

In an action to foreclose on a common charge lien, Plaintiff must submit proof of its “authority to collect common charges from the owners of units and, in the event of nonpayment, to add late fees, interest, attorneys’ fees and other costs of collection to the assessment” (*Board of Mgrs. of W. Amherst Off. Park Condominium v RMFSG, LLC*, 153 AD3d 1611 [4th Dept 2017]). In addition, Plaintiff must demonstrate the reliability of or how the amounts were calculated (see *Board of Mgrs. of Natl. Plaza Condominium I v. Astoria Plaza, LLC*, 40 AD3d 564 [2d Dept 2007]).

Here, Plaintiff demonstrated with the affidavit of Michael Zerka (“Zerka”), an employee of non-party Blue Wood Management Group, Inc. (“Blue Wood”), the managing agent for Plaintiff, its authority to collect common charges and that its method of calculation was accurate and reliable. As such, Plaintiff demonstrated, *prima facie*, its entitlement to summary judgment on its foreclosure cause of action.

Defendant Ullah’s opposition is a hodge-podge of arguments most of which are either irrelevant or incomprehensible. Those urgings that are discernable fail to defeat summary judgment. Defendant Ullah is not the owner of the premises and was only included as a party by Plaintiff as an occupant of the unit (see RPAPL §1311[1]). None of the arguments raise an issue of fact as to whether Plaintiff has the right to foreclose on the lien. Indeed, the arguments in opposition predominantly relate to the counterclaim and are insufficient to defeat summary judgment (see *Brody v Soroka*, 173 AD2d 431 [2d Dept 1991]).

As to the cross-motion, to the extent Defendant seeks summary judgment dismissing Plaintiff’s complaint, no basis for this relief was established. The remainder of the relief requested either seeks denial of Plaintiff’s motion or, as best the Court can discern, summary disposition on Defendant’s counterclaim. These requests for relief are also not established.

The branch of the motion to sever the counterclaim is granted as it is wholly dissimilar and separable from the foreclosure action (see *Valley Sav. Bank v Rose*, 228 AD2d 666 [2d Dept 1997]). The branch of Plaintiff’s motion for a default judgment against the non-appearing parties is granted (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 (see generally CPLR §3025; *JP Morgan Chase Bank, N.A. v Laszio*, 169 AD3d 885, 887 [2d Dept 2019]).

Accordingly, it is

ORDERED that Plaintiff’s motion for a summary judgment against Defendants IR 96th Street Holding LLC and Farrin B. Ullah a/k/a Farrin Ullah a/k/a Entezari F. Ullah a/k/a Entezari Ullah a/k/a Farrin E. Ullah (“Ullah”) is granted; and it is further

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

ORDERED that Defendant Ullah's counterclaim is severed; and it is further

ORDERED that the cross-motion is denied in its entirety; and it is

ORDERED that **Allison Furman, Esq., 260 Madison Avenue, 15th Floor, New York, New York 10016, 212-684-9400** is hereby appointed Referee in accordance with RPAPL § 1321 to compute the amount due to Plaintiff and to examine whether the tax parcel 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 they are 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 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 18, 2023 at 10:20 a.m.** 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.

9/23/2022

DATE

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input checked="" type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

F. A. Kahn III

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

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