

**Board of Mgrs. of the Langston Condominium v
Pichardo**

2022 NY Slip Op 33559(U)

October 18, 2022

Supreme Court, New York County

Docket Number: Index No. 151652/2021

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARY V. ROSADO

PART 33

Justice

-----X

INDEX NO. 151652/2021

BOARD OF MANAGERS OF THE LANGSTON
CONDOMINIUM, SUING ON BEHALF OF THE UNIT
OWNERS,

MOTION DATE 05/10/2022

MOTION SEQ. NO. 002

Plaintiff,

- v -

JUAN PICHARDO, ISALINA MINAYA

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40

were read on this motion to/for

JUDGMENT - FORECLOSURE & SALE

On the Summons, Complaint, and Notice of Pendency duly filed in this action on February 17, 2021, the Decision and Order on Motion ("Order of Reference") dated January 17, 2022 and entered on January 19, 2022, and all proceedings thereon, and on reading and filing the Affirmation of Nancy L. Kourland, Esq., counsel for Plaintiff, dated May 9, 2022, from which it appears that each of the defendants herein has been duly served with the Summons and Complaint in this action, and stating that more than the legally required number of days had elapsed since said defendants were so served and/or appeared; and that the Complaint herein and Notice of Pendency containing all the particulars required to be stated therein were duly filed with the New York County Clerk on February 17, 2021 and have not been amended to add new parties or to embrace real property not described in the original Complaint, and that a Referee having been duly appointed to compute the amount due to the Plaintiff upon continuing lien of common charges (the "Lien") set forth in the Complaint and examine and report whether the subject premises can be sold in parcels,

AND, on reading the report of JUDITH AARONS, ESQ., the Referee named in said Order of Reference (the "Report"), by which Report dated May 6, 2022, it appears that the sum of \$35,046.35 was due as of February 22, 2022, and that the subject premises should be sold in one parcel,

NOW, upon proof of due notice of this application upon all parties who had not waived the same, ON MOTION of Lasser Law Group, PLLC, attorneys for Plaintiff, it is ORDERED, that the motion is granted; and it is further ORDERED, ADJUDGED, AND DECREED, that the said Report of JUDITH AARONS, ESQ., dated May 6, 2022, be, and the same is hereby to the extent provided for herein, ratified and confirmed; and it is further

ORDERED, ADJUDGED, AND DECREED, that the premises known as and located at 68 Bradhurst Avenue, Unit 7-O, New York, NY 10039, Block 2045, Tax Lot 1124 ("Premises"), or such part thereof as may be sufficient to discharge the Lien, the expenses of the sale, and the costs of this action as provided by the Real Property Actions and Proceedings Law be sold, in one parcel, by and under the direction of JUDITH AARONS, ESQ., who is hereby appointed Referee for that purpose, that the said Referee shall set the date of sale, the place of public auction, and give public notice of the time and place of sale in accordance with RPAPL § 231 in an official publication, to wit: New York Law Journal ; and it is further

ORDERED, ADJUDGED, AND DECREED that said Referee shall accept at such sale the highest bid offered by a bidder, who shall be identified upon the court record, and shall require that such successful bidder immediately pay to the Referee in cash or certified or bank check payable to such Referee, ten percent of the sum bid, and shall execute the Terms of Sale for the purchase of the Premises, unless such successful bidder is the Plaintiff herein, in which case, no deposit against the purchase price shall be required; and it is further

ORDERED, ADJUDGED, AND DECREED that in the event that the first successful bidder fails to immediately pay the ten percent deposit as provided herein or fails to execute the Terms of Sale immediately following the bidding upon the subject property, the property shall thereafter immediately, on the same day, be reoffered at auction; and it is further

ORDERED, ADJUDGED, AND DECREED that the closing of title shall take place at the office of the Referee or at such other location as the Referee shall determine, if any, within forty-five days after such sale, unless otherwise agreed to by all parties. The Referee shall transfer title only to the successful bidder at the auction or an assignee of same; and it is further

ORDERED, ADJUDGED, AND DECREED that the Referee deposit all funds received pursuant to this Order in his or her own name as Referee in Referee's I.O.L.A. account maintained for legal clients at an FDIC-insured bank of the Referee's choice; and it is further

ORDERED, ADJUDGED, AND DECREED that said Referee on receiving the proceeds of such sale shall forthwith pay therefrom:

FIRST: The statutory fees and commissions of said Referee pursuant to CPLR § 8003(b) that shall not exceed \$750 unless the sale price (the amount of the accepted bid) exceeds \$50,000.00. In the event the sale price exceeds fifty thousand dollars and additional compensation (including commissions) in excess of \$750 is sought pursuant to CPLR § 8003(b), and if no surplus monies are produced by the sale, the parties may present a stipulation, signed by the Referee and all parties appearing, agreeing to a stated sum, to be so-ordered by the Court. Where surplus monies will be available following distribution of sums as provided herein, or where the parties are unable to agree to the Referee's proper compensation under CPLR § 8003(b), application shall be made to this Court on notice to all parties known to be entitled to claim against any surplus monies, including the defaulting owner of the equity of redemption. Such application shall be promptly

submitted to the Court within five days of the transfer of the deed and prior to filing the Report of Sale. The five-day period for payment of surplus money into Court as set forth in RPAPL § 1354(4), and the thirty-day period set forth in RPAPL § 1355 for the filing of the Report of Sale shall be deemed extended pending the decision of the Court regarding such application. In the event a scheduled sale is cancelled or postponed, Plaintiff shall compensate the Referee in the sum of \$250.00 for each adjournment or cancellation unless the Referee has requested the delay. Such compensation may be recouped from the proceeds of sale as a cost to Plaintiff. This Order shall constitute the necessary prior authorization for compensation as set forth herein. No compensation in excess of \$1500, including compensation authorized pursuant to CPLR § 8003(a) for computation of the sum due to Plaintiff, exclusive of compensation for adjournments, if any, may be accepted by the Referee without Court approval and compliance with the filing provisions of Section 36.4 of the Rules of the Chief Judge.

SECOND: The expenses of sale and the advertising expenses as shown on the bills presented and certified by said Referee to be correct, duplicate copies of which shall be annexed to the report of sale.

THIRD: Pursuant to Real Property Actions and Proceedings Law § 1354, in accordance with their priority according to law, taxes, assessments, sewer rents, water rates, and any charges placed upon the property by a city agency, which have priority over the Lien, which are liens on the Premises at the time of sale with such interest or penalties which may have lawfully accrued thereon to the date of payment.

FOURTH: Said Referee shall then pay to the Plaintiff or its attorney a sum for costs and disbursements in this action to be taxed by the Clerk and inserted herein, with interest from the date hereof, and also the sum of \$37,331.07, the said amount so reported due as aforesaid, plus

interest at the statutory post-judgment rate from December 15, 2021 to the date of transfer of title, or so much thereof as the purchase money of the Premises will pay of the same, together with \$35,046.35 hereby awarded to the Plaintiff as reasonable legal fees, together with any additional fees and advances made or to be made to protect the Lien, if any, upon presentation to the Referee of receipts for said expenditures, all together with interest thereon. Copies of such receipts shall be annexed to the Referee's Report of Sale; and it is further

ORDERED, ADJUDGED, AND DECREED that in case the Plaintiff be the purchaser of said Unit at said sale, said Referee shall not require the Plaintiff to pay in cash the entire amount bid at said sale, but shall execute and deliver only to the Plaintiff a deed of the Unit sold upon the payment to said Referee of the sum awarded to her under the above provisions marked "FIRST", "SECOND", and "THIRD" if such expenses were paid by the Referee, or in lieu of the payment of said last mentioned amounts, upon filing with said Referee receipts of the proper municipal authorities showing payment thereof. The balance of the amount bid, after deducting therefrom 5 the aforementioned payments to the Referee for compensation and expenses, taxes, assessments, sewer rents, water rates, and priority liens of a city agency, shall be allowed to the Plaintiff and applied by said Referee upon the amounts due to the Plaintiff as specified in item marked "FOURTH". If upon so applying the balance of the amount bid, there shall be a surplus over and above the said amounts due to the Plaintiff, the Plaintiff shall pay to the said Referee, upon delivery to Plaintiff of said Referee's deed, the amount of such surplus [which shall be applied by the Referee, upon motion made pursuant to RPAPL § 1351(3) and proof satisfactory to the Referee of the sums due thereon, to any subordinate mortgage duly recorded against the property, pursuant to RPAPL § 1354(3), which payment shall be reported in the Referee's Report of Sale.] Any surplus remaining after all payments as herein provided shall be deposited into Court in accordance with

RPAPL § 1354(4) and the Referee shall immediately give notice of such surplus to the owner of the Unit as identified by Plaintiff at the time of the sale; and it is further

ORDERED, ADJUDGED, AND DECREED that said Referee take the receipt of the Plaintiff or Plaintiff's attorney for the amounts paid as hereinbefore directed in item marked "FOURTH", and file it with her Report of Sale, that she deposit the surplus monies, if any, with the County Clerk within five days after the same shall be received unless such period be deemed extended by the filing of an application for additional compensation as set forth herein, to the credit of this action, to be withdrawn only upon order of the Court, signed by a Justice of the Court; that said Referee make his Report of such Sale under oath showing the disposition of the proceeds of the sale, accompanied by the vouchers of the persons to whom payment was made, and file it with the County Clerk after completing the sale and executing the proper conveyance to the purchaser or within thirty days of the decision of the court with respect to any application for additional compensation; and it is further

ORDERED, ADJUDGED, AND DECREED, that if the proceeds of such sale be insufficient to pay the amount reported due to the Plaintiff with interest and costs as aforesaid, the Plaintiff may recover of the Defendants the whole deficiency or so much thereof as the Court may determine to be just and equitable of the residue of the Lien remaining unsatisfied after the sale of the Premises and the application of the proceeds thereof, provided a motion for a deficiency judgment shall be made, and the amount thereof is determined and awarded by an order of this Court as provided for in said action; and it is further

ORDERED, ADJUDGED, AND DECREED, that the purchaser or purchasers at such sale be let into possession on production of the Referee's deed or deeds; and it is further

ORDERED, ADJUDGED, AND DECREED, that each and all of the defendant(s) in this action, and all persons claiming under any of them after the filing of such Notice of Pendency of this action, be and they are hereby forever barred and foreclosed of all right, claim, lien, title, interest, and equity of redemption in the said Premises and each and every part thereof; and it is further

ORDERED, ADJUDGED, AND DECREED, that said Premises are to be sold in one parcel in "as is" physical order and condition on the day of sale, subject to any state of facts that an inspection of the Premises would disclose, any state of facts that an accurate survey of the premises would show, any covenants, restrictions, declarations, reservations, easements, right of way and public utility agreements of record, any building and zoning ordinances of the municipality in which the Premises is located and possible violations of same, any rights of tenants or persons in possession of the subject premises, prior liens of record, if any, except those liens addressed in section 1354 of the Real Property Actions and Proceedings law, and any equity of redemption of the United States of America to redeem the premises within 120 days 7 from the date of sale. Risk of loss shall not pass to purchaser until closing of title; and it is further

ORDERED, that in absence of the Referee, the Court may designate a Substitute Referee forthwith; and it is further

ORDERED, that if the Referee does not conduct the sale within 90-days of the date of the judgment, in accordance with CPLR § 2004, the time fixed by RPAPL § 1351(1) is extended for the Referee to conduct the sale as soon as reasonably practicable; and it is further

ORDERED, that the Referee appointed herein is subject to the requirements of Rule 36.2(c) of the Chief Judge, and if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall notify the Appointing Judge forthwith; and it is further

ORDERED, that a copy of this Judgment with Notice of Entry shall be served upon the designated Referee, the owner of the equity of redemption as of the date of this Order, any tenants named in this action, and any other party entitled to notice no less than thirty days prior to sale. A description of the Premises is annexed hereto as Schedule "A."

This constitutes the Decision and Order of the Court.

10/18/2022

DATE

Mary V Rosado

HON. MARY V. ROSADO, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE