

**Wilmington Trust, N.A. v American Equities LLC**

2022 NY Slip Op 34372(U)

December 16, 2022

Supreme Court, New York County

Docket Number: Index No. 850026/2022

Judge: Francis A. Kahn III

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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

WILMINGTON TRUST, NATIONAL ASSOCIATION AS  
TRUSTEE FOR THE BENEFIT OF THE REGISTERED  
HOLDERS OF BANK 2019 BNK19, COMMERCIAL  
MORTGAGE PASS THROUGH CERTIFICATES, SERIES  
2019 BNK19, BY AND THROUGH ITS SPECIAL  
SERVICER, LNR PARTNERS, LLC,

INDEX NO. 850026/2022

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 002

Plaintiff,

- v -

AMERICAN EQUITIES LLC, UNTIED GROUP  
LLC, SHAPOUR SOHAYEGH, RONI MOVAHEDIAN,  
COLGATE RENTALS CORP., SHA HOME  
IMPROVEMENTS INC., THE CITY OF NEW YORK,  
PEOPLE OF THE STATE OF NEW YORK, JOHN DOE  
NOS. 1-25

**DECISION + ORDER ON  
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 80, 86, 87, 88, 89, 90, 91, 92, 93, 94

were read on this motion to/for

JUDGMENT - SUMMARY

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

In this action to foreclose on a mortgage encumbering commercial real property, Plaintiff moves for summary judgment against the appearing parties, for an order of reference, for a default judgment against the non-appearing Defendants and to amend the caption. Defendant Golden Seahorse, Inc. ("Golden Seahorse") opposes the 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 unpaid note, and evidence of Golden Seahorse's default under the note and mortgage (see *U.S. Bank, N.A., v James*, 180 AD3d 594 [1<sup>st</sup> Dept 2020]; *Bank of NY v Knowles*, 151 AD3d 596 [1<sup>st</sup> Dept 2017]; *Fortress Credit Corp. v Hudson Yards, LLC*, 78 AD3d 577 [1<sup>st</sup> 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 [1<sup>st</sup> Dept 2019]).

Plaintiff's motion was supported with an affirmation from Kyle Morris ("Morris"), an Asset Resolution Consultant Senior of Midland Loan Services, a division of PNC Bank, National Association, which is the special servicer to Plaintiff, as well as annexed documentation. The affirmation established the mortgage, note, and evidence of mortgagor's default and was sufficiently supported by documentary evidence admissible pursuant to CPLR §4518 (*see eg Bank of NY v Knowles, supra; Fortress Credit Corp. v Hudson Yards, LLC, supra*).

In opposition, Defendants' claim that issues of fact exist which preclude summary judgment is inapposite. It is undisputed that Golden Seahorse defaulted in its scheduled interest payments under the notes beginning on May 6, 2020. To the extent that Golden Seahorse is claiming it cured this default, that assertion is not established. Although it proffered evidence that some of the overdue interest was paid, unpaid interest under Note B remains outstanding. In any event, the payment made by Golden Seahorse occurred after this action was commenced and debts under the notes accelerated. Upon the occurrence of a default event and acceleration, "a mortgagor has no right to compel redemption of the loan by tendering only the arrears due" (*see Home Sav. of Am. v Isaacson*, 240 AD2d 633, 634 [2d Dept 1997]) and Plaintiff was not required to accept anything other than full repayment (*see EMC Mortg. Corp. v Stewart*, 2 AD3d 772, 773 [2d Dept 2003]). Further, based upon the uncured default, Plaintiff's continued charge of default interest is justified by the express terms of the notes. That there may be a dispute as to other claimed default events does not require denial of the motion.

Golden Seahorse's citation to economic forces beyond their control is unavailing. Appeals for equity and sympathy are ineffective as application of the former in foreclosure proceedings is rare and the latter cannot undermine the stability of contractual relations (*see L & L Assoc. Holding Corp. v Seventh Day Church of God of the Apostolic Faith*, 188 AD3d 1180 [2d Dept 2020]).

Any assertion the motion must be denied because no discovery has been conducted is unavailing as Golden Seahorse has offered nothing to demonstrate Plaintiff is in exclusive possession of facts which would establish a viable defense to summary judgment (*see Island Fed. Credit Union v. I&D Hacking Corp.*, 194 AD3d 482 [1<sup>st</sup> Dept 2021]).

As to any affirmative defenses unaddressed by Defendant, by failing to raise specific legal arguments in rebuttal of the branch of the motion to dismiss same they 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]).

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 [1<sup>st</sup> 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]).

Defendant Golden Seahorse's demands for affirmative relief in its memorandum of law are inappropriate absent a cross-motion.

Accordingly, it is

ORDERED that Plaintiff is awarded summary judgment against the appearing parties and a default judgment against the non-appearing defendants; and it is further

ORDERED that that **Jeffery R. Miller, Esq, 32 Broadway, 13<sup>th</sup> Floor, New York, New York 10004, 212-227-4200** is hereby appointed Referee in accordance with RPAPL § 1321 to compute the amount due to Plaintiff and 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 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 or is required to perform other significant services in issuing the report, 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 the caption be amended striking therefrom the remaining defendants sued herein as "John Doe #1 to #25" all without prejudice to proceedings therefore had herein; and it is further

ORDERED that the caption shall read as follows:

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

-----X  
WILMINGTON TRUST, NATIONAL  
ASSOCIATION, AS TRUSTEE FOR THE BENEFIT  
OF THE REGISTERED HOLDERS OF  
COMMERCIAL MORTGAGE PASS-THROUGH  
CERTIFICATES SERIES 2018-C6, WELLS FARGO  
COMMERCIAL MORTGAGE TRUST 2018-C47,  
COMMERCIAL MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2018-C47 AND CSAIL  
2018-C14 COMMERCIAL MORTGAGE TRUST,  
COMMERCIAL MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2018-C14,  
850073/2022

Index No.

Plaintiff,

-against-

GOLDEN SEAHORSE LLC, JUBAO XIE, MCSAM  
DOWNTOWN LLC, AMAZON RESTAURANT &  
BAR INC., BUREAU OF HIGHWAY OPERATIONS,  
AND NYC ENVIRONMENTAL CONTROL BOARD,

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/suptctmanh)); and it is further

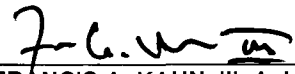
All parties are to appear for a virtual conference via Microsoft Teams on **April 13, 2023, at 10:20 a.m.** If a motion for judgment of foreclosure and sale has been filed Plaintiff may contact the Part Clerk Tamika Wright ([tswright@nycourt.gov](mailto:tswright@nycourt.gov)) in writing to request that the conference be cancelled. If a motion has not been made, then a conference is required to explore the reasons for the delay.

12/16/2022  
DATE

CHECK ONE:  CASE DISPOSED  GRANTED  DENIED

APPLICATION:  SETTLE ORDER  SUBMIT ORDER

CHECK IF APPROPRIATE:  INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT  REFERENCE

  
FRANCIS A. KAHN, III, A.J.S.C.  
**HON. FRANCIS A. KAHN III**  
NON-FINAL DISPOSITION  GRANTED IN PART  OTHER **J.S.C.**