SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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A10 CAPITAL, LLC,

Plaintiff,

- v -

LISPENARD 3J, LLC,535 BROADWAY GROUP, LLC,JACK JANGANA, JENNY HAIM, JOYCE REISS, JACOB CHETRIT, JOSEPH SUTTON, BENJAMIN VILINSKY, ANTON ANIKST, JENNIFER E. ANIKST, 427 BROADWAY MARKET LLC,ZACHARY SIAM, JUSTIN MATHEWS, SAMUEL CALVERT, GIDEON EICHHORN, AHORON GLUSKA, YAEL GLUSKA, ERIK REISS, A10 CAPITAL, LLC,NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, JOHN DOES,

Defendant.

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INDEX NO. 850206/2020

MOTION DATE

MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 006) 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 275, 277, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER.

Upon the foregoing documents, the motion and cross-motion are determined as follows:

The within action is to foreclose on an amended, restated and consolidated mortgage encumbering five parcels of commercial real property located at 46-48 Lispenard Street, Units 1A, 1B, 5A, 5B and PH, New York New York. The mortgage was given by Defendant Lispenard 3J LLC ("Lispenard") to Plaintiff A10 Capital LLC ("A10 Capital") to secure loans with original principal amounts of $17,100,000.00 and $2,460,000.00 and are memorialized by a pair of notes identified as Note A and Note B, respectively. The notes and mortgage, all dated May 31, 2019, were given to Plaintiff and were executed by Defendant Joyce Reiss ("Reiss") as Manager of Lispenard. Concomitantly with these documents, Defendants Reiss, Jenny Haim ("Haim") and Jack Jangana ("Jangana") each executed a document titled "Conditional Springing Guaranty" which created personal liability for the indebtedness upon the happening of specified events.

By a series of three undated allonges, each contained on a separated page, Note A was assigned by indorsement from Plaintiff to non-party A10 Reit LLC ("Reit"), then from Reit to non-party A10 Revolving Asset Financing I, LLC ("Revolving") and lastly from Revolving to non-party A10 Bridge

Asset Financing 2019-B, LLC ("Bridge"). Note B was apparently indorsed by allonge, dated June 13, 2019, from Plaintiff to non-party Schroder Opportunistic Secured Income Fund Limited ("Schroder"). The notes and mortgage are subject to an amended and restated loan agreement, dated August 6, 2019, which, among other things, defines co-lender provisions relating to Note A and Note B. By servicing agreements dated August 7, 2019, and February 23, 2018, respectively, Bridge and Schroder designated Plaintiff as their servicing agent of the loans.

Plaintiff commenced this action alleging *inter alia* Defendants defaulted in repayment under the notes. With leave of the Court, Plaintiff filed an amended complaint. Defendants Lispenard, 535 Broadway Group, LLC, Jangana, Haim and Reiss answered jointly and pled eight [8] affirmative defenses, including lack of standing.

Now, Plaintiff moves for *inter alia* summary judgment against Lispenard, 535 Broadway Group, LLC, Jangana, Haim and Reiss, for a default judgment against the non-appearing parties, striking the appearing Defendants' affirmative defenses, appointing a referee to compute and to amend the caption. Defendants Lispenard, 535 Broadway Group, LLC, Jangana, Haim and Reiss oppose the motion and cross-move to dismiss Plaintiff's complaint pursuant to CPLR §3211[a][1] and [7]. Plaintiff opposes the cross-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 note, and evidence of Defendants' default in repayment (*see eg U.S. Bank, N.A. v James,* 180 AD3d 594 [1st Dept 2020]; *Bank of NY v Knowles*, 151 AD3d 596 [1st Dept 2017]; *Fortress Credit Corp. v Hudson Yards, LLC*, 78 AD3d 577 [1st Dept 2010]). Based upon Defendants' affirmative defense, Plaintiff was also required to demonstrate it had standing when this action was commenced (*see eg Wells Fargo Bank, N.A. v Tricario*, 180 AD3d 848 [2nd Dept 2020]).

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 [1st Dept 2019]). A plaintiff may rely on evidence from persons with personal knowledge of the facts, documents in admissible form and/or persons with knowledge derived from produced admissible records (*see eg U.S. Bank N.A. v Moulton*, 179 AD3d 734, 738 [2d Dept 2020]). No particular set of business records must be proffered, as long as the admissibility requirements of CPLR 4518[a] are fulfilled and the records evince the facts for which they are relied upon (*see eg Citigroup v Kopelowitz*, 147 AD3d 1014, 1015 [2d Dept 2017]).

Plaintiff's motion was supported with an affidavit from Peter W. Ware, Jr. ("Ware"), General Counsel for Plaintiff, the alleged mortgage servicing agent. Ware stated that his affidavit was based upon both his personal knowledge and examination of business records. His affidavit laid a proper foundation for the admission of Plaintiff's records into evidence under CPLR §4518 (*see Bank of N.Y. Mellon v Gordon*, 171 AD3d 197 [2d Dept 2019]). The records of other entities were also admissible since Ware sufficiently established that those records were received from the makers and incorporated into the records Plaintiff kept and that it routinely relied upon such documents in its business (*see U.S. Bank N.A. v Kropp-Somoza,* 191 AD3d 918 [2d Dept 2021]). Further, annexed to the motion were records referenced by Ware (*cf. Deutsche Bank Natl. Trust Co. v Kirschenbaum*, 187 AD3d 569 [1st Dept 2020]) as well as the servicing agreements demonstrating the authority of Plaintiff to act on behalf of Bridge and Schroder, the note holders (*see Deutsche Bank Natl. Trust Co. v Silverman*, 178 AD3d 898, 901 [2d Dept 2019]).

Ware's affidavit and the referenced documents sufficiently evidenced the note and mortgage. As to the Mortgagor's default, it "is established by (1) an admission made in response to a notice to admit, (2) an affidavit from a person having personal knowledge of the facts, or (3) other evidence in admissible form" (*Deutsche Bank Natl. Trust Co. v McGann*, 183 AD3d 700, 702 [2d Dept 2020]). Here, Ware's personal knowledge and the attached account records demonstrated that the Mortgagor defaulted in repayment under the notes (*see eg ING Real Estate Fin. (USA) LLC v Park Ave. Hotel Acquisition, LLC*, 89 AD3d 506 [1st Dept 2011]). In opposition, Defendants failed to raise an issue of fact as these issues were not addressed in their memorandum of law.

On the issue of standing, a plaintiff in a foreclosure must ordinarily establish ownership of the note and mortgage through direct privity, assignment or holder status (*see CWCapital Asset Mgt. v Charney-FPG 114 41st St., LLC*, 84 AD3d 506 [1st Dept 2011]; *see also Wells Fargo Bank, N.A. v Tricario*, 180 AD3d 848 [2d Dept 2020]; *Wells Fargo Bank, NA v Ostiguy*, 127 AD3d 1375 [3d Dept 2015]). Here, it is undisputed that Plaintiff is not the holder of the notes, but contrary to Defendants' assertions that fact is not fatal to this action. Where, as here, the foreclosure complaint[1] identified Bridge and Schroder as the note holders, the action was expressly maintained in Plaintiff's capacity as servicing agent, and the servicing agreements delegated the authority to act with respect to the subject mortgages to Plaintiff, standing exists (*see CWCapital Asset Mgt. v Charney-FPG 114 41st St., LLC,* supra; *Fairbanks Capital Corp. v Nagel*, 289 AD2d 99, 100 [1st Dept 2001]; *see also CWCapital Asset Mgt., LLC v Great Neck Towers, LLC,* 99 AD3d 850, 851 [2d Dept 2012]).

As to the guarantees, typically, "'[o]n a motion for summary judgment to enforce a written guaranty all that the creditor need prove is an absolute and unconditional guaranty, the underlying debt, and the guarantor's failure to perform under the guaranty'" (*see 4 USS LLC v DSW MS LLC*, 120 AD3d 1049, 1051 [1st Dept 2014], *quoting City of New York v Clarose Cinema Corp.*, 256 AD2d 69, 71 [1st Dept 1998]). However, in the present case, the guaranty is what is colloquially referred to as a "bad boy" guaranty which creates individual liability upon the occurrence of specified events (*see Nexbank, SSB v Soffer*, 129 AD3d 485 [1st Dept 2015]). As such, *prima facie* proof that one or more of the contractual conditions occurred is necessary on this motion.

Under the heading the provided "Springing Conditions", contained in all the guarantees, it provides as follows:

> This Guaranty and all obligations hereunder shall become immediately effective only upon the occurrence of one or more of the following events, at which point Lender shall be entitled to enforce Guarantor's obligations under this Guaranty (collectively, the "Springing Conditions"):
>
> (i) the (A) commencement of a voluntary case or other voluntary proceeding (excluding any involuntary case or proceeding initiated by or at the request of Lender or any of its affiliates) against Borrower or any other Person (as defined in the Loan Agreement) having a direct ownership in the Mortgaged Property (each, a "Bankruptcy Party"), or (B) commencement of an involuntary case or other involuntary proceeding (excluding any involuntary case or proceeding initiated by or at the request of Lender or any of its affiliates) against a Bankruptcy Party in which any Bankruptcy Party files, or joins in the filing of such involuntary proceeding, colludes with, solicits or actively causes to be

[1] Despite its inartful drafting on this issue, the annexed documentation, which is incorporated into the complaint by rule (CPLR §3014), establishes Plaintiff's standing.

solicited, petitioning creditors for such involuntary proceeding or fails to object or dispute, when it has a good faith basis for such objection or dispute, such involuntary proceeding, which case or proceeding, in either of the foregoing clauses (A) or (B), seeks liquidation, reorganization or other relief with respect to it or its debts or other liabilities under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any of its property, and, in the case of an involuntary case or other proceeding, and such case or proceeding remains undismissed or unstayed for a period of ninety (90) days, or consent by a Bankruptcy Party to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it (excluding any involuntary case or proceeding initiated by or at the request of Lender or any of its affiliates), or the making by a Bankruptcy Party of a general assignment for the benefit of creditors, or the failure by a Bankruptcy Party to pay, or the admission by a Bankruptcy Party in writing of its inability to pay, its debts from its assets generally as they become due, or any action by a Bankruptcy Party to authorize or effect any of the foregoing;

(ii) a material falsity or material inaccuracy by Borrower or Guarantor of any written warranty or written representation made or furnished to Lender (including the intentional omission of any material information relating to such written warranty, representation or statement) by or on behalf of Borrower or Guarantor;

(iii) any fraud or intentional misrepresentation by Borrower or any Guarantor in connection with the Loan; and

(iv) after an Event of Default (as defined in the Note, the Loan Agreement, the Mortgage or any Loan Document) which results in Lender, after any applicable notice or cure periods, exercising its remedies against the Mortgaged Property, Borrower or any Borrower Party intentionally interferes or hinders solely for the sake of delaying Lender's exercise of its remedies under the Mortgage, the Loan Agreement or the other Loan Documents, or Borrower or any Borrower Party Transfers, removes, disposes or converts the Mortgaged Property or its interest in Borrower;

Plaintiff claims that the conditions under romanettes 2, 3 and 4 were triggered by Borrower by failing to deposit rents it collected into the agreed account, by failing to remit rents collected to the Lender and by delaying Plaintiff's application for the appointment of a receiver. The assertion that Borrower's failure to deposit and turnover rents proves, *prima facie*, that representations in the Loan Agreement and Collateral Mortgage constituted a material falsity or inaccuracy in a written representation to Lender (romanette 2) or fraud or intentional misrepresentation to the Lender (romanette 3) is not, as yet, established. Generally, the failure to abide by a contract term is not *ipso facto* evidence of fraud or proof that a party did not intend to abide by its contractual obligations (*see eg Junger v John V Dinan Assoc., Inc.*, 164 AD3d 1428, 1430 [2d Dept 2018]).

However, Plaintiff established that the improper depositing and withholding of rent interfered or hindered Plaintiff in the exercise of its remedies against the Defendants and mortgaged property. The failure to deposit rents in the contractually provided for account inhibited Plaintiff's use of these funds as a setoff as defined under section 7.2[c] of the Loan Agreement. Further, by delaying and opposing

the appointment of a receiver, Defendants hindered this remedy under section 6.2[f] of the mortgage since that relief was "irrevocably consent[ed]" to by the Mortgagor.

In opposition, Plaintiff's reliance on springing events in the motion that were not pled in the complaint was proper. Summary judgment on an unpleaded claim is sanctioned when the proof supports the claim and the opponent has not been misled to its detriment (*see eg Kramer v Danalis*, 49 AD3d 263, 264 [1st Dept 2008]). Defendants have not demonstrated the existence of any prejudice in Plaintiff relying on springing conditions not pled in the complaint. Indeed, any claim that Defendants could not, absent inclusion in the complaint, foresee Plaintiff's claim of interference with its receiver application as a springing condition is implausible. Appointment of a receiver was expressly consented to by Borrower in the loan documents and was incapable of being pled since this remedy is not available until after an action is commenced. Defendants' reliance on estoppel and other defenses to liability under the guarantees is unavailing as they expressly waived reliance on same (*see eg Citibank v Plapinger*, 66 NY2d 90 [1985]; *Red Tulip, LLC v Neiva*, 44 AD3d 204 [1st Dep't 2007]).

As to the branch of Plaintiff's motion to dismiss Defendants' affirmative defenses, CPLR §3211[b] provides that "[a] party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit". For example, affirmative defenses that are without factual foundation, conclusory or duplicative cannot stand (*see Countrywide Home Loans Servicing, L.P. v Vorobyov*, 188 AD3d 803, 805 [2d Dept 2020]; *Emigrant Bank v Myers*, 147 AD3d 1027, 1028 [2d Dept 2017]). When evaluating such a motion, a "defendant is entitled to the benefit of every reasonable intendment of its pleading, which is to be liberally construed. If there is any doubt as to the availability of a defense, it should not be dismissed" (*Federici v Metropolis Night Club, Inc.*, 48 AD3d 741, 743 [2d Dept 2008]).

At the outset, the guarantor Defendants expressly waived all defenses pertaining to their liability for the indebtedness, save discharge by full payment (*see Hotel 71 Mezz Lender LLC v Mitchell*, 63 AD3d 447 [1st Dept 2009]). Even if this were not the case, a guarantor generally cannot rely on any defenses personal to the borrower (*see I Bldg, Inc. v Hong Mei Cheung*, 137 AD3d 478 [1st Dept 2017]).

The first affirmative defense based upon Executive Order 202.8, *et seq.* fails as matter of law. The Executive Orders at issue do not dictate a remedy for a violation (*see United States Bank N.A. v Middle Dam St.*, ___Misc3d___, 2021 NY Slip Op 30686[U][Sup Ct Kings Cty 2021]["Importantly, the aforementioned Executive Orders do not authorize the dismissal of commercial foreclosure actions commenced during the COVID-19 pause period, pursuant to CPLR 3211"]). Analogously, statutes using mandatory terms like "shall" (*see eg* RPAPL §§1303, 1304; RPL §§232-a, 735[1]; VTL §313; GML §50-e) and with remedial purposes have been interpreted to be conditions precedent with a consequence of dismissal of the action for non-compliance (*see First Natl. Bank of Chicago v Silver*, 73 AD3d 162 [2d Dept 2010]). Unlike those edicts, which were enacted through the legislative process and were intended to be more permanent solutions to societal problems[2], the Executive Orders at issue were intended to be temporary in duration. Additionally, certain case law in this state indicates that violation of an Executive Order creates rights for the executive branch of the government to enforce (*see Singer v Bruner--Ritter, Inc.*, 180 Misc 928 [Sup Ct NY Cty 1943], *affd* 266 App Div 953 [1st Dept 1943]; *see*

[2] For example, the Home Equity Theft Prevention Act (RPL §265-a) and its statutory progeny were enacted to serve enduring social policies (RPL §265-a[1][b]["it is the express policy of the state to preserve and guard the precious asset of home equity, and the social as well as the economic value of homeownership"]).

also Bradford v Durkee Mar. Prods. Corp., 180 Misc 1049 [Sup Ct NY Cty 1943]; *Leahy v Brooklyn Waterfront Term. Corp.*, 272 App Div 781 [2d Dept 1947]).

The second, sixth and seventh affirmative defenses pleading bad faith, assuming it is even applicable in a mortgage foreclosure action[3], unclean hands, prior action pending, waiver and estoppel are entirely conclusory and unsupported by any facts in the answer. As such, these affirmative defenses are nothing more than unsubstantiated legal conclusions which are insufficiently pled as a matter of law (*see Board of Mgrs. of Ruppert Yorkville Towers Condominium v Hayden,* 169 AD3d 569 [1st Dept 2019]; *see also Bosco Credit V Trust Series 2012-1 v. Johnson,* 177 AD3d 561 [1st Dept 2020]; *170 W. Vil. Assoc. v G & E Realty, Inc.*, 56 AD3d 372 [1st Dept 2008]; *see also Becher v Feller*, 64 AD3d 672 [2d Dept 2009]; *Cohen Fashion Opt., Inc. v V & M Opt., Inc.*, 51 AD3d 619 [2d Dept 2008]).

The third affirmative defense claiming lack of personal jurisdiction was waived when Defendants failed to move to dismiss pursuant to CPLR §3211[a][8] within sixty [60] days of pleading this affirmative defense (*see* CPLR §3211[e]).

The fourth affirmative defense of standing fails as a matter of law based on the Court's findings supra.

The fifth affirmative defense which relates to the legal sufficiency of Plaintiff's complaint, is unnecessary as a general matter since dismissal cannot be effectuated without a motion pursuant to CPLR 3211[a][7] (*see Riland v Frederick S. Todman & Co.*, 56 AD2d 350 [1st Dept 1977]). Normally, this defense is nothing more than "'harmless surplusage,' and . . . a motion by the plaintiff to strike the same should be denied" (*Butler v Catinella*, 58 AD3d 145 [2d Dept 2008]). However, where all other affirmative defenses fail as a matter of law, it may be dismissed (*Raine v Allied Artists Productions, Inc.*, 63 AD2d 914, 915 [1st Dept 1978]).

The seventh affirmative defense, claiming waiver and estoppel, as pled, is entirely conclusory and fails to state a defense. Considering the opposition

The eighth affirmative defense of mitigation is unavailing in a foreclosure action (*see Marine Midland Bank, N. A. v Virginia Woods Ltd.*, 201 AD2d 625 [2d Dept 1994]; *HSBC Bank USA v Rodriguez*, ____Misc 3d____, 2016 NY Slip Op 32123[U][Sup Ct Queens Cty 2016]). Moreover, as this defense relates to the amount due and owing, it is not a viable defense to summary judgment (*see eg 1855 E. Tremont Corp. v Collado Holdings LLC,* 102 AD3d 567, 568 [1st Dept 2013]).

Further, any affirmative defenses pled which were unaddressed by Defendants in their opposition 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]).

Plaintiff has established that it is entitled to a default judgment against all non-appearing Defendants (*see* CPLR §3215; *SRMOF II 2012-I Trust v Tella*, 139 AD3d 599, 600 [1st Dept 2016]).

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[3] "Case law, however, urges this defense to a mortgage foreclosure action to be facile. No decision has yet found such an interposed defense to both meet the definition of the doctrine and establish the requisite detriment to the asserting party." (1 Bergman on New York Mortgage Foreclosures § 5.08 [2019]).

The branch of Plaintiff's motion to amend 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 Plaintiff is awarded summary judgment on its cause of action for foreclosure against the appearing parties and a default judgment against the non-appearing defendants; and it is further

ORDERED that Plaintiff is awarded summary judgment against Defendants Joyce Reiss, Jenny Haim and Jack Jangana on the issue of their liability under the guarantees; and it is further

ORDERED that that **Clark Whitsett, Esq., 108-26 Myrtle Avenue, Richmond Hill, NY 11418-1235 (718) 850-0003** 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 if a Defendant appears and contests the amount due, in the discretion of the Referee, a hearing may be held, and testimony taken, otherwise the Referee shall hold no hearing and take no testimony or evidence other than by written submission; 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 is hereby amended by striking therefrom the "JOHN DOE" defendants as parties 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

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A10 CAPITAL, LLC, in its capacity as mortgage servicing agent,

Index No. 850206/2020

Plaintiff,

-against-

LISPENARD 3J, LLC, 535 BROADWAY GROUP, LLC, JACK JANGANA, JENNY HAIM, JOYCE REISS, JACOB CHETRIT, JOSEPH SUTTON, BENJAMIN VILINSKY, ANTON ANIKST, JENNIFER E. ANIKST, 427 BROADWAY MARKET LLC, ZACHARY SIAM, JUSTIN MATHEWS, SAMUEL CALVERT. GIDON EICHHORN, AHORON GLUSKA, YAEL GLUSKA, ERIK REISS, A10 CAPITAL, LLC (in its capacity as collateral mortgagee), NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE

Defendants.

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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

All parties are to appear for a virtual conference via Microsoft Teams on **June 28, 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.

2/21/2023
DATE

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

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

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
	X	GRANTED	☐ DENIED		GRANTED IN PART	☐ OTHER	
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN		X	FIDUCIARY APPOINTMENT	☐ REFERENCE	