

601 18th St. LLC v Blue Capital Group LLC

2023 NY Slip Op 31689(U)

May 17, 2023

Supreme Court, Kings County

Docket Number: Index No. 502530/2022

Judge: Debra Silber

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : PART 9**

X

**601 18th STREET LLC,
603 18 LLC,
STARR FORTY SIX LLC,
232 M HOLDINGS LLC,
LMW 234 LLC,
STARR OPAY LLC,
and LAZAR WALDMAN,**

DECISION/ORDER

**Index No. 502530/2022
Motion Seq. No. 003**

Plaintiffs,

-against-

BLUE CAPITAL GROUP LLC and BROAD SPV I LLC,

Defendants.

X

Recitation, as required by CPLR 2219(a), of the papers considered in the review of defendants' motion to dismiss

Papers	NYSCEF Doc.
Notice of Motion, Affirmations, Affidavits, and Exhibits Annexed.....	<u>48-58</u>
Affirmation in Opposition, Affidavits, and Exhibits Annexed.....	<u>60-62</u>
Reply Affirmation.....	<u>65</u>

Upon the foregoing cited papers, the Decision/Order on this application is as follows:

In motion sequence #3, defendants move, pre-answer, to dismiss the complaint pursuant to CPLR 3211(a)(1) and (7). The first two motions in this action were withdrawn.

This is an action to vacate two judgments entered on confessions of judgment. One, under index 530253/2021, was entered against plaintiffs 603 18 LLC, Starr Forty Six LLC, 232 M Holdings LLC, LMW 234 LLC, Starr Opay LLC, and Lazar Waldman, jointly and severally, on 11/26/2021. The other, under index 530254/2021, also entered on 11/26/2021, was entered against plaintiffs 601 18th Street LLC and Lazar Waldman, jointly and severally. The judgments were to be entered in favor of defendant Blue Capital Group LLC, but due to what counsel claims was a typographical error, the judgment

creditor for both judgments is Broad SPV I LLC, an entity not in the caption of the two underlying actions. As counsel's typo ended up in both judgments, this court cannot correct them in this index number.

The gravamen of the complaint is that the loans which underly the confessions of judgment were usurious. Bringing a plenary action to vacate a confessed judgment due to fraud or some other issue with the underlying judgment is the proper procedure. See *Siegel's NY Practice*, §302, citing *Scheckter v Ryan*, 161 AD2d 344 [1st Dept 1990]. However, here, plaintiffs do not set forth a valid reason to vacate the judgments in their complaint.

Plaintiff Lazar Waldman is presently engaged in more than a half dozen active lawsuits in Kings County, many of which are foreclosures with regard to multiple dwellings, for which receivers have been appointed, and is a sophisticated real estate investor. His argument that he was somehow "forced" into signing the loans at issue here without being granted time to obtain counsel to review the documents is completely incredible. In addition to the numerous actions involving the parties in this caption, Mr. Waldman is also involved as a party in the following active cases in Kings County, and he is represented by counsel in all of them: 524178/2021 [Mr. Waldman is being sued on a commercial lease guaranty]; 531498/2021 [foreclosure on 1638 Dekalb Avenue, with receiver appointed]; 507351/2023 [Foreclosure of 181 Troutman Street and 303 Stockholm Street, Mr. Waldman was personal guarantor]; LT 305824/2023 [Housing Court action brought by NYC HPD for repairs to 54 Herkimer Place against Mr. Waldman and other parties].

Plaintiffs' first cause of action in their amended complaint [Doc 34] is a request for a declaratory judgment that the loans and all related documents should be declared to be

void and unenforceable as they violate the criminal usury laws. The loan documents state that they will be interpreted pursuant to New Jersey law [Doc 3 ¶12]. The borrowers (plaintiffs) are all limited liability companies, with Mr. Waldman as guarantor. As such, under New Jersey law, the loans are not usurious (see N.J. Stat. Ann. § 2C:21-19 [a]).¹ The court notes that Mr. Waldman signed on behalf of all six plaintiff LLC's and as guarantor. It should also be noted that under New York law, the loans would be considered usurious. (*Powercap Partners LLC v Beaux Equities LLC*, 77 Misc 3d 1221[A], 2023 NY Slip Op 50013[U] [Sup Ct, Kings County 2023]). However, the lender is a New Jersey entity, and choice of law provisions are enforceable. Plaintiffs' arguments to the contrary are unavailing.

Plaintiffs' second cause of action seeks an order vacating the two judgments because they are based "on criminally usurious loans which must be voided." As stated above, under New Jersey law, the loans, which consist of written promissory notes and security agreements, are not usurious.

Plaintiffs' third cause of action is for an order cancelling and voiding the declarations of restriction which defendants allegedly recorded against the properties. The Declarations are all identical, and unlike a typical declaration of restriction, which might say, for example, that the property will not be used for a specified purpose, such as a noisy purpose, or a polluting purpose, these instead state that the owner of the

¹ a. Criminal usury. A person is guilty of criminal usury when not being authorized or permitted by law to do so, he: (1) Loans or agrees to loan, directly or indirectly, any money or other property at a rate exceeding the maximum rate permitted by law; or (2) Takes, agrees to take, or receives any money or other property as interest on the loan or on the forbearance of any money or other interest in excess of the maximum rate permitted by law. For the purposes of this section and notwithstanding any law of this State which permits as a maximum interest rate a rate or rates agreed to by the parties of the transaction, any loan or forbearance with an interest rate which exceeds 30% per annum shall not be a rate authorized or permitted by law, except if the loan or forbearance is made to a corporation, limited liability company or limited liability partnership any rate not in excess of 50% per annum shall be a rate authorized or permitted by law [emphasis added].

property “1. [S]hall not sell, mortgage, assign, lease, convey, transfer, encumber, pledge, hypothecate or otherwise take any action creating a security interest in the Premises without the written consent of Steven Berkovitch Esq. 2. Any such transfer, assignment or encumbrance, without written consent of Steven Berkovitch Esq. shall be null and void and of no force and effect. 3. This declaration shall be binding on the heirs, personal representatives, successors and assigns of the Declarant. 4. This Declaration may not be changed or modified orally and may only be changed, modified or rescinded with the written consent of Steven Berkovitch Esq. 5. Only Steven Berkovitch Esq. or their delegates [sic] shall have the right to terminate or rescind this Declaration of Restriction.” Mr. Berkovitch is an attorney with the firm that represents the judgment creditor. Until the judgments are satisfied, or the property is deeded by a Referee in a foreclosure action, the Declarations of Restriction are valid encumbrances on the applicable borrower’s title.

For the \$750,000 loan, executed by the entities 232 M Holdings LLC, LMW 234 LLC, Starr Opay LLC, Starr Forty Six LLC and 603 18 LLC, there is an identical Declaration of Restriction, signed by Lazar Waldman for the applicable LLC, recorded against all of the borrowers’ properties: 603 18th Street [603 18 LLC], 20 and 20A Starr Street [Starr Opay LLC], 46 Starr Street [Starr Forty Six], 232 Marcy Avenue [232 M Holdings LLC], and 234 Marcy Avenue [LMW 234 LLC].

The other loan, for \$350,000, which resulted in the other judgment, was only executed by 601 18th St. LLC and Mr. Waldman. That property, 601 18th Street, Brooklyn, NY is owned by plaintiff 601 18th St. LLC, and Mr. Waldman owns 100% of the LLC, according to his sworn verification at Doc 2 in Index 526243/2022. A Judgment of Foreclosure was entered and a Receiver appointed, in Index 500429/2022. The judgment was entered against not only the property owner LLC and Mr. Waldman, but also against

both defendants here, who defaulted in that action, thereby wiping out any judgment lien of the judgment and permitting the referee appointed to convey good title following a foreclosure auction, which would also “wipe out” the requirements of the declaration of restriction. Thus, with regard to this property and this judgment, plaintiffs’ claim, in the third cause of action, that the declaration of restriction recorded should be cancelled, is moot.

The property 603 18th Street, Brooklyn, NY is owned by plaintiff 603 18 LLC, and Mr. Waldman owns 100% of the LLC, according to his sworn verification at Doc 2 in Index 500840/2022. A Judgment of Foreclosure was entered in Index 500429/2022. The Judgment was entered against not only the property owner LLC and Mr. Waldman, but also against both defendants here, thereby wiping out any judgment lien. Thus, with regard to this property, plaintiffs’ claim, in the third cause of action, that the declaration of restriction recorded should be cancelled, is also moot.

The property 46 Starr Street, Brooklyn, NY is owned by plaintiff Starr Forty Six LLC, and Mr. Waldman owns 100% of the LLC, according to his sworn verification at Doc 2 in Index 526243/2022. A proposed Judgment of Foreclosure was recently submitted for signature in Index 500429/2022. The Judgment will be entered against not only the property owner LLC and Mr. Waldman, but also against both defendants here, thereby wiping out any judgment lien. Thus, with regard to this property, plaintiffs’ claim in the third cause of action that the declaration of restriction recorded should be cancelled, will also be moot once the judgment of foreclosure is signed and entered.

The properties at 20 and 20A Starr Street are owned by plaintiff Starr Opay LLC, and the foreclosure is under index 531616/2021. Mr. Waldman owns 100% of the LLC, according to his sworn verification at Doc 2 in Index 526243/2022. A receiver has been

appointed. This only leaves 232 and 234 Marcy Avenue, which do not appear to be in foreclosure. However, these documents were part of a negotiated transaction, were intended to provide additional security to the lender, and are validly recorded against the properties until such time as the judgments are satisfied. At that point, if not canceled by operation of law by a Referee's deed, they should be canceled by means of a recorded document.

Plaintiffs' fourth cause of action seeks an order vacating the judgments as unconscionable contracts of adhesion. This cause of action has no merit as Mr. Waldman is not a "consumer" but a sophisticated real estate investor.

Plaintiffs' fifth cause of action is essentially for an injunction barring the enforcement of the judgments while this action is pending.

The court finds that the promissory notes and security agreements and other documents executed in connection therewith, including the affidavits of confession of judgment, are valid and enforceable, and as such, the complaint fails to state a valid cause of action, and thus has no merit and must be dismissed pursuant to CPLR 3211 (a)(7).

Accordingly, the motion is granted and the complaint is dismissed.

This constitutes the decision and order of the court.

Dated: May 17, 2023

ENTER :



Hon. Debra Silber, J.S.C.