

**RSS MSBAM2015-C20 - NY 3W4, LLC v  
33 W. 46 Realty, LLC**

2023 NY Slip Op 31935(U)

June 7, 2023

Supreme Court, New York County

Docket Number: Index No. 850232/2021

Judge: Barry R. Ostrager

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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. BARRY R. OSTRAGER PART MOTION IAS 61EF M**

*Justice*

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RSS MSBAM2015-C20 - NY 3W4, LLC,

Plaintiff,

- v -

33 W. 46 REALTY, LLC, IGNACIO JAVIER LAYUS as Provisional Executor of the Estate of Jorge Justo Neuss, GERMAN RICARDO JORGE NEUSS, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, NEW YORK CITY DEPARTMENT OF FINANCE, PAKNIA ENGINEERING & ARCHITECTURE, P.C., A/K/A PAKNIA ENGINEERING, P.C., THE CITY OF NEW YORK, NEW YORK CITY OFFICE OF ADMINISTRATIVE AND TRIAL HEARINGS, and "JOHN DOE" NO. 1 THROUGH "JOHN DOE" NO. 100,

<b>INDEX NO.</b>	850232/2021
<b>MOTION DATE</b>	
<b>MOTION SEQ. NO.</b>	002

**DECISION + ORDER ON MOTION**

Defendants.

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HON. BARRY R. OSTRAGER

Currently pending before the Court is plaintiff’s Motion Sequence 002 for summary judgment on the foreclosure causes of action and for other requested relief. On June 5, 2023, the Court held a conference via Microsoft Teams with counsel for all parties, during which time the parties indicated that a contractor for the repairs of the Property located at 33 West 46<sup>th</sup> Street, New York, New York (the “Property”) had been selected but the parties were still finalizing the contract. Despite the delay in finalizing the repair contract, the parties expressed their desire for Motion Sequence 002 to be granted. Counsel for defendant 33 W. 46 Realty, LLC (the “Borrower”) indicated on the Transcript of Proceedings of June 5, 2023 that the Borrower does not oppose the motion for summary judgment on the foreclosure causes of action. Accordingly, in accordance with the decision on the Transcript of Proceedings on June 5, 2023, and as further established here, the motion is granted in all respects.

On November 25, 2014, non-party Morgan Stanley Bank, N.A. (plaintiff's predecessor-in-interest, hereinafter referred to as "Original Lender") lent defendant Borrower \$19,500,000.00 secured by a mortgage on the Property. The various loan documents also included a security interest in certain collateral in favor of the mortgage holder. On March 2, 2021, after a series of assignments, the loan documents were eventually assigned to plaintiff. NYSCEF Doc. No. 97, Exhs. 6–17.

To establish its prima facie entitlement to summary judgment on the foreclosure motions, plaintiff must produce the documents underlying the transactions and undisputed evidence of nonpayment. *See Red Tulip, LLC v. Neiva*, 44 A.D.3d 204, 209 (1<sup>st</sup> Dept. 2007).

In support of its motion, plaintiff has submitted (1) the November 25, 2014 Loan Agreement (the "Loan") executed by and between defendant Borrower and the Original Lender; (2) the November 25, 2014 Consolidated, Amended and Restated Promissory Note (the "Note") executed by defendant Borrower to Original Lender; (3) the November 25, 2014 Consolidated, Amended and Restated Mortgage, Assignment of Leases and Rents and Security Agreement (the "Mortgage") executed by Borrower and Original Lender, which also granted a security interest in favor of the Mortgage Holder in certain collateral. NYSCEF Doc. No. 97. Collectively, the Loan Agreement, the Note, and the Mortgage constitute the "Loan Documents"; (4) the affidavit of Nicholas Powell, an individual with personal knowledge of the underlying transactions. NYSCEF Doc. No. 96; and (5) evidence of defendant Borrower's non-payment in the form of a Notice of Default, a Demand Statement, and a Notice of Acceleration. NYSCEF Doc. No. 97, Exhs. 18–20.

The motion for summary judgment was unopposed and Borrower does not dispute the above. Plaintiff has established that it is entitled to summary judgment for the foreclosure of the

Mortgage and the foreclosure of its security interest in the Collateral pursuant to the operative agreements.

A follow-up status conference is scheduled for July 11, 2023 at 3:00 p.m. via Microsoft Teams.

Accordingly, it is hereby

**ORDERED** that plaintiff's motion is hereby granted in its entirety; and it is further

**ORDERED** that summary judgment is hereby granted in favor of plaintiff as against defendants 33 W. 46 Realty, LLC, Ignacio Javier Layus as Provisional Executor of the Estate of Jorge Justo Neuss, German Ricardo Jorge Neuss (collectively, the "Answering Defendants") and Answering Defendants' Answer to the Amended Complaint is hereby stricken pursuant to CPLR § 3212; and it is further

**ORDERED** that default judgment is hereby granted in favor of plaintiff as against defendants New York State Department of Taxation and Finance, New York City Department of Finance, Paknia Engineering & Architecture, P.C. a/k/a Paknia Engineering, P.C., the City of New York, and New York City Office of Administrative and Trial Hearings (collectively, the "Defaulting Defendants"); and it is further

**ORDERED** that defendants John Doe. No. 1 through John Doe No. 100 are hereby stricken and discontinued, without costs to any part as against the other, without prejudice to the proceedings heretofore had herein, and the Clerk is directed to amend the caption to remove these parties from the caption upon counsel's e-filing of NYSCEF Form EF-23, or any other required form, directed to the County Clerk; and it is further

**ORDERED** this action be, and the same is hereby referred to

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as referee (“Referee”) to ascertain and compute the amount due to the Plaintiff for principal, interest, late charges and disbursements advanced and any other charges as provided for in each of Loan Documents, including the Note and Mortgage (as such terms are defined in the Complaint), upon which this action was brought, to examine and report whether or not the Property can be sold in one or more parcels, and that the Referee make his/her report with all convenient speed, but no later than sixty (60) days from the date of this Order, and that, except for good cause shown, the Plaintiff shall move for judgment no later than sixty (60) days of the date of the referee’s report; and it is further

**ORDERED**, that upon submission of the Referee’s report, Plaintiff shall pay the following agreed-upon fees for Mr. Cardello to serve as referee in this foreclosure action, which sum may be recouped as a cost of litigation:

- \$2,500.00 for referee’s report and computation of amount due;
- \$5,000.00 for referee’s foreclosure sale of the subject property and closing on the successful bid; and
- \$250.00 in the event that a foreclosure auction is cancelled; and it is further

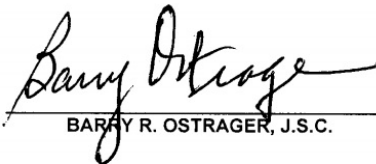
**ORDERED**, that by accepting this appointment the Referee certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCCR Part 36), including but not limited to, Section 36.2(e) (“Disqualifications from appointment”), and Section 36.2(d) (“Limitations on Appointments Based upon Compensation”); and it is further

**ORDERED**, that the Referee’s hearing, if any, be held in the County of New York; 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 Order with Notice of Entry shall be served upon the owner of the equity of redemption, any tenants named in this action and any other party entitled to notice.

Dated: June 7, 2023

  
BARRY R. OSTRAGER, 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