

Kats v Agosto

2023 NY Slip Op 32518(U)

July 10, 2023

Supreme Court, New York County

Docket Number: Index No. 850027/2012

Judge: Nancy M. Bannon

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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. NANCY M. BANNON PART **42**

Justice

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RUDOLF KATS,

Plaintiff,

- v -

BLANCA N. AGOSTO, GREEN ERA CONSTRUCTION
CORP., and 20 MAIDEN LANE ASSOCIATES LLC,

Defendants.

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INDEX NO. 850027/2012

MOTION DATE 03/07/2023,
03/07/2023

MOTION SEQ. NO. 006 006

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 006) 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625

were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL

The following e-filed documents, listed by NYSCEF document number (Motion 006) 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625

were read on this motion to/for JUDGMENT - FORECLOSURE & SALE

In this and two related breach of contract and foreclosure actions arising from a series of four loans by the plaintiff to the defendant, Blanca Agosto (“Agosto”), the court, by an order dated May 5, 2020, granted the plaintiff’s motions for summary judgment to the extent of awarding the plaintiff leave to enter a judgment of foreclosure against Agosto, with the full amount of damages to be determined by David Dender, Esq., as referee.¹ By an order dated December 17, 2020, the court denied Agosto’s motion to renew and reargue her opposition to the plaintiff’s summary judgment motion. Agosto appealed that decision and, by an order dated March 31, 2022, the Appellate Division, First Department, dismissed her appeal.

¹ The two related actions are *Rudolf Kats v. Blanco Agosto*, Index No. 810027/2010 and *Rudolf Kats v. Blanco Agosto, Green Era Construction Corp. and 20 Maiden Lane Associates LLC*, Index No. 850360/2014.

On November 12, 2020, the plaintiff filed his proposed referee's report of computation. On December 18, 2020, a conference call was held between the parties and the referee to discuss the plaintiff's proposed computation, during which call Agosto's counsel indicated that his only objection to the plaintiff's proposed computation was that it did not include the plaintiff's attorney's fees. It was determined that the computation did not and would not include attorney's fees. The referee's Report of Amount Due, dated March 4, 2022 and filed with the court on June 13, 2022, concluded, based upon the documentary evidence submitted, that \$2,182,218.55 was due to the plaintiff as of January 31, 2022, not including legal fees.

The plaintiff now moves for an order: (1) consolidating this action with the two related actions also pending before the court, *Rudolf Kats v. Blanco Agosto*, Index No. 810027/2010 and *Rudolf Kats v. Blanco Agosto, Green Era Construction Corp. and 20 Maiden Lane Associates LLC*, Index No. 850360/2014, with the three actions, as consolidated, proceeding under Index No. 850027/2012; (2) amending the captions of the two related actions being consolidated to add the middle initial "N" in Agosto's name; and (3) confirming the referee's Report of Amount Due and granting a Judgment of Foreclosure and Sale. Agosto opposes the motion and cross-moves to renew (again) her opposition to the plaintiff's summary judgment motions.

"Consolidation is generally favored in the interest of judicial economy and ease of decision-making where cases present common questions of law and fact, 'unless the party opposing the motion demonstrates that a consolidation will prejudice a substantial right.'" Raboy v McCrory Corp., 210 AD2d 145 (1st Dept. 1994), quoting Amtorg Trading Corp. v Broadway & 56th St. Assoc., 191 AD2d 212, 213 (1st Dept. 1993). The plaintiff correctly argues that this and the two related actions present common questions of law and fact. See CPLR 602. In particular, the mortgages that are the subject of the three actions to be

consolidated have the same mortgagor and mortgagee and are secured by the same real property. Indeed, the court has already acknowledged this identity of issues in its May 5, 2020 order, which was a single consolidated decision covering all three of the actions to be consolidated.

As a general rule, the court should not disturb the findings of a referee, and the report should be confirmed, if the referee's findings are supported by the record, and the referee has clearly defined the issues and resolved any matters of credibility. See Bd. of Managers of Boro Park Vill.-Phase I Condo. v Boro Park Townhouse Assocs., 284 AD2d 237, 238 (1st Dept. 2001); Freedman v Freedman, 211 AD2d 580, 580 (1st Dept. 1995). Here, only one, clearly defined issue—the computation of damages—was referred to the referee, which required only a review of documentary evidence and thus did not implicate matters of credibility. Upon a review of the documentary evidence submitted to the referee, the court concludes the referee's findings as to the plaintiff's damages are supported by the record. The court has considered the defendant's arguments in opposition and determined they do not warrant a contrary conclusion.

Accordingly, the plaintiff's motion is granted in its entirety in accordance with the attached Order and Judgment of Foreclosure and Sale.

The defendant's cross-motion to renew her opposition to the plaintiff's summary judgment motions is meritless, as it is duplicative of her unavailing opposition to the plaintiff's summary judgment motions and her prior, unsuccessful motion seeking the same relief. The defendant's cross-motion is therefore denied for the same reasons previously stated in the court's orders dated May 5, 2020 and December 17, 2020.

Accordingly, it is hereby

ORDERED that the plaintiff's motion is granted in its entirety in accordance with the attached Order and Judgment of Foreclosure and Sale; and it is further

ORDERED that the defendant's cross-motion is denied.

This constitutes the Decision and Order of the court.

7/10/2023

DATE



NANCY M. BANNON, 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