

**Ready Capital Mtge. Fin. 2019-FL3, LLC v PB 151  
Grand LLC**

2023 NY Slip Op 32811(U)

August 11, 2023

Supreme Court, New York County

Docket Number: Index No. 850041/2022

Judge: Melissa A. Crane

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. MELISSA A. CRANE** PART **60M**

*Justice*

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READY CAPITAL MORTGAGE FINANCING 2019-FL3,  
LLC,

Plaintiff,

INDEX NO. 850041/2022

MOTION DATE 06/26/2023

MOTION SEQ. NO. 003

- v -

PB 151 GRAND LLC,DAN AREV, BARUCH SINGER,  
MARIE ADRIENNE LLC,DOMANI INSPECTION SERVICES  
INC.,HARTFORD STRUCTURAL INSPECTIONS  
LLC,PRIORITY NY INC.,PEOPLE OF THE STATE OF NEW  
YORK, AFRO CONTRACTING & DEMO., CORP., MID-  
STATE CONSTRUCTION CORP., JOHN DOES NOS. 3-25,

Defendant.

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 373, 374

were read on this motion to/for

JUDGMENT - SUMMARY

In Motion Seq. No. 03, Plaintiff Ready Capital Mortgage Financing 2019-FL3, LLC (“Ready Capital”) moves for an order granting summary judgment in its favor, pursuant to CPLR 3212(b). Ready Capital also moves for order granting it leave to enter a default judgment, pursuant to CPLR 3215, as against the non-appearing defendants, Marie Adrienne LLC, Hartford Structural Inspections, LLC, Priority N.Y. Inc., People of the State of New York, and Afro Contracting & Demo Corp (Doc 254 [Notice of Motion]).

As explained on the record during oral argument on June 26, 2023, Ready Capital has established its *prima facie* entitlement to summary judgment of foreclosure, as to liability only, by submitting the loan documents at issue and evidence of the borrower’s defaults thereunder (*New*

*York Corp. v Pisces Properties, Inc.*, 138 AD3d 583 [1st Dept 2016]). Ready Capital has also established its *prima facie* entitlement to summary judgment, as to liability only, under the relevant guarantees in this case to the extent of any deficiency that arises. Ready Capital has established the existence of the guaranty, the underlying debt, and the guarantor's failure to perform under the guaranty (*Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A. v Navarro*, 25 NY3d 485, 492 [2015], citing *Davimos v Halle*, 35 AD3d 270, 272 [1st Dept 2006]).

Defendants' arguments in opposition to this motion are unavailing. Defendants argue that the exhibits in the record are by Mr. Ghezzi, who is LNR's employee, and who lacks any personal knowledge of Ready Capital's business practices. However, LNR is Ready Capital's servicer, and the relevant allonges (Docs 274, 275) settle the matter concerning Mr. Ghezzi's personal knowledge. In any event, plaintiff offered, on the record, that they hold the relevant power of attorney and that they would make it available for defendants' review if needed (6/26/23 Tr. at 17). Additionally, Mr. Ghezzi testified that the documents are incorporated into LNR's business records, and that they are relied on in the ordinary course of business (Doc 273 [Ghezzi Aff.] ¶ 2). This is sufficient to establish their authenticity as business records (*see Merrill Lynch Bus. Fin. Services, Inc. v Trataros Const., Inc.*, 30 AD3d 336, 337 [1st Dept 2006]; *Landmark Capital Investments, Inc. v Li-Shan Wang*, 94 AD3d 418, 419 [1st Dept 2012]).

Defendants also do not provide any basis to suggest these documents are fraudulent. In fact, the Forbearance Agreement expressly releases the plaintiff of any claims relating to any funding (Doc 344 [Forbearance Agreement] ¶ 10). The Forbearance Agreement further provides that it was negotiated, prepared, and executed at arm's length without fraud, duress, undue influence, or coercion (*id.*, ¶ 21).

The court also rejects the argument that the Forbearance Agreement was not entered into in good faith in light of the COVID-19 pandemic. The dispute in this case is well past the pandemic

at this point. The parties are also sophisticated investors who knew or should have known the obligations that they agreed to. Further, as explained above, the Forbearance Agreement also expressly waived all arguments defendants may have had about the mishandling of the construction funds. In any event, the loan documents make clear that once the loan is in default, the lender has absolute discretion for application of the loan to reserve funds under sections 3.1 and 3.12 of the loan agreements.

Thus, plaintiff has demonstrated its *prima facie* entitlement to foreclose under the relevant documents by producing the relevant documents and undisputed evidence of default (*VNB New York Corp. v Pisces Properties, Inc.*, 138 AD3d 583 [1st Dept 2016]). Plaintiff also established that striking defendants' affirmative defenses is appropriate, and defendants failed to raise a triable issue of fact with respect to their defenses. Specifically, defendants failed to submit any evidence of bad faith or raise an issue concerning their uncured defaults or the validity of the loan documents. Additionally, Defendants expressly waived their affirmative defenses in both the Forbearance Agreement and in the Guaranties.

Plaintiff has also demonstrated its *prima facie* entitlement to a judgment, as to liability only, on the Completion Guaranty (Doc 338), the Recourse Guaranty (339), and the Carry Guaranty (Doc 340). The guarantors failed to dispute their breaches of these three guarantees at issue. The guarantors jointly executed these guaranties, as consideration for the underlying loans, but failed to pay the amounts due and owing thereunder. Further, the guaranties' plain and unambiguous terms do not provide any defense for such non-payment. As such, Defendants have failed to rebut plaintiff's *prima facie* showing.

Plaintiff has also demonstrated its *prima facie* entitlement to a default judgment as against the non-appearing defendants in this case, Marie Adrienne LLC, Hartford Structural Inspections, LLC, Priority N.Y. Inc., People of the State of New York, and Afro Contracting & Demo Corp.

These defendants have not appeared, have not answered the complaint, and have not opposed this motion. The record also establishes that the lender is entitled to foreclose on the property, and that these non-appearing defendants are junior to the lender's mortgage liens as they asserted Mechanics' Liens after August 2018 (Doc 255 [Plaintiff's MOL] at 27). Plaintiff has submitted proof of service of the summons and complaint (Docs 258-261 [Affidavits of Service]), proof of the facts constituting its claim (Doc 273 [Ghezzi Aff.]) proof of defendants' default, and proof of compliance with CPLR 3215 (Doc 266 [Supplemental Affidavits of Service]). As such, the court grants the portion of plaintiff's motion seeking a default judgment as against these defendants.

The court has considered the parties' remaining arguments and finds them unavailing.

Accordingly, it is

ORDERED that Plaintiff's motion is granted to the extent that Defendants' PB 151 Grand LLC's, Baruch Singer's, Dan Arev's, Mid-State Construction Corp.'s, and Domani Inspection Services Inc.'s affirmative defenses are stricken, and defendants' affirmative defenses are severed and dismissed; and it is further

ORDERED that Plaintiff's motion is granted to the extent that Plaintiff is awarded a default judgment against the non-appearing defendants Marie Adrienne LLC, Hartford Structural Inspections, LLC, Priority N.Y. Inc., People of the State of New York, and Afro Contracting & Demo Corp; and it is further

ORDERED that Plaintiff Ready Capital Mortgage Financing 2019-FL3, LLC's motion is granted to the extent that Plaintiff is awarded summary judgment against defendant PB 151 Grand LLC on the first and second foreclosure causes of action on the issue of liability only; and it is further

ORDERED that Plaintiff's motion is granted to the extent that Plaintiff is awarded summary judgment on the issue of liability only against Borrower, Singer, and Arev for the fourth cause of action [deficiency judgment]; and it is further

ORDERED that Plaintiff's motion is granted to the extent that Plaintiff is entitled to summary judgment on the issue of liability only against defendants Baruch Singer and Dan Arev on the fifth cause of action pursuant to the Completion Guaranty; and it is further

ORDERED, that this action be referred to Mark L. McKew, of McKew Law Firm PLLC, having an office at 1725 York Avenue, Suite 29A, New York, New York 10128, telephone number (212) 876-6783 Ext. 125, as Referee to ascertain and compute the amount due to Plaintiff Ready Capital Mortgage Financing 2019-FL3, LLC herein for principal, interest and other disbursements advanced as provided for by statute and in the note and mortgage upon which this action was brought, to examine and report whether or not the mortgaged premises should be sold in parcels, and that the Referee make his report no later than sixty (60) days from the date of this Order and that, except for good cause shown, Plaintiff Ready Capital Mortgage Financing 2019-FL3, LLC shall move for final judgment of foreclosure and sale no later than sixty (30) days from the date of the Referee's Report; and it is further

ORDERED that the Referee shall hold no hearing and take no testimony or evidence other than by written submission; the Court is the ultimate arbiter and the Referee's report is merely an advisory ruling; and it is further

ORDERED that by accepting this appointment the Referee certifies that they are 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 \$250 shall be paid to the Referee for the computation of the amount due and upon the filing of their 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 themselves or paying funds to themselves without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED that upon submission of the Referee's Report, Plaintiff Ready Capital Mortgage Financing 2019-FL3, LLC shall pay \$250 to the referee as compensation for his services, which sum may be recouped as a cost of litigation; and it is further

ORDERED that Plaintiff shall forward all necessary documents to the Referee and to the defendants who have appeared in this case within 20 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 defendants 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 that 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 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 is further

ORDERED that Plaintiff shall serve a copy of this Order with notice of entry on all parties and persons entitled to notice, including the Referee appointed herein; and it is further

ORDERED that the defendants captioned as "JOHN DOE # 3" through "JOHN DOE # 25," who were not served with copies of the Commercial Foreclosure Summons and Verified Complaint with exhibits thereto, or the Supplemental Commercial Foreclosure Summons and Supplemental Verified Complaint with exhibits thereto, are not necessary parties. The action is severed and dismissed against defendants "JOHN DOE # 3" through "JOHN DOE # 25"; and it is further

ORDERED that all future papers filed with the Court shall bear the following amended caption:

\_\_\_\_\_<sup>X</sup>  
 READY CAPITAL MORTGAGE FINANCING 2019-FL3, LLC,  
 a Delaware limited liability company,

Plaintiff,

Index No. 850041/2022

- against -

PB 151 GRAND LLC, DAN AREV, BARUCH  
 SINGER, MARIE ADRIENNE LLC, DOMANI  
 INSPECTION SERVICES INC., HARTFORD  
 STRUCTURAL INSPECTIONS LLC, PRIORITY NY  
 INC., PEOPLE OF THE STATE OF NEW YORK,  
 AFRO CONTRACTING & DEMO., CORP., and  
 MIDSTATE CONSTRUCTION CORP.,

Defendants.

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And it is further

ORDERED that within 5 days of the court’s entry of this order, counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the General Clerk’s Office (Room 119), who are directed to mark the Court’s records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the County Clerk and 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 – [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)).

8/11/2023  
DATE

  
MELISSA A. CRANE, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART		
		<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE