

U.S. Bank N.A. v 1880 Broadway Retail, LLC
2023 NY Slip Op 33000(U)
August 28, 2023
Supreme Court, New York County
Docket Number: Index No. 850093/2023
Judge: Melissa A. Crane
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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*

-----X

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR
MORGAN STANLEY BANK OF AMERICA MERRILL
LYNCH TRUST 2012-C6, COMMERCIAL MORTGAGE
PASS-THROUGH CERTIFICATES, SERIES 2012-C6,

INDEX NO. 850093/2023**MOTION DATE** N/A**MOTION SEQ. NO.** 005

Plaintiff,

- v -

1880 BROADWAY RETAIL, LLC, GLOBAL
DIVERSIFICATION CORP., DRAWBRIDGE LONG DATED
VALUE FUND LP, DRAWBRIDGE LONG DATED VALUE
FUND (B) LP, AZWZ/15CPW, LLC, Z-1 15CPW LLC, Z-2
15CPW LLC, WILLIAMS-SONOMA STORES INC., IT'S
SUGAR LLC, NEW YORK CITY DEPARTMENT OF
FINANCE, NEW YORK STATE DEPARTMENT OF
TAXATION AND FINANCE, JOHN DOE

DECISION + ORDER ON MOTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 005) 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 149

were read on this motion to/for

JUDGMENT - SUMMARY

In Motion Seq. No. 05, plaintiff U.S. Bank National Association, as Trustee for Morgan Stanley Bank of America Merrill Lynch Trust 2012-C6, Commercial Mortgage Pass-Through Certificates, Series 2012-C6 ("Plaintiff") moves, pursuant to CPLR 3212, for an order granting it summary judgment as against defendants 1880 Broadway Retail, LLC ("Borrower"), Global Diversification Corp. ("Global"), Drawbridge Long Dated Value Fund LP and Drawbridge Long Dated Value Fund (B) LP (collectively, "Drawbridge"), AZWZ/15CPW, Z-1/15CPW, LLC, and Z-2/15CPW, LLC (collectively, "Zeckendorf") (together, the "Answering Defendants"). Plaintiff also moves for a default judgment, pursuant to CPLR 3215, against non-appearing defendants

IT'SUGAR LLC, New York City Department of Finance, and New York State Department of Taxation and Finance (the “Non-Appearing Defendants”).

Here, plaintiff 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 (VNB New York Corp. v Pisces Properties, Inc., 138 AD3d 583 [1st Dept 2016]). The Answering Defendants concede liability for the requested relief of foreclosure on the mortgage loan, but only raise three specific issues regarding additional relief included in Plaintiff’s Notice of Motion.

The first is to the inclusion of the request in subsection (d) of Plaintiff’s Notice of Motion (Doc 106 [Notice of Motion]), that the Court “order[] that Defendants,...be barred and forever foreclosed of...equity of redemption in and to the Mortgaged Property, including the fixtures and articles of personalty upon which the Mortgage is a lien” (Doc 139 [Borrower’s Opp.] at 3; Doc 132 [Global Opp.] at 3; Doc 131 [Zeckendorf Opp.] at 2-3; Doc 130 [Drawbridge Opp.] at 4-5). Specifically, they argue that Plaintiff’s request for an order barring and foreclosing defendants from all equity of redemption in and to the property upon entry of summary judgment is inappropriate as a matter of law. In reply, Plaintiff indicates that it does not object to the Answering Defendants’ request to exclude this item [foreclosure of the “equity of redemption”] in its order granting summary judgment in Plaintiff’s favor (Doc 149 [Reply MOL] at 2-3).

Second, the Drawbridge Guarantors and the Zeckendorf Guarantors each object to Plaintiff’s Motion to the extent that it seeks a deficiency judgment against them (Doc 131 [Zeckendorf Opp.] at 3; Doc 130 [Drawbridge Opp.] at 4). In its reply, Plaintiff concedes that it is not seeking a deficiency judgment against any of the Answering Defendants in connection with this motion (Doc 149 [Reply MOL] at 3). Instead, Plaintiff reserves the right to seek a deficiency

judgment if and when Plaintiff is entitled to one against any of the answering defendants, that it acknowledges may never occur (*id.*). Therefore, the court does not need to decide whether Plaintiff is entitled to a deficiency judgment at this time, as Plaintiff is not seeking that relief.

Third, the Borrower, Global, and the Drawbridge Guarantors each object to the inclusion of the requests in subsections (f), (g), and (i) of Plaintiff's Notice of Motion seeking orders to sell the Mortgaged Premises, be paid amounts due on the Loan, and otherwise apply the proceeds of the sale (Doc 139 [Borrower's Opp.] at 4-5; Doc 132 [Global Opp.] at 4-5; Doc 130 [Drawbridge Opp.] at 5-6). They argue that the Court, upon granting summary judgment, needs to either hold an inquest or refer the matter of an inquest to a referee to hear and report, in order to make a finding about the final amount due. In reply, Plaintiff agrees (Doc 149 [Reply MOL] at 3-4).

Based on its submissions, plaintiff has demonstrated its *prima facie* entitlement to foreclose by producing the relevant documents and undisputed evidence of defendants' default (*VNB New York Corp. v Pisces Properties, Inc.*, 138 AD3d 583 [1st Dept 2016]). The Answering Defendants do not oppose foreclosure, have conceded liability for the requested relief of foreclosure, and have not raised or asserted any affirmative defenses.

Plaintiff has also demonstrated its *prima facie* entitlement to a default judgment as against the Non-Appearing Defendants in this case, IT'SUGAR LLC, New York City Department of Finance, and New York State Department of Taxation and Finance. These defendants have not appeared, have not answered the complaint, and have not opposed this motion. Plaintiff has submitted proof of service of the summons and complaint (Doc 108 [Kratenstein Aff.]), proof of the facts constituting its claim (Doc 110 [Vis Aff.]), proof of defendants' default, and proof of compliance with CPLR 3215. As such, the court grants the portion of plaintiff's motion seeking a default judgment as against the Non-Appearing Defendants.

As discussed above, the relief requested in subsections (d), (f), (g), and (i) of plaintiff's notice of motion is denied. Plaintiff concedes that it is not seeking that relief, or that such relief is inappropriate at this time.

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 Plaintiff is awarded a default judgment as against the Non-Appearing Defendants in this case, IT'SUGAR LLC, New York City Department of Finance, and New York State Department of Taxation and Finance; and it is further

ORDERED that Plaintiff's motion is granted to the extent that Plaintiff is awarded summary judgment as against the Answering Defendants, 1880 Broadway Retail, LLC, Global Diversification Corp., Drawbridge Long Dated Value Fund LP, Drawbridge Long Dated Value Fund (B) LP, AZWZ/15CPW, Z-1/15CPW, LLC, and Z-2/15CPW, LLC, on the first and second foreclosure causes of action on the issue of liability only; 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 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 shall move for final judgment of foreclosure and sale no later than thirty (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 on 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 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 shall pay \$350 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 twenty (20) days of the date 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 fourteen (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 judgment of foreclosure and sale; and it is further

ORDERED that Plaintiff must bring a motion for judgment of foreclosure and sale within thirty (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 "JOHN DOE #1" through "JOHN DOE #50" are not necessary parties. The action is severed and dismissed against defendants "JOHN DOE #1" through "JOHN DOE #50"; and it is further

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

Index No. 850093/2023

-----X

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR
MORGAN STANLEY BANK OF AMERICA MERRILL
LYNCH TRUST 2012-C6, COMMERCIAL MORTGAGE
PASS-THROUGH CERTIFICATES, SERIES 2012-C6,

Plaintiff,

- v -

1880 BROADWAY RETAIL, LLC, GLOBAL
DIVERSIFICATION CORP., DRAWBRIDGE LONG DATED
VALUE FUND LP, DRAWBRIDGE LONG DATED VALUE
FUND (B) LP, AZWZ/15CPW, LLC,Z-1 15CPW LLC,Z-2
15CPW LLC,WILLIAMS-SONOMA STORES INC.,IT'S
SURGAR LLC,NEW YORK CITY DEPARTMENT OF
FINANCE, NEW YORK STATE DEPARTMENT OF
TAXATION AND FINANCE

Defendants.

-----X

And it is further

ORDERED that all other relief requested in the notice of motion is denied; and it is further

ORDERED that within five (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).

8/28/2023

DATE

CHECK ONE:

☐

CASE DISPOSED

☐

GRANTED

☐

DENIED

☒

NON-FINAL DISPOSITION

☒

GRANTED IN PART

☐

OTHER

APPLICATION:

☐

SETTLE ORDER

☐

SUBMIT ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

☐

FIDUCIARY APPOINTMENT

☒

REFERENCE