

**NYCTL 2019-A Trust v Yelagina**

2023 NY Slip Op 34194(U)

December 1, 2023

Supreme Court, New York County

Docket Number: Index No. 158938/2020

Judge: Francis A. Kahn III

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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. FRANCIS A. KAHN, III **PART** **32**  
*Justice*

-----X  
NYCTL 2019-A TRUST, AND THE BANK OF NEW YORK  
MELLON AS COLLATERAL AGENT AND CUSTODIAN  
FOR THE NYCTL 2019-A TRUST,  
  
Plaintiff,  
  
- v -  
  
YELENA YELAGINA, BOARD OF MANAGERS OF THE  
TRUMP TOWER CONDOMINIUM, JOHN DOE NO. 1  
THROUGH JOHN DOE NO. 100  
  
Defendant.

INDEX NO. 158938/2020  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36  
were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, the motion is determined as follows:

This is an action to foreclose on a tax lien on real property owned by Defendant Yelena Yelagina (“Yelagina”). Defendant Yelagina answered and pled thirteen affirmative defenses. Now, Plaintiff moves for a summary judgment judgment, an order of reference and to amend the caption. Defendant Yelagina opposes the motion.

In moving for summary judgment, Plaintiff was required to establish *prima facie* entitlement to judgment as a matter of law though proof in admissible form (*see* CPLR §3212[b]; *Tri-State Loan Acquisitions III, LLC v Litkowski*, 172 AD3d 780 [1<sup>st</sup> Dept 2019]). In support of the motion, a plaintiff may rely on evidence from persons with personal knowledge of the facts, documents in admissible form and/or persons with knowledge derived from produced admissible records (*see eg U.S. Bank N.A. v Moulton*, 179 AD3d 734, 738 [2d Dept 2020]). No particular set of business records must be proffered, as long as the admissibility requirements of CPLR 4518[a] are fulfilled and the records evince the facts for which they are relied upon (*see eg Citigroup v Kopelowitz*, 147 AD3d 1014, 1015 [2d Dept 2017]).

Plaintiff has established *prima facie* its entitlement to a default judgment against Defendant Yelagina with submission of the subject tax lien certificate, which was presumptive evidence of a valid and enforceable lien, proof that the outstanding balance due under the lien was not paid as well as evidence that constitutionally adequate notice of the sale of the tax lien justify judgment in Plaintiff’s favor (*see eg NYCTL 2009-A Trust v Morris*, 164 AD3d 1249 [2d Dept 2018]; *NYCTL 1998-2 Trustee v 2388 Nostrand Corp.*, 69 AD3d 594 [2d Dept 2010]).

In opposition, Defendant's claim that Plaintiff failed to demonstrate entitlement to summary judgment, its standing or compliance with statutory requirements is without merit. To the extent Defendant claims there are issue of fact concerning the amount owed, this is not a defense to summary judgment but rather an issue for the reference to compute (*see 1855 E. Tremont Corp. v Collado Holdings LLC*, 102 AD3d 567, 568 [1<sup>st</sup> Dept 2013]).

As pled, all the affirmative defenses are entirely conclusory and unsupported by any facts in the answer. As such, these affirmative defenses are nothing more than unsubstantiated legal conclusions which are insufficiently pled as a matter of law (*see Board of Mgrs. of Ruppert Yorkville Towers Condominium v Hayden*, 169 AD3d 569 [1<sup>st</sup> Dept 2019]; *see also Bosco Credit V Trust Series 2012-1 v. Johnson*, 177 AD3d 561 [1<sup>st</sup> Dept 2020]; *170 W. Vil. Assoc. v. G & E Realty, Inc.*, 56 AD3d 372 [1st Dept 2008]; *see also Becher v Feller*, 64 AD3d 672 [2d Dept 2009]; *Cohen Fashion Opt., Inc. v V & M Opt., Inc.*, 51 AD3d 619 [2d Dept 2008]). Further, to the extent that specific legal arguments were not proffered in support of any affirmative defense, those defenses were abandoned (*see U.S. Bank N.A. v Gonzalez*, 172 AD3d 1273, 1275 [2d Dept 2019]; *Flagstar Bank v Bellafore*, 94 AD3d 1044 [2d Dept 2012]; *Wells Fargo Bank Minnesota, N.A v Perez*, 41 AD3d 590 [2d Dept 2007]).

The assertion the motion must be denied because no discovery has been conducted is unavailing as Defendant offered nothing to demonstrate Plaintiff is in exclusive possession of facts which would establish a viable defense to summary judgment (*see Island Fed. Credit Union v I&D Hacking Corp.*, 194 AD3d 482 [1<sup>st</sup> Dept 2021]).

The branch of Plaintiff's motion for a default judgment against the non-appearing parties is granted (*see CPLR §3215; SRMOF II 2012-I Trust v Tella*, 139 AD3d 599, 600 [1<sup>st</sup> Dept 2016]).

The branch of Plaintiff's motion to amend the caption is granted (*see generally CPLR §3025; JP Morgan Chase Bank, N.A. v Laszio*, 169 AD3d 885, 887 [2d Dept 2019]).

ORDERED that the motion for a default judgment against the non-appearing parties is granted; and it is

ORDERED that **Mark McKew, Esq., 1725 York Ave, Ste 29A, New York, New York, 212-876-6783** is hereby appointed Referee in accordance with RPAPL § 1321 to compute the amount due to Plaintiff and to examine whether the property identified in the notice of pendency can be sold in parcels; and it is further

ORDERED that in the discretion of the Referee, a hearing may be held, and testimony taken; and it is further

ORDERED that by accepting this appointment the Referee certifies that he is 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 \$350 shall be paid to the Referee for the computation of the amount due and upon the filing of his 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 himself or paying funds to himself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED that if the Referee holds a hearing, the Referee may seek additional compensation at the Referee's usual and customary hourly rate; and it is further

ORDERED that plaintiff shall forward all necessary documents to the Referee and to defendants who have appeared in this case within 30 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 defendant(s) 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 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 a 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 further

ORDERED, the caption be amended to reflect RADION IFKHAKOV s/h/a JOHN DOE No.1 be substituted in the place and stead of the defendant sued herein as JOHN DOE No.1 and that the names of defendants "JOHN DOE No.2" through "JOHN DOE No. 100" be severed and stricken from the caption herein and that the action be discontinued as to them, all of the foregoing without prejudice to any of the proceedings heretofore had herein or to be had herein; and it is further

ORDERED that the caption shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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NYCTL 2019-A TRUST, and THE BANK OF NEW  
YORK MELLON as Collateral Agent and Custodian for  
the NYCTL 2019-A Trust,

Plaintiff,

-against-

YELENA YELAGINA, BOARD OF MANAGERS OF  
THE TRUMP TOWER CONDOMINIUM and RADION  
IFKHAKOV,

Defendants

-----X

and it is further

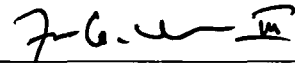
ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the parties being removed pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the 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 at the address (www.nycourts.gov/supctmanh)); 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.

All parties are to appear for a virtual conference via Microsoft Teams on **March 27, 2024, at 10:00 am**. If a motion for judgment of foreclosure and sale has been filed Plaintiff may contact the Part Clerk Tamika Wright ([tswright@nycourt.gov](mailto:tswright@nycourt.gov)) in writing to request that the conference be cancelled. If a motion has not been made, then a conference is required to explore the reasons for the delay.

12/1/2023  
DATE

  
FRANCIS A. KAHN, III, A.J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: