

NY 2015 Boat LLC v 2435 Kingsland LLC
2023 NY Slip Op 35276(U)
November 24, 2023
Supreme Court, Bronx County
Docket Number: Index No. 806264/2022E
Judge: Fidel E. Gomez
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NEW YORK SUPREME COURT - COUNTY OF BRONX
PART 32

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

-----X
NY 2015 BOAT LLC,

Plaintiff,

Index No. **806264/2022E**

- against -

Hon. **FIDEL E. GOMEZ**
Justice

2435 KINGSLAND LLC, ERIC SHAPIRO, STEVEN J. SHAPIRO, CITY OF NEW YORK DEPARTMENT OF FINANCE, CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD AND "JOHN DOE NO. 1 THROUGH JOHN DOE NO. 99," SAID NAMES BEING FICTITIOUS, PARTIES INTENDED BEING POSSIBLE TENANTS OR OCCUPANTS OF PREMISES, AND CORPORATIONS, OTHER ENTITIES OR PERSONS WHO CLAIM, OR MAY CLAIM, A LIEN AGAINST THE PREMISES,

Defendants.

-----X
The following papers numbered 1 to 1, Read on this Motion noticed of 10/27/23, and duly submitted as no. 5 on the Motion Calendar of 10/27/23.

	<u>PAPERS NUMBERED</u>	
Notice of Motion - Order to Show Cause – Exhibits and Affidavits Annexed	1	
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
Notice of Cross-Motion - Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers- Proposed Order of Reference		
Memorandum of Law		

Plaintiff's motion is decided in accordance with the ~~Decision~~ Order annexed hereto.

Dated:

11/24/23

Her

FIDEL E. GOMEZ, JSC

1. CHECK ONE

2. MOTION/CROSS-MOTION IS

3. CHECK IF APPROPRIATE.

☐ CASE DISPOSED

☐ GRANTED (MOTION)

☐ GRANTED IN PART

☐ SETTLE ORDER

☐ SUBMIT ORDER

☐ DO NOT POST

☒ NON-FINAL DISPOSITION

☒ DENIED (MOTION)

☐ OTHER

☐ FIDUCIARY APPOINTMENT

☐ REFEREE APPOINTMENT

☐ NEXT APPEARANCE DATE:

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

-----X
NY 2015 BOAT LLC,

Plaintiff,

-against-

DECISION AND ORDER

Index No. 806264/2022E

**2435 KINGSLAND LLC, ERIC SHAPIRO, STEVEN
J. SHAPIRO, CITY OF NEW YORK
DEPARTMENT OF FINANCE, CITY OF NEW
YORK ENVIRONMENTAL CONTROL BOARD
AND “JOHN DOE NO. 1 THROUGH JOHN DOE
NO. 99,” SAID NAMES BEING FICTITIOUS,
PARTIES INTENDED BEING POSSIBLE TENANTS
OR OCCUPANTS OF PREMISES, AND
CORPORATIONS, OTHER ENTITIES OR
PERSONS WHO CLAIM, OR MAY CLAIM, A
LIEN AGAINST THE PREMISES,**

Defendants.

-----X

Plaintiff's motion for the appointment of a temporary receiver is denied without prejudice.

This is an action to foreclose a commercial mortgage which encumbers real property located at 2435 Kingsland Avenue, Bronx, New York 10469. By Decision & Order dated November 3, 2023, the Court granted plaintiff's motion for summary judgment, default judgment, an order of reference and amendment of the caption.

Plaintiff now moves for an Order appointing a temporary receiver of the rents and profits of the mortgaged premises and directing defendant 2435 Kingsland LLC to account and to turn over to the receiver all rents and profits received from tenants and/or occupants of the mortgaged premises.

As defendants Eric Shapiro and Steven Shapiro note, pursuant to Commercial Division Rule 24 and this Court's Part Rules, before filing the instant motion, plaintiffs were required to provide defendants and the Court with advance written notice.

Commercial Division Rule 24 provides, in relevant part, that

(c) Prior to the making or filing of a motion, counsel for the moving party shall advise the Court in writing (no more than two pages) on notice to opposing counsel outlining the issue(s) in dispute and requesting a telephone conference. If a cross-motion is contemplated, a similar motion notice letter shall be forwarded to the court and counsel. Such correspondence shall not be considered by the court in reaching its decision on the merits of the motion. . .

(f) If the matter cannot be resolved, the parties shall set a briefing schedule for the motion which shall be approved by the court. Except for good cause shown, the failure to comply with the briefing schedule may result in the submission of the motion unopposed or the dismissal of the motion, as may be appropriate.

Part 32 - Commercial Division Rules, Section VI, states:

The procedure prescribed by Commercial Division Rule 24 must be followed before any qualifying motion is made, including those promulgated by Rules 14 and 24.

(emphasis in original).

Here, plaintiffs did not provide defendants or the Court with advance notice before filing the motion as required by Commercial Division Rule 24(c)¹ Plaintiffs did not request a pre-motion telephone conference with the Court as required by that same rule. Nor did they obtain a court-approved briefing schedule as required by Rule 24(f).²

¹The Rules of the Commercial Division, 22 NYCRR 202.70, are incorporated by reference in the Part 32 - Commercial Division Rules, subject to minor modifications not relevant here.

²The motion does not fall into any categories of motions exempted from these requirements under Rule 24(b).

Accordingly, it is hereby

ORDERED that plaintiff shall serve a copy of this Decision and Order upon all defendants, with Notice of Entry, within thirty (30) days of the date hereof.

This constitutes the Decision and Order of this Court.

Dated: Bronx, New York
November 24, 2023

Hon 
FIDEL E. GOMEZ, J.S.C.