

**Elizon DB Transfer Agent LLC v 1711 E. 15 St. LLC**

2024 NY Slip Op 31008(U)

March 26, 2024

Supreme Court, Kings County

Docket Number: Index No. 512350/2022

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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ELIZON DB TRANSFER AGENT LLC,

Plaintiff,

Decision and order

- against -

Index No. 512350/2022

1711 East 15 Street LLC, Benzion Eisenberg,  
Springland Enterprises, LLC, Mr. Super Inc.,  
New York City Parking Violations Bureau, New  
York City Environmental Control Board, New  
York City Transit Authority Transit Adjudication  
Bureau, New York City Department of Finance,  
and New York State Department of Taxation and  
Finance, Jean "Doe" (Refused Last Name) served  
herein as "John Doe" #1, "John Doe" (Refused Name)  
served herein as "John Doe" #2, "John Doe"  
(Refused Name) served herein as "John Doe" #3,  
"John Doe" (Refused Name) served herein as  
"John Doe" #4, "Jane Doe" (Refused Name) served  
herein as "John Doe" #5, "John Doe" (Refused Name)  
served herein as "John Doe" #6, "John Doe"  
(Refused Name) served herein as "John Doe" #7,  
"John Doe" (Refused Name) served herein as "John Doe"  
#8, Barbara "Doe" (Refused Last Name) served herein  
as "John Doe" #9, "John Doe" (Refused Name) served  
herein as "John Doe" #10, Diamond "Doe"  
(Refused Last Name) served herein as "John Doe" #11,  
"John Doe" (Refused Name) served herein as "John Doe"  
#12, "John Doe" (Refused Name) served herein as  
"John Doe" #13, "John Doe" (Refused Name) served  
herein as "John Doe" #14, Iana "Doe" (Refused Last Name)  
served herein as "John Doe" #15, "John Doe"  
(Refused Name) served herein as "John Doe" #16,  
"John Doe" (Refused Name) served herein as "John Doe"  
#17, "John Doe" (Refused Name) served herein as "John Doe"  
#18, "Jane Doe" (Refused Name) served herein as  
"John Doe" #19, "John Doe" (Refused Name) served  
herein as "John Doe" #20, "John Doe" (Refused Name)  
served herein as "John Doe" #21, "John Doe"  
(Refused Name) served herein as "John Doe" #22,  
Victoria "Doe" (Refused Last Name) served herein  
as "John Doe" #23, "John Doe" (Refused Name) served  
herein as "John Doe" #24, "John Doe" (Refused Name)  
served herein as "John Doe" #25, "John Doe" (Refused Name)  
served herein as "John Doe" #26, Jenell "Doe"  
(Refused Last Name) served herein as "John Doe" #27,  
"John Doe" (Refused Name) served herein as "John Doe"  
#28, "John Doe" (Refused Name) served herein as

"John Doe" #29, "John Doe" (Refused Name) served herein as "John Doe" #30, "Jane Doe" (Refused Name) served herein as "John Doe" #31, "John Doe" (Refused Name) served herein as "John Doe" #32, "John Doe" (Refused Name) served herein as "John Doe" #33, Mia "Doe" (Refused Last Name) served herein as "John Doe" #34, "John Doe" (Refused Name) served herein as "John Doe" #35, "John Doe" (Refused Name) served herein as "John Doe" #36, "John Doe" (Refused Name) served herein as "John Doe" #37, "John Doe" (Refused Name) served herein as "John Doe" #38, "Jane Doe" (Refused Name) served herein as "John Doe" #39, "John Doe" (Refused Name) served herein as "John Doe" #40, "John Doe" (Refused Name) served herein as "John Doe" #41, "John Doe" (Refused Name) served herein as "John Doe" #42, "John Doe" (Refused Name) served herein as "John Doe" #43, "John Doe" (Refused Name) served herein as "John Doe" #44, and "John Doe" (Refused Name) served herein as "John Doe" #45;

Defendants,

March 26, 2024

-----x  
PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #7

The plaintiff has moved seeking to confirm the report of the referee and for a judgement of foreclosure and sale. The defendant Eisenberg opposes the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

As recorded in prior orders, on July 21, 2020, the plaintiff loaned the defendant 1711 East 15 Street LLC five million dollars. The loan was secured by a mortgage on real property located at 1711 East 15<sup>th</sup> Street in Kings County. Further, the defendant Eisenberg executed a promissory note to the plaintiff in the amount of \$5,000,000. The defendant was required to make monthly interest only payments until July 2021 when the entire

amount was due. The defendant failed to make any interest payments from April 2021 and failed to return the five million dollars loaned.

The plaintiff instituted this lawsuit seeking to foreclose on the above noted property. The complaint asserts causes of action for foreclosure and a declaratory judgement. All of the defendants defaulted except for defendant Eisenberg. The court granted the plaintiff's motion seeking summary judgement on the grounds there were no questions of fact the money was owed. Further, the court appointed a referee to compute the amount due to plaintiff and to issue a report within sixty days of the order of reference. The plaintiff now moves seeking to confirm the report of the referee. The defendant opposes that request.

Specifically, the defendant opposes the referee's conclusions on various grounds. First, the defendant argues the referee never conducted a hearing on notice to the defendant. This is crucial, argues the defendant, because a UCC sale of the shares of the defendant corporation took place on October 21, 2021, pursuant to a pledge agreement provided by the defendants. At the UCC sale the plaintiff purchased the shares of the defendant corporation for \$100. The defendant argues he was never afforded an opportunity to contest the valuation of the shares of the corporation. Further, the defendant objects to the interest calculations of the referee.

Conclusions of Law

CPLR §4313 provides, in relevant part, that "unless the order of reference otherwise provides, the referee shall forthwith notify the parties of a time and a place for the first hearing to be held" (id). Thus, unless the order of reference provides that a hearing is unnecessary, the referee should not compute the amount owed without conducting a hearing (OneWest Bank WSB v. Feffer, 210 AD3d 992, 178 NYS3d 763 [2d Dept., 2022]). However, "as long as a defendant is not prejudiced by the inability to submit evidence directly to the referee, a referee's failure to notify a defendant and hold a hearing is not, by itself, a basis to reverse a judgment of foreclosure and sale and remit the matter for a hearing and a new determination of amounts owed" (Wilmington Savings Fund Society FSB v. Helal, 211 AD3d 991, 181 NYS3d 306 [2d Dept., 2022]).

In this case the defendant was notified by the referee of the computations and was afforded an opportunity to offer any objections. In any event, the opposition to the computations accompany this motion and may be reviewed by the court. As the court in Wilmington (supra) observed a defendant has "an opportunity to raise questions and submit evidence directly to the Supreme Court, which evidence could be considered by the court in determining whether to confirm the referee's report, the defendant is not prejudiced by any error in failing to hold a

hearing" (id).

Thus, a review of all the evidence is necessary.

The court confirms that the defendant failed to make any payments from April 1, 2021 and that the default commenced on that date. Further, pursuant to the loan agreement the default rate of 24% applies. Thus, the Consolidated Amended and Restated Promissory note states that "from and after any Event of Default under the Mortgage, the interest rate of this Note shall be the Default Rate (as defined in the Mortgage) (see, Note, page 3 [NYSCEF Doc. No. 302]). The Mortgage provides that the default rate "shall mean a rate of interest equal to the lesser of 24% per annum or the maximum legal rate at the time any such interest is to be calculated" (see, Mortgage ¶1(e) [NYSCEF Doc. No. 297]). Further, the mortgage provides that "in the event of a foreclosure proceeding or a bankruptcy, insolvency or similar proceeding following acceleration, notice of prepayment or scheduled maturity, the rate of interest that shall accrue and be payable (and be secured by this Mortgage) during the pendency of such proceeding and until this Mortgage is paid in full, shall be the Default Rate" (Id., at ¶12). Thus, there is no merit to the argument the default rate ceased upon the maturity date.

Further, the court confirms the valuations placed upon the property by the referee and rejects alternative valuations proposed by the defendant.


Lastly, the court confirms the commercial reasonableness of the UCC sale conducted and the price of \$100 paid and thus deducted from the balance. The court has considered all the arguments presented by the defendant and finds them unpersuasive.

Therefore, based on the foregoing, the referee's report is confirmed in full.

So ordered.

ENTER:

DATED: March 26, 2024  
Brooklyn N.Y.

  
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Hon. Leon Ruchelsman  
JSC