

**Harlem Multifamily LLC v Reifer**

2024 NY Slip Op 31920(U)

May 30, 2024

Supreme Court, New York County

Docket Number: Index No. 850009/2020

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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HARLEM MULTIFAMILY LLC	INDEX NO.	<u>850009/2020</u>
Plaintiff,	MOTION DATE	<u>01/11/2024</u>
- v -	MOTION SEQ. NO.	<u>005</u>
DANIEL REIFER,		
Defendant.	<b>DECISION + ORDER ON MOTION</b>	

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 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, 296, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, the motion is granted to the extent set forth on the record (*tr.* 5.30.24):

The underlying loan default occurred as of the date that Mr. Stanley Reifer’s affidavit, dated November 4, 2016, indicates that defaults would automatically occur (without notice or time to cure), provided that certain violations were not cured within six months of the date of his affidavit:

- 4. The Borrower shall undertake to have the Violations corrected within six (6) months of the date hereof. The failure to correct the Violations within such time period shall be, without notice or time to cure, a default pursuant to the Mortgage entitling the Lender to all remedies available thereunder.

(NYSCEF Doc. No. 284). The record reflects that such violations were not cured, and the Defendant did not dispute this at oral argument (*tr.* 5.30.24). As such, default under the Mortgages is established and default interest accrued as of this date.

The First Loan Guaranty (NYSCEF Doc. No. 277) and Second Loan Guaranty (NYSCEF Doc. No. 283) in this case contain numerous provisions that make clear that the Guarantor is not entitled to any sort of off set of any kind:

1.4 Guaranteed Obligations Not Reduced by Offset The Guaranteed Obligations and the liabilities and obligations of Guarantor to Lender hereunder shall not be reduced discharged or released because or by reason of any existing or future offset, claim or defense of Borrower or any other party against Lender or against payment of the Guaranteed Obligations, whether such offset claim or defense arises in connection with the Guaranteed Obligations (or the transactions creating the Guaranteed Obligations) or otherwise

...

2.5 Release of Obligors **Any full or partial release of the liability of Borrower on the Guaranteed Obligations**, or any part thereof or of any co-guarantors or any other person or entity now or hereafter liable whether directly or indirectly, jointly, severally, or jointly and severally to pay, perform guarantee or assure the payment of the Guaranteed Obligations or any part thereof **it being recognized acknowledged and agreed by Guarantor that Guarantor may be required to pay the Guaranteed Obligations in full without assistance or support of any other party** and Guarantor has not been induced to enter into this Guaranty on the basis of a contemplation, belief understanding or agreement that other parties will be liable to pay or perform the Guaranteed Obligations or that Lender will look to other parties to pay or perform the Guaranteed Obligations

...

2.10 Offset **The Note the Guaranteed Obligations and the liabilities and obligations of Guarantor to Lender hereunder shall not be reduced discharged or released because of or by reason of** any existing or future right of offset, claim or defense of Borrower against Lender or any other party, or against payment of the Guaranteed Obligations whether such right of offset claim or defense arises in connection with the Guaranteed Obligations (or the transactions creating the Guaranteed Obligations) **or otherwise**

(*id.*, §§ 1.4, 2.5, 2.10 [emphasis added]). Further, the Guarantor waived all defenses aside from payment:

1.11 Waiver of Defenses Guarantor hereby waives all defenses (other than payment) in the enforcement of this Guaranty, including the defense of the election of remedies

(*id.*, § 1.11). The bankruptcy court cramdown to \$11 million reflected in the So-Ordered Bankruptcy Stipulation (the **BK Stipulation**; NYSCEF Doc. No. 269) does not act to offset any obligation of the Guarantor under either Guaranty because that BK Stipulation provided explicitly that any compromise in the amount of the Lender's claim would not inure to the Guarantor's benefit:

The Lender expressly reserves any and all rights to pursue any claims against any third parties, including without limitation any guarantor of the Loans. **Any compromise in the amount of the Lender's claim pursuant to this Stipulation is not intended to, and shall not, inure to the benefit of any guarantor of the Loans.**

(*id.*, § 3[c] [emphasis added]). The BK Stipulation did not operate to increase any obligation of the Guarantor.

Thus, there are no issues of fact and the Plaintiff is directed, within fourteen days from the date of this decision and order, to submit a proposed judgment and accompanying letter (not to exceed three pages) explaining the methodology for the damages calculation. The Defendant shall submit, within fourteen days' receipt of the Plaintiff's proposed judgment, a proposed counter judgment along with a letter (not to exceed three pages) explaining the methodology for the Defendant's calculations. The entry of judgment will be addressed by supplemental order, if appropriate. The issue of attorneys' fees will be referred to a JHO for determination.

The Court has considered the Defendant's other arguments and finds them unavailing. The Plaintiff shall order a copy of the transcript of the proceedings (*tr.* 5.30.24) and have it uploaded to NYSCEF.

Accordingly, it is hereby

ORDERED that the Plaintiff's motion for summary judgment is granted to the extent set forth in this decision and order; and it is further

ORDERED that the cross-motion is denied as moot; and it is further

ORDERED that the parties are directed, in accord with the foregoing, to submit a proposed judgment and counter judgment, if appropriate; and it is further

ORDERED that the parties appear for a conference via the Microsoft Teams platform on July 18, 2024, at 11:30 AM; and it is further

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to determine the issue of attorneys' fees, which is hereby submitted to the JHO/Special Referee for such purpose; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or [spref@nycourts.gov](mailto:spref@nycourts.gov)) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at [www.nycourts.gov/suptctmanh](http://www.nycourts.gov/suptctmanh) at the “References” link ), shall assign this matter at the initial appearance to an available JHO/Special Referee to determine as specified above; and it is further

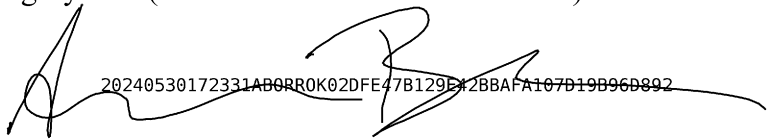
ORDERED that counsel shall immediately consult one another and counsel for plaintiff shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the “References” link on the court’s website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that on the initial appearance in the Special Referees Part the parties shall appear for a pre-hearing conference before the assigned JHO/Special Referee and the date for the hearing shall be fixed at that conference; the parties need not appear at the conference with all witnesses and evidence; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue specified above shall proceed from day to day until completion

and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the "References" link on the court's website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules).

  
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5/30/2024  
DATE

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ANDREW BORROK, J.S.C.

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