

**CSAIL 2018-CX11 6-8 W. 28th St. LLC v JTRE
Nomad 8 W 28th LLC**

2024 NY Slip Op 32815(U)

August 1, 2024

Supreme Court, New York County

Docket Number: Index No. 850161/2021

Judge: Joel M. Cohen

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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 03M

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CSAIL 2018-CX11 6-8 WEST 28TH STREET LLC,

Plaintiff,

- v -

JTRE NOMAD 8 W 28TH LLC, JACK TERZI, NEW YORK
CITY DEPARTMENT OF FINANCE, NEW YORK STATE
DEPARTMENT OF TAXATION AND FINANCE, NEW
YORK CITY ENVIRONMENTAL CONTROL BOARD,
ABECO CONSTRUCTION LLC, PASQUALE
QUARANTINO INC.,

Defendants.

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INDEX NO. 850161/2021

MOTION DATE 04/26/2024

MOTION SEQ. NO. 007

**DECISION + ORDER ON
MOTION**

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 007) 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194

were read on this motion to CONFIRM REPORT.

In this mortgage foreclosure action, Plaintiff Stillwater Asset Management LLC, as Trustee of LCBS2 Trust (“Plaintiff”) moves for an Order Confirming the Referee’s Report dated January 31, 2024, for the entry of Final Judgment of Foreclosure and sale pursuant to RPAPL §1351 that directs the distribution of the sale proceeds pursuant to and in accordance with RPAPL §1354, an award of attorneys’ fees and costs, and to extend time for Notice of Pendency. This motion is unopposed.

CSAIL 2018-CX11 6-8 West 28th Street LLC (“CSAIL”) commenced this action in June 2021 to foreclose a commercial mortgage executed by defendant JTRE Nomad 8 W 28th LLC (“Borrower”) and guaranteed by Jack Terzi (“JTRE Defendants”). This action is based upon a Consolidated, Amended and Restated Mortgage, Assignment of Leases and Rents and Security Agreement dated as of August 11, 2017 in the original principal amount of \$26,000,000.00 (the

“Mortgage”) secured by the real property located at 6-8 West 28th Street, New York, New York (the “Property”) (NYSCEF 5). Concurrently with the execution of the Mortgage, the Borrower executed and delivered to the original lender a Consolidated, Amended and Restated Promissory Note dated as of August 11, 2017 in the original principal amount of \$26,000,000.00 (NYSCEF 4).

On June 9, 2021, CSAIL filed a notice of pendency in accordance with RPAPL §1331 and CPLR Article 65 (NYSCEF 15).

Following the commencement of this action, on April 7, 2022, the underlying note and mortgage were validly assigned from CSAIL to Plaintiff.

By Notice of Motion dated July 11, 2022, Plaintiff moved for default judgment against the JTRE Defendants, New York State Department of Taxation and Finance, New York City Environmental Control Board, and Pasquale Quarantino Inc.

By Order dated December 1, 2022, the Court granted Plaintiff’s motion for default judgment against the JTRE Defendants and the New York State Department of Taxation and Finance for failure to appear or timely respond to the pleadings,¹ and for issuance of an Order of reference for computation of amounts due, among other relief (NYSCEF 107).

The Special Referee held a hearing on or about November 29, 2023, during which counsel for Plaintiff and counsel for the JTRE Defendants appeared (NYSCEF 184 [“Pikus Aff”] ¶14; NYSCEF 190). On or about January 31, 2024, the Special Referee executed the Referee Report of Amount Due (the “Report”), which found that the amount due to Plaintiff as of

¹The Court denied Plaintiff’s motion for default against the New York City Environmental Control Board and Pasquale Quarantino because Plaintiff provided no support for its claim that either party has actually filed any liens against the Property (NYSCEF 107).

Defendant Abeco Construction filed an Answer on August 3, 2021 (NYSCEF 39).

January 31, 2024 totals the sum of \$36,154,713.73 (\$35,434,326.07 plus accrued interest of \$720,387.66) and recommended that the mortgaged premises be sold in one parcel (NYSCEF 181).

As a result, and in conjunction with this application and requested relief, Plaintiff seeks the confirmation of the Special Referee's report and for a judgment of foreclosure and sale, and to extend the time of the Notice of Pendency.

DISCUSSION

CPLR 4403 permits a court to confirm or reject a referee's report, in whole or in part. "The report of a referee should be confirmed whenever the findings are substantially supported by the record, and the referee has clearly defined the issues and resolved matters of credibility" (*Flagstar Bank, F.S.B. v Konig*, 153 AD3d 790, 790-91 [2d Dept 2017]).

Plaintiff's unopposed motion to confirm the Report is granted. The Special Referee clearly defined the issues to be considered, specifically, to ascertain and compute the amount due to the plaintiff by virtue of the bond/note and mortgage upon which the action was brought, and also to examine and report whether the mortgaged premises can be sold in parcels. In resolving the issues, the Special Referee held a hearing on or about November 29, 2023, during which the Referee reviewed the evidence in the record and counsel ultimately agreed on the calculations. Thus, the record supports the Special Referee's determination that the amount due to Plaintiff as of January 31, 2024 totals the sum of \$35,434,326.07, plus accrued interest of \$720,387.66, totaling \$36,154,713.73, and his recommendation that the mortgaged premises be sold in one parcel (NYSCEF 191).

Since the Court already found that Plaintiff established all the required elements for a foreclosure, Plaintiff's request that that the Property be sold pursuant to RPAPL §1351 and that the sale proceeds be distributed in accordance with RPAPL §1354 is granted.

Additionally, Plaintiff's request to extend time for Notice of Pendency is granted pursuant to CPLR § 6513. A notice of pendency may be extended for additional three-year periods upon a showing of good cause (*see Matter of Sakow*, 97 NY2d 436, 442 [2002]). Here, the instant foreclosure action is still pending, and Plaintiff's application to extend is timely.

Finally, Plaintiff is entitled to a judgment that includes reimbursement for Plaintiffs attorneys' fees and costs in this action in accordance with the terms of the Note and Mortgage (*see* NYSCEF 186 §§ 9, 10(h), 12).

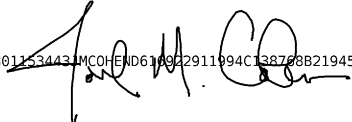
Accordingly, it is

ORDERED that Plaintiff's motion to confirm Referee's Report and for judgment of foreclosure and sale is **GRANTED**, and the Report of Special Referee Harold E. Bahr, III, dated January 31, 2024 (NYSCEF 181) is confirmed; and it is further

ORDERED that the Notice of Pendency filed in the within action on June 9, 2021, against the real property located at 6-8 West 28th Street, New York, New York 10001, designated as Block 829, Lots 45 and 46 on the land and tax map of the City of New York, County of New York in the State of New York (the Notice of Pendency") is extended for a period of three (3) years, and upon service of a copy of this order, the County Clerk of New York County is directed to file, record and index an Order extending the duration of the Notice of Pendency filed in the within action to and including June 9, 2027; and it is further

ORDERED that Plaintiff is to submit a proposed Judgment of Foreclosure and Sale to the Court within seven (7) days of the date of this Order.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

8/1/2024
DATE

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: