

DLJ Mtge. Capital, Inc. v Adler

2024 NY Slip Op 32856(U)

August 8, 2024

Supreme Court, New York County

Docket Number: Index No. 850324/2018

Judge: Nancy M. Bannon

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

PRESENT: HON. NANCY M. BANNON PART 42

Justice

-----X

DLJ MORTGAGE CAPITAL, INC.,

Plaintiff,

- v -

MEYER ADLER, 56 WEST 126 HOLDING, LLC,
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS,
INC. AS NOMINEE, FIRST FINANCIAL EQUITIES, INC.,
NEW YORK CITY ENVIRONMENTAL CONTROL BOARD,
JUNCTION ABSTRACT INC.
and JOHN DOE #1-10

Defendants.

-----X

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124

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

I. INTRODUCTION

This is a mortgage foreclosure action concerning real property located at 56 West 126th Street in Manhattan [Block 1723, Lot 59], currently a vacant multi-unit residential building. The plaintiff, DLJ Mortgage Capital, Inc. (DLJ Mortgage), claims lien priority and seeks an order directing the County Clerk to correct records *nunc pro tunc* as the mortgage was misfiled against an adjacent property in 2005.

The plaintiff now moves for summary judgment as against defendants Meyer Adler (Adler) and 56 West 126 Holding, LLC (56 West 126) and for a default judgment against the non-answering defendants. Adler and 56 West 126 oppose the motion and 56 West 126 cross-moves to dismiss the complaint. The plaintiff opposes the cross-motion. The motion is granted, the Clerk is directed to correct the records, a judgment of foreclosure shall issue and the matter is referred to a Special Referee to compute damages. The cross-motion is denied.

II. BACKGROUND

DLJ Mortgage commenced the action in 2018 against Adler, who had purchased the property and obtained a mortgage from First Financial Equities, Inc. (First Financial), a predecessor of DLJ Mortgage, in July 2005, and 56 West 126 Holding LLC (56 West 126), an entity in which Adler is alleged to be a principal and/or hold an interest and to which he purportedly conveyed the property a few months later. Adler made payment on the note between 2005 and 2009. No payment has been made since 2012. In the interim, several transfers and assignments of the note and mortgage occurred, including to GMAC Mortgage LLC, who assigned it to DLJ Mortgage. DLJ discontinued as against several other defendants.

In 2016, two years prior to the commencement of this action, Adler commenced a declaratory judgment action against DLJ Mortgage and its loan servicer, Selene Finance LP (Selene) in regard to the same mortgage (*Adler v DLJ Mortgage Capital, Inc.*, Index No. 654812/2016) (Adler action). In his action, Adler sought a declaration that the underlying note in the principal sum of \$650,000.00, with 5% annual interest and a 30-year term, which he executed in favor of First Financial to finance his purchase of the property, had been cancelled and discharged in 2009. When Adler defaulted in payment in 2009, First Financial accelerated the debt and commenced a foreclosure action which it then voluntarily discontinued in 2011. Adler maintained that this discontinuance had the effect of canceling and discharging the debt and any foreclosure action would now be time-barred

The Adler action was disposed by an order of the Appellate Division, First Department, dated May 27, 2021, in which the Court rejected Adler's argument, granted the defendants' motion for summary judgment and "declared that defendants [DLG Mortgage and its servicing agent Selene Finance, L.P] maintain a right, claim and lien against the subject property." The Court held that "this case is governed by the recent Court of Appeals' decision in *Freedom Mtge. Corp. v Engel* [37 NY3d 1 (2021)] and "the lender's 2009 notice of default did not accelerate the debt (*Kirschenbaum v Wells Fargo Bank*, 193 AD3d 425 [1st Dept. 2021]) and even if it did, the voluntary discontinuance of the 2009 foreclosure action [in 2011] constituted an affirmative act of revocation of that acceleration (*Freedom, supra* at 6)." That is, Adler was not relieved of his obligations to DLJ under the note by reason of the notice of default.

The instant action was commenced on November 19, 2018, by the filing of the original complaint, alleging five causes of action, including one to quiet title pursuant to RPAPL article 15 by correcting the subject mortgage instruments in the real property records of New York County to establish lien priority over all other judgment creditors, and another for a judgment of foreclosure on the subject mortgage note dated July 25, 2005, in the principal sum of \$566,684.98. By order dated May 15, 2019, the court granted a motion by the defendants for various relief to the extent of staying the instant action during the pendency of the Adler action.

Following the Appellate Division decision in the prior action, on or about July 14, 2021, the stay in this action was lifted and DLJ Mortgage filed an amended complaint asserting two causes of action – (1) seeking a judgment of foreclosure against Adler and 56 West 126, the entity to which Adler transferred the property by deed on September 28, 2005, and (2) seeking an order directing the County Clerk to correct the date of the recording of the subject mortgage and all subsequent mortgages and assignments, to reflect the recording date of the subject mortgage to be October 1, 2005. DLJ Mortgage claims that its predecessor or its title abstract company erroneously recorded and indexed the subject mortgage against the wrong property, an adjacent property on the same block, 52 West 126th Street [Block 1723, Lot 157]. Adler had executed a separate mortgage on that property about the same time, with the same lender and in the same amount \$650,000.00. The error apparently went uncorrected until 2016 and was carried over in the documents filed in regard to several subsequent assignments. In February of 2016, the plaintiff filed several documents titled “Correction of Assignment of Mortgage” referencing the assignments and stating that the subject property was Block 1723, Lot 59. That is, DLJ Mortgage now seeks to correct the County Clerk’s records so as to confirm its lien priority pursuant RPAPL § 291 and to foreclose on that mortgage.

Defendants Meyer Adler and 56 West 126 each answered the amended complaint separately and asserted various affirmative defenses. Defendants New York City Environmental Control Board and Junction Abstract, Inc. did not answer or appear. Plaintiff DLJ discontinued the action as against defendants Mortgage Electronic Registration Systems, Inc. and First Financial Equities, Inc. on July 14, 2021.

Plaintiff DLJ filed the instant motion (1) for summary judgment pursuant to CPLR 3212 as against defendants Adler and 56 West 126, upon a correction, *nunc pro tunc*, of the County Clerk records, and appointment of a Referee to compute damages (2) for leave to enter a

default judgment pursuant to CPLR 3215 against non-answering defendants New York City Environmental Control Board and Junction Abstract, Inc., and appointment of a Referee to compute damages (3) for leave to amend the caption pursuant to CPLR 3025 to delete defendants Mortgage Electronic Registration Systems, Inc. and First Financial Equities, Inc. as per the discontinuance.

The motion is supported, *inter alia*, by an affidavit of Watson Dixon, a Document Execution Specialist employed by Selene who, based on business records maintained by Selene, alleges that on October 1, 2005, Adler executed the \$650,000 note in favor of DLJ as collateral security for payment and that the mortgage was then mistakenly not immediately recorded against the subject property but was properly recorded on January 8, 2016. In the meantime, after execution of the note and mortgage, Adler deeded the property to 56 West 126 via a “short sale contract” in which he represented both himself and 56 West 126. Dixon further alleges that the borrower defaulted by not paying on the note starting on December 1, 2012, and that \$221,686.98 of the principal, plus fees costs and interest from December 1, 2012, remains due and owing, as of the date of the motion. Dixon represents that Selene obtained the original note from Wells Fargo in August 2019 and maintained it in its own offices until the commencement of the action, such that either the plaintiff or its agents are now in possession of the note. Dixon attaches the references supporting documents to his affidavit.

Defendant Adler opposes the motion by arguing that (1) the prior action concerned a different note, as there are two versions of the note in the two cases, and DLJ did not show it had the proper original note in its possession when it commenced the action, (2) the business records submitted are not properly authenticated and (3) the motion is thus premature as necessary discovery is outstanding.

Defendant 56 West 126 also opposes the motion and cross-moves to dismiss the complaint as against it pursuant to CPLR 3211(a)(1) and (a)(7). This defendant argues that the plaintiff’s proof, including the Dixon affidavit, is not sufficient to support the relief sought and that, in any event, there is no dispute that there was no mortgage recorded against the property at the time it purchased it and thus there are can be no liens against it. That is, 56 West 126 argues that it took title on September 28, 2005, and the deed was recorded on November 11, 2005, and that the plaintiff did not seek to have the subject mortgage properly recorded until April 15, 2016. Defendant 56 West 126 further argues that the purported “corrections”

subsequently filed by DLJ do not change the fact that when it took title by assignment from Adler in 2005, there was no recorded mortgage on the subject property. Notably, the defendants do no dispute that Adler conveyed the property to 56 West 126, his own company, just months after Adler signed the subject note, and just after the incorrect filing, nor do they contest the allegation that Adler as the principal of 56 West 126 and thus had constructive or actual notice of the subject note and mortgage. The plaintiff opposes the cross-motion.

III. DISCUSSION

(1) Plaintiff's Motion

(A) Summary Judgment

On a motion for summary judgment, the moving party must make a *prima facie* showing of its entitlement to judgment as a matter of law by submitting evidentiary proof in admissible form sufficient to establish the absence of any material, triable issues of fact. See CPLR 3212(b); Jacobsen v New York City Health & Hosps. Corp., 22 NY3d 824 (2014); Alvarez v Prospect Hosp., 68 NY2d 320 (1986); Zuckerman v City of New York, 49 NY2d 557 (1980). Once the movant meets this burden, it becomes incumbent upon the party opposing the motion to come forward with proof in admissible form to raise a triable issue of fact. See Alvarez v Prospect Hospital, supra; Zuckerman v City of New York, supra.

A plaintiff in a foreclosure action can establish entitlement to judgment as a matter of law by producing evidence of the mortgage, the unpaid note, and the defendant's default. See VNB N.Y. Corp. v Pisces Props., Inc., 138 AD3d 583, 583 (1st Dept 2016). Where, as here, a defendant places the plaintiff's standing in dispute, the burden is placed on the plaintiff to establish its standing. See Society of Plastics Indus. v County of Suffolk, 77 NY2d 761 (1991), U.S. Bank, N.A. v Collymore, 68 AD3d 752, 753 (2nd Dept 2009); see also Bank of Am., N.A. v Thomas, 138 AD3d 523, 523-524 (1st Dept 2016). The decision of the First Department in the Adler action precludes any argument that DLJ cannot maintain this action. Moreover, contrary to the defendants' contention in that regard, DLJ has sufficiently established, by the Dixon affidavit and attached exhibits, that either it or its loan servicer was in possession of the note on the date that the action was commenced. See Aurora Loan Servs., LLC v Taylor, 25 NY3d 355(2015); Bank of America, N.A. v Pennicooke, 186 AD3d 545 (1st Dept. 2020); Wells Fargo Bank, N.A. v Ho Shing, 168 AD3d 126 (1st Dept 2019); OneWest Bank FSB v Carey, 104 AD3d 444 (1st Dept 2013). Nor can it be reasonably disputed that Dixon's affidavit is competent evidence. See Citimortgage, Inc v Espinal, 134 AD3d 876 (2nd Dept, 2015). [affidavit of employee of

mortgagor who reviewed records is competent evidence]; HSBC Bank USA, N.A. v Sage, 112 AD3d 1126 (3rd Dept. 2013) [affidavit of AVP of mortgage servicing company based on review of records was reliable].

In opposition to the summary judgment motion, where these defendants are required to “lay bare their proofs” (see GHH Assocs. LLC v Trenchant Funds, 228 AD3d 503 (1st Dept. 2024), they merely attack the evidence submitted and do not deny or offer any explanation as to the plaintiff’s proof regarding the “short sales” and assignments and allegations that Adler had notice of the recording error and orchestrated the subsequent transfers between himself and his companies. In his two-page affidavit, Adler merely states that he purchased the property in 2005, executed a note for \$650,000 in favor of First Financial, and on September 28, 2005 “transferred” the property to its “current owner 56 West 126 Holding LLC.” The contention of Adler and 56 West 126 that a different note, also dated July 28, 2005, was the subject of the Adler action is without merit as DLJ presented and relied upon the correct “Adjustable Rate Note” in both actions. It was Adler who filed a different note in the prior litigation as an exhibit to the amended complaint, without explanation, and now raises the issue for the first time here seeking to use that filing in an attempt to create an issue of fact in this action. Notably, neither the answer of 56 West 126 nor the answer of Adler in this action, filed on August 17 and 19, 2021, respectively, mentions the existence of a note other than the “Adjustable Rate Note.”

Nor is there merit to the defendants’ argument that the plaintiff’s motion is premature due to outstanding discovery. They “fail to establish how discovery will uncover further evidence or material in the exclusive possession” of the plaintiff. Kent v 534 East 11th Street, 80 AD3d 106, 114 (1st Dept. 2010). “[T]he party invoking CPLR 3212(f) must show some evidentiary basis supporting its need for further discovery.” Green v Metropolitan Transp. Auth. Bus Co., 127 AD3d 421 423 (1st Dept. 2015). It is well settled that mere hope or speculation that discovery may uncover evidence to defeat the motion is insufficient. See Reyes v Park, 127 AD3d 459 (1st Dept. 2015); Alcaron v Ucan White Plains Housing Dev. Fund Corp., 100 AD3d 431 (1st Dept. 2012); Kent v 534 East 11th Street, supra.

DLJ Mortgage correctly argues that the court may direct that the mortgage documents be corrected *nunc pro tunc*, and that a correction is warranted in this case. “The nature of *nunc pro tunc* relief is to correct procedural irregularities where there is no prejudice to third parties (citations omitted).” Geltzer v Harris, 51 AD3d 196, 204 (1st Dept. 2008). There is no dispute

that at the time it was executed, the original mortgage was erroneously recorded against another, adjacent, property and not recorded against the subject property until 2016, and that, in the interim, several transfers and assignments occurred. The effect of that error on the transfer and assignments on this foreclosure action is the remaining central issue in this case. Since the recordings can be amended to reflect that the subject mortgage was recorded in 2005, there is no issue to resolve. It is well settled that a court may allow scrivener's error in a mortgage record to be corrected *nunc pro tunc*. See e.g. Bank of America, N.A. v Pennicoke, 186 AD3d 545 (2nd Dept. 2020) [court reformed the mortgage to correct scrivener's error in legal description]; Beneficial Homeowner Svc. Corp. v KeyBank Natl. Assoc., 17 AD3d 1253 (4th Dept. 2019) [appropriate for court to allow amendment to mortgage to correct undisputed typographical errors that did not prejudice the defendants]; Bank of New York v Stein, 130 AD3d 552 (2nd Dept. 2015) [permissible to amend underlying mortgage to correct scrivener's error in description of mortgaged property]; Wells Fargo Bank, NA v Ambrosov, 120 AD3d 1225 (2nd Dept. 2014) [court properly granted motion to amend notice of pendency to correct typographical errors in legal description of the subject property]; DLJ Mortgage Capital, Inc. v Windsor, 78 AD3d 645 (2nd Dept. 2010) [correction may be made to notice of pendency recorded for wrong property and incorrectly satisfied]; 360 West 11th Street LLC v ACG Credit Company II, LLC, 20 Misc 3d 1112(A) (Sup Ct, NY County, Bransten, J.) [mortgage recorded against wrong property may be corrected].

Moreover, “[a] foreclosure action is equitable in nature and triggers the equitable powers of the court’ (Bank of N.Y. Mellon v. George, 186 AD3d 661, 663; see Notey v. Darien Constr. Corp., 41 NY2d 1055, 1056; U.S. Bank N.A. v. Losner, 145 AD3d 935, 937). ‘Once equity is invoked, the court's power is as broad as equity and justice require’ ” (Bank of N.Y. Mellon v. George, 186 AD3d at 663 quoting U.S. Bank N.A. v. Losner, 145 AD3d at 938 [internal quotation marks omitted]).” Bank of America, N.A. v Danzig, 225 AD3d 832, 834 (2nd Dept. 2024) [court amends judgment of foreclosure and sale *nunc pro tunc*].

The defendants are correct in citing Real Property Law § 291, titled “Recording of Conveyances”, which provides that any conveyance of real property shall be recorded by the county clerk upon the request of any party and that “every such conveyance not so recorded is void as against any person who subsequently purchases or acquires by exchange or contracts to purchase or acquire by exchange, the same real property or nay portion thereof...” See V&D Realty USA Corp. v Mitso Group, Inc. 240 AD2d 562 (2nd Dept. 1997) [“an error in indexing a

mortgage prevents a record of that instrument from constituting constructive notice ‘as to the property in any block not duly designated’ at the time the mortgage is filed for the prior that the error remains uncorrected.” [internal citations omitted]. Therefore, “[i]n order to cut off a prior lien, such as a mortgagee, the purchaser or encumbrancer must have no knowledge of the outstanding lien and must win the race to the recording office.” DLJ Mortgage Capital, Inc. v Windsor, supra at 647. As noted, the proof submitted demonstrates that Adler had notice of the recording error and orchestrated the subsequent transfers between himself and his companies. No triable issue was raised in opposition. Adler filed brief affidavit in which he does not deny a close association with 56 West 126 or provide any factual basis to indicate he did not have constructive or actual notice of the mortgage. Notably, on the first page of the operative document, the property is described as 56 West 126th Street, in Brooklyn, but with the correct zip code for Manhattan. The issue was not raised previously by Adler or 54 West 126, and Adler made payment on that note between 2005 and 2009, when he defaulted. And neither Adler nor 56 West 126 dispute the contentions or proof submitted by DLJ Mortgage showing that Adler signed as a representative of 56 West 126 in other transactions. In his brief and sole affidavit in opposition, dated January 2022, Adler merely states that “on or about September 28, 2005, I transferred the property to its current owner, 56 West 126 Holding LLC” without stating his association to that entity. The deed from Adler to 56 West 126 is dated September 28, 2005.

Having produced sufficient evidence of the mortgage and unpaid note and default on the note, plaintiff DLJ Mortgage is entitled to summary judgment on the cause of action for foreclosure. See VNB N.Y. Corp. v Pisces Props., Inc., 138 AD3d 583 (1st Dept. 2016); EMC Mortgage Corp. V Riverdale Assoc., 291 AD2d 370 (2nd Dept. 2022). In that regard, the holding of the Appellate Division in the Adler action concerned the same mortgage and established that GMAC Mortgage LLC’s discontinuance of the 2009 foreclosure action constituted an affirmative revocation of the acceleration such that the statute of limitations did not begin to run in 2009. Thus, GMAC remained as the creditor until it assigned the debt to DLJ Mortgage and Selene, such that DLJ Mortgage and Selene “maintain[ed] a right, claim and lien” against the property. Notably, while both versions of the note were filed in the Adler case, no issue of the differing versions or of the erroneous recording was raised in the Adler action. In any event, it was in September 2005 that Adler purported to assign his interest in the property to 56 West 126, by virtue of a deed, and for consideration of ten dollars.

A judgment of foreclosure shall issue upon confirmation of a report by the Referee or JHO's report on the issue of the amount owed on the subject note.

(B) Default Motion

DLJ moves pursuant to CPLR 3215 for leave to enter a default judgment against defendants New York City Environmental Control Board and Junction Abstract, Inc., who did not answer or appear. The plaintiff filed affidavits of service showing that these defendants were served with the original complaint on November 28, 2018, and with the amended complaint on July 14, 2021. While DLJ did not move within one year of the purported default in regard to the original complaint as required by CPLR 3215(c), this does not preclude relief since the action had been stayed before the year expired. Immediately upon expiration of the stay, the plaintiff filed the amended complaint on all defendants and made this instant motion within one year thereafter. Thus, there is no basis to conclude that it abandoned the action at any time.

On a motion for leave to enter a default judgment pursuant to CPLR 3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting party's default in answering or appearing (see CPLR 3215[f]; Allstate Ins. Co. v Austin, 48 AD3d 720, 720)." Atlantic Cas. Ins. Co. v RJNJ Services, Inc., 89 AD3d 649 (2nd Dept. 2011). The proof submitted must establish a prima facie case. See Silberstein v Presbyterian Hosp., 95 AD2d 773 (2nd Dept. 1983). For reasons set forth herein, DLJ Mortgage has met that burden.

(C) Motion to Amend Caption

Leave to amend a pleading should be freely granted absent evidence of substantial prejudice or surprise, or unless the proposed amendment is palpably insufficient or patently devoid of merit. See CPLR 3025(b); JPMorgan Chase Bank, N.A. v Low Cost Bearings NY, Inc., 107 AD3d 643 (1st Dept. 2013). Here, DLJ Mortgage seeks only to amend the caption to delete the two defendants against whom it discontinued the action. There is no opposition to this relief. Indeed, no party could claim surprise or prejudice by the amendment as the discontinuance was filed July 14, 2021, removing those parties from the action as of that date.

(2) Defendant 56 West 126 's Cross-Motion

For the same reasons that the plaintiff's motion for summary judgment on the complaint is granted, the cross-motion of defendant 56 West 126 to dismiss the complaint pursuant to

CPLR 3211(a)(1), a defense founded in documentary evidence, and CPLR 3211(a)(7), failure to state a cause of action, is denied. The defendants remaining contentions have been considered and found unavailing.

IV. CONCLUSION

Accordingly, upon the foregoing papers, it is

ORDERED that the plaintiff’s motion pursuant to CPLR 3212 for summary judgment as against defendants Meyer Adler and 56 West 126 Holding LLC is granted on the issue of liability, damages to be determined by a Special Referee, as set forth below, and it is further

ORDERED that the New York County Clerk is directed to correct the subject mortgage instruments in the real property records, *nunc pro tunc*, to reflect that the subject mortgage held by the plaintiff, DLJ Mortgage Capital, Inc., was filed and recorded against the subject real property located at 56 West 126th Street in New York County [Block 1723, Lot 59] on October 1, 2005, and to correct all subsequent assignments to reflect the same, and it is further

ORDERED that plaintiff’s motion for leave to enter a default judgment pursuant to CPLR 3215 as against defendants New York City Environmental Control Board and Junction Abstract, Inc., is granted, without opposition, on the issue of liability, damages to be determined by a Special Referee, and it is further

ORDERED that, upon the plaintiff’s Notice of Discontinuance dated July 14, 2021, the action is discontinued and the complaint is dismissed without prejudice as against defendants Mortgage Electronic Registration Systems, Inc. and First Financial Equities, Inc., and it is further

ORDERED that the plaintiff’s motion to amend the caption is granted to the extent that the caption is hereby amended and the Clerk shall mark the records to reflect the following:

DLJ MORTGAGE CAPITAL, INC.

v

MEYER ADLER and 56 WEST 126 HOLDING, LLC.

And it is further

ORDERED that a Special Referee shall be designated to hear and report to this Court on the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose:

- (1) the issue of the amount due to the plaintiff for unpaid obligations on the subject note, interest on those obligations, and costs, including attorney's fees;

and it is further,

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119M, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon which 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/supctmanh at the "References" link under "Courthouse Procedures"), shall assign this matter to an available JHO/Special Referee to hear and report 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 email, an Information Sheet (which can be accessed 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 the plaintiff shall serve a proposed accounting within 24 days from the date of this order and the defendants shall serve objections to the proposed accounting within 20 days from service of plaintiff's papers and the foregoing papers shall be filed with the Special Referee Clerk at least one day prior to the original appearance date in Part SRP fixed by the Clerk as set forth above; and it is further,

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed, on the date first

fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further,

ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4320[a]) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issues specified above shall proceed from day to day until completion; and it is further,

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts, and it is further

ORDERED that the cross-motion of defendant 56 West 126 Holding LLC to dismiss the complaint as against pursuant to CPLR 3211(a)(1) and (a)(7) is denied, and it is further

ORDERED that the parties shall appear for a status conference on October 31, 2024, at 11:00 a.m..

This constitutes the Decision and Order of the court.


NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

8/8/24

DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE