

**Greystone Commercial Mtge. Capital LLC v 2142
Frederick Douglass Blvd. Corp.**

2024 NY Slip Op 35075(U)

September 16, 2024

Supreme Court, Westchester County

Docket Number: Index No. 57005/2024

Judge: Linda S. Jamieson

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right (CPLR § 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Disp x Dec _____ Seq. No. 2 Type SJ

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PRESENT: HON. LINDA S. JAMIESON

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GREYSTONE COMMERCIAL MORTGAGE CAPITAL
LLC,

Index No. 57005/2024

Plaintiff,

DECISION AND ORDER

-against-

2142 FREDERICK DOUGLASS BLVD. CORP.,
2142 FREDERICK DOUGLASS BLVD LLC,
d/b/a 2142 FREDERICK DOUGLASS BLVD
NY LLC, FRANCESCO BRUSCO, and DIANA
PEREZ,

Defendants.

-----X

The following papers numbered 1 to 6 were read on this
motion:

<u>Paper</u>	<u>Number</u>
Notice of Motion, Affirmations and Exhibits	1
Memorandum of Law	2
Statement of Material Facts	3
Affidavit and Affirmation in Opposition	4
Reply Affirmations and Exhibits	5
Reply Memorandum of Law	6

Greystone Commercial Mortgage Capital LLC brings its motion for summary judgment against defendants 2142 Frederick Douglass Blvd. Corp. ("Corp."), 2142 Frederick Douglass Blvd LLC, d/b/a 2142 Frederick Douglass Blvd NY LLC (the "Borrower"), Francesco

Brusco and Diana Perez.¹ Plaintiff seeks an Order: (1) declaring that title to the subject real property located at 11 West Prospect Avenue, Mount Vernon (the "Property") was validly conveyed to the Borrower as of October 19, 2023; (2) declaring that plaintiff's mortgage, assignment of rents, and other collateral security are valid first-priority liens encumbering the Property; (3) directing the Sheriff to execute and deliver a deed to plaintiff to memorialize such transfer that may be recorded in the Westchester County land records; (4) directing the Westchester County Clerk to accept such deed and/or a final Order or Judgment of this Court for recording, which shall be deemed to have been recorded prior to plaintiff's collateral security; or, in the alternative, an Order (5) directing the Westchester County Clerk to accept a final Order or Judgment of this Court for recording that recognizes plaintiff's interest as an equitable mortgage; or, in the alternative, (6) an Order equitably subrogating defendants' rights and interests to the equitable lien of plaintiff's mortgage; and (7) enjoining defendants from disturbing or interfering with plaintiff's rights under plaintiff's loan or loan documents.

¹ Perez is Brusco's former wife, who plaintiff says that it "joined as a defendant in this action to address any equitable distribution rights she has claimed to have in the Divorce Action." The Court notes that although Perez filed an answer to the complaint, she did not serve any opposition to this motion. References to "defendants" throughout omit Perez.

Plaintiff submitted a Statement of Material Facts on this motion. Defendants did not file anything in response. The Court notes that it has "discretion under section 202.8-g (former [c]) to deem the assertions in plaintiff's statement of material facts admitted" if appropriate. *On the Water Prods., LLC v. Glynos*, 211 A.D.3d 1480, 1481, 181 N.Y.S.3d 786, 788 (4th Dept. 2022). See also *Abreu v. Barkin & Assocs. Realty, Inc.*, 69 A.D.3d 420, 421, 893 N.Y.S.2d 25, 27 (1st Dept. 2010). The Court begins by reviewing the Statement and the corresponding documents to see if it is appropriate to deem the material facts admitted.

Brusco is the sole owner and shareholder of Corp. In August 2022, Corp. took out a loan in the amount of \$1,400,000 from AI Capital Partners LLC ("AI") on or about August 26, 2022. This was a two-year loan, with a balloon payment due in August 2024. It was secured by a mortgage encumbering the Property. Approximately one year later, Brusco sought to refinance the AI loan, and approached plaintiff's predecessor, Greystone Select Company II LLC (the "Original Lender"), to procure new mortgage financing in the amount of \$1,700,000 to refinance and replace the AI loan.

In the application to the Original Lender, Brusco himself, as Sponsor, agreed to form a new single purpose entity, the Borrower, to own and operate the Property. He also agreed to a

first priority mortgage lien on the Borrower's interest in the Property.

The Original Lender agreed to advance the loan in October 2023. The terms of this loan were set forth in an agreement, dated October 19, 2023, that was executed by Brusco on behalf of the Borrower (the "Loan Agreement"). In the Loan Agreement, the Borrower represented and warranted to the Original Lender that, as of the closing date, it had full authority "to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the Property" as required by the Loan Agreement. The Loan Agreement acknowledges that Borrower is the "successor-in-interest [sic] to 2142 Frederick Douglass Blvd Corp., a New York corporation."

In the Loan Agreement, the Borrower agreed that it "will, at Borrower's sole cost and expense, do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as" required for the purposes of "conveying, assigning, transferring, and confirming unto" the Original Lender the Property. To evidence its indebtedness under the Greystone Loan, at the same time, the Borrower executed and delivered a promissory note in favor of the Original Lender in the original principal amount of \$1,700,000, as well a mortgage to the Property. This mortgage was recorded

on October 24, 2023. The loan was further secured by two Uniform Commercial Code financing statements, an Assignment of Leases and Rents, and Brusco's Guaranty of Recourse Obligations.

At the conclusion of the closing of this loan, \$1,322,495.78 of the loan proceeds was wired to AI to satisfy Corp.'s obligation, which resulted in the cancellation of Corp.'s mortgage. The Borrower used other loan proceeds to satisfy unpaid real estate taxes and other liabilities that encumbered the Property at the time of the closing in the amount of \$75,415.32, and to provide Brusco with more than \$31,000 of cash out. Shortly after the closing, the Original Lender assigned all of the Original Lender's right, title and interest in and to the loan and its documents to plaintiff.

As required by the loan documents, Corp.'s then-counsel prepared a deed to be executed by Brusco, on behalf of Corp., vesting title in the Property with the Borrower (the "Deed"). There is no dispute that the Deed was never signed at the closing. Plaintiff asserts, without contradiction, that this was an oversight. Although plaintiff and the title company repeatedly sought to get the Deed, defendants refused to do so.

The documents submitted to the Court on this motion demonstrate that all of plaintiff's allegations are accurate and that the Court should deem the assertions in the Statement of Material Facts to be admitted. Plaintiff has thus demonstrated

its prima facie entitlement to summary judgment. See *Woodmere Rehab. & Health Care Ctr., Inc. v. Zafrin*, 197 A.D.3d 1263, 1268, 154 N.Y.S.3d 101, 106 (2d Dept. 2021). In opposition, defendants submit nothing to the Court to undermine plaintiff's prima facie showing. See *Strickon v. Ornstein*, 276 A.D.2d 787, 788, 715 N.Y.S.2d 329 (2d Dept. 2000).

All defendants state is that "Plaintiff countlessly mentions the loan agreement between 2142 Frederick Douglass Blvd NY LLC (hereinafter "LLC") and Greystone Mortgage Capital LLC, but Plaintiffs neglect the fact that 2142 Fredrick Douglass Blvd. Corp. (hereinafter "Corp." or "Corporation") is not a party to any agreement or note between the LLC and Greystone Mortgage Capital," and that "Plaintiff fails to establish that there was any agreement between the Corporation, the LLC, or with Greystone Mortgage Capital LLC to convey any property."

The problem with defendants' assertions is that Brusco agreed, from the outset of his interactions with the Original Lender, that he could and would create the Borrower, and could and would convey the Property from Corp. to the Borrower. To pretend otherwise is to ignore the documentary evidence. Indeed, there is no dispute that defendants, not plaintiff, actually prepared the Deed that should have been executed at the closing. It is disingenuous, at best, for defendants to attempt to avoid their obligations to plaintiff because of what appears

to have been an oversight at the closing. The Court is not persuaded by defendants' assertions that Corp. - which undisputedly had its obligations to AI repaid - is a stranger to this transaction and should be able to have both the loan proceeds as well as the Property, with no remedy for plaintiff.

Accordingly, the motion is granted and the Court finds that (1) title to the Property was validly conveyed to the Borrower as of October 19, 2023; (2) plaintiff's mortgage, assignment of rents, and other collateral security are valid first-priority liens encumbering the Property; (3) if defendants refuse to execute the Deed within ten business days from the date of receipt of this Decision and Order, plaintiff is empowered to execute a deed on Corp.'s behalf, to the same effect as the Deed; (4) the Westchester County Clerk shall accept such deed for the Property for recording, which shall be deemed to have been recorded prior to plaintiff's collateral security.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York
September 16, 2024



HON. LINDA S. JAMIESON
Justice of the Supreme Court

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