

NY 2015 Boat LLC v 2435 Kingsland LLC
2024 NY Slip Op 35576(U)
April 15, 2024
Supreme Court, Bronx County
Docket Number: Index No. 806264/2022E
Judge: Fidel E. Gomez
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PART 32

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

-----X
NY 2015 BOAT LLC,

Plaintiff,

Index No. 806264/2022E

- against -

Hon. **FIDEL E. GOMEZ**
Justice

2435 KINGSLAND LLC, ERIC SHAPIRO, STEVEN
J. SHAPIRO, CITY OF NEW YORK DEPARTMENT
OF FINANCE, CITY OF NEW YORK
ENVIRONMENTAL CONTROL BOARD,

Defendant.

-----X

The following papers numbered 1 to 4, Read on this motion noticed on 12/12/23, and duly submitted as no.6 on the Motion Calendar of 2/6/24.

	<u>PAPERS NUMBERED</u>	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	1	
Answering Affidavit and Exhibits	2	
Replying Affidavit and Exhibits	3	
Notice of Cross-Motion - Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers-Judgment of Foreclosure and Sale	4	
Memorandum of Law		
Administrative Order 5.25.2022 and Amended Bronx Auction Plan 2021		

Plaintiff's motion seeking a Judgment of Foreclosure and Sale is decided in accordance with the Decision and Order annexed hereto.

Dated: 4/15/2024

Hon

FIDEL E. GOMEZ, JSC

1. CHECK ONE

☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION

2. MOTION/CROSS-MOTION IS

☒ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER

3. CHECK IF APPROPRIATE.

☐ SETTLE ORDER ☐ SUBMIT ORDER ☐ DO NOT POST
☐ FIDUCIARY APPOINTMENT ☐ REFEREE APPOINTMENT
☐ NEXT APPEARANCE DATE:

2SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
NY 2015 BOAT LLC,

Plaintiff,

- against -

DECISION AND ORDER
Index No. 806264/2022E

**2435 KINGSLAND LLC, ERIC SHAPIRO, STEVEN
J. SHAPIRO, CITY OF NEW YORK DEPARTMENT
OF FINANCE, CITY OF NEW YORK
ENVIRONMENTAL CONTROL BOARD,**

Defendants.
-----X

In the instant foreclosure action, plaintiff moves for an order granting it a Judgment of Foreclosure and Sale pursuant to RPAPL § 1351, confirming the referee's report made in accordance with RPAPL § 1321, and attorney's fees, costs and expenses. For the reasons that follow hereinafter, plaintiff's motion is granted.

JUDGMENT OF FORECLOSURE AND SALE/CONFIRM REFEREE'S REPORT

Plaintiff's motion seeking the entry of a judgment of foreclosure and sale pursuant to RPAPL §1351, including confirmation of the referee's report, is granted.

RPAPL § 1351(1) states that the

The judgment shall direct that the mortgaged premises, or so much thereof as may be sufficient to discharge the mortgage debt, the expenses of the sale and the costs of the action, and which may be sold separately without material injury to the parties interested, be sold by or under the direction of the sheriff of the county, or a referee within ninety days of the date of the judgment.

Furthermore, pursuant to CPLR § 4403,

Upon the motion of any party or on his own initiative, the judge required to decide the issue may confirm or reject, in whole or in part, the verdict of an advisory jury or the report of a referee to report; may make new findings with or without taking additional testimony; and may order a new trial or hearing.

A referee's report should be confirmed if its findings are supported by the record (*Barrett v Toroyan*, 45 AD3d 301, 301 [1st Dept 2007]; *Freedman v Freedman*, 211 AD2d 580, 580 [1st Dept 1995]; *Kardanis v Velis*, 90 AD2d 727, 727 [1st Dept 1982] [“where questions of fact are submitted to a referee, it is the function of the referee to determine the issues presented, as well as to resolve conflicting testimony and matters of credibility, and generally courts will not disturb the findings of a referee to the extent that the record substantiates his findings and they may reject findings not supported by the record.”] [internal citations and quotations omitted]).

In opposition to the motion, defendants Eric Shapiro and Steven J. Shapiro (defendants) contend that the referee's report should not be confirmed in the amount of \$365,884.84 because they did not receive the full balance of the loan proceeds due to plaintiff's purported fraud and because of pending application before this Court seeking, *inter alia*, a stay pending appeal of this Court's Decision and Order, which granted summary judgment in plaintiff's favor. However, during the pendency of this motion, in its Decision and Order dated February 21, 2024, this Court again rejected the contention of fraud and likewise denied to stay this action pending appeal.

Here, plaintiff is entitled to a Judgment of Foreclosure and Sale since the record establishes all required elements for foreclosure. Significantly, by decision and order dated November 3, 2023, this Court granted plaintiff's motion for appointment of a referee upon plaintiff's showing that the claims in the complaint seeking foreclosure of the relevant mortgage and sale of the property it encumbers, have merit. Additionally, the referee's calculations are supported by the evidence submitted and must be confirmed.

REQUEST FOR ATTORNEY'S FEES

Plaintiff's request for attorney's fees in the amount of \$13,875.00 is granted, the amount which plaintiff has substantiated for legal services rendered and the actual time spent,

demonstrating that the fees sought are reasonable. Plaintiff's request for statutory costs, allowances, and disbursements totaling \$2,179.53 is also granted.

Generally, in the absence of an agreement, contract, or statute, a party involved in litigation is responsible for all legal fees and costs incurred in the defense or prosecution of the action and cannot recover the same from an opposing party (*Hooper Assoc., Ltd. v AGS Computers, Inc.*, 74 NY2d 487, 491 [1989b]; *Matter of A.G. Ship Maintenance Corp. v Lezak*, 69 NY2d 1, 5 [1986]). When a party is entitled to such fees, the court must determine whether the same are in fact reasonable (*Coniglio v Regan*, 186 AD2d 708, 709 [2d Dept 1992]). When the moving party is entitled to recover legal expenses and tenders proof of the reasonableness of the expenses incurred, absent a challenge regarding the reasonableness of said expenses, the moving party is entitled to the amount sought (*Gray Mfg. Co. v Pathe Indus., Inc.*, 33 AD2d 739 [1st Dept 1969], *affd sub nom. Gray Mfg Co v Pathe Indus., Inc.*, 26 NY2d 1045 [1970]). If the reasonableness of the legal fees claimed is challenged, the court must then conduct a hearing on that issue (*Tishman Const. Corp. of New York v Am. Mfrs. Mut. Ins. Co.*, 303 AD2d 323, 324 [1st Dept 2003]). Notwithstanding a contract entitling a party to legal fees, it is well settled, that such relief is only available to the prevailing party and only if the same prevails on a central issue (*Nestor v McDowell*, 81 NY2d 410, 415 [1993]).

As relevant here, attorney's fees may be recovered in a mortgage foreclosure action if contractually authorized (*Vigo v 501 Second St. Holding Corp.*, 121 AD3d 778, 779 [2nd Dept 2014]; *Neighborhood Hous. Servs. of New York City, Inc. v Hawkins*, 97 AD3d 554, 554, [2nd Dept 2012]). "In determining reasonable compensation for an attorney, the court must consider such factors as the time, effort, and skill required; the difficulty of the questions presented; counsel's experience, ability, and reputation; the fee customarily charged in the locality; and the contingency or certainty of compensation" (*Vigo* at 780). While a hearing is not required in all

circumstances, “the court must possess sufficient information upon which to make an informed assessment of the reasonable value of the legal services rendered” (*People's United Bank v Patio Gardens III, LLC*, 143 AD3d 689, 691 [2nd Dept 2016] [internal citations omitted]; *Bank of New York Mellon v Graffi*, 172 AD3d 1148, 1150 [2nd Dept 2019] [We also agree with the Supreme Court's denial of the plaintiff's request for attorney's fees, as the plaintiff failed to substantiate the performance of certain services, to establish the time and rate for the services, and to demonstrate the reasonableness of the attorney's fees requested]).

Here, paragraph 17 of section E of the mortgage provides for the recovery of costs and expenses in a mortgage foreclosure proceeding, entitling plaintiff to attorney's fees, disbursements, and costs as specified. Plaintiff submits an affirmation of Michael Falkowski (Falkowski), a member of the firm RICHLAND & FALKOWSKI, PLLC, attorneys for plaintiff, with attached bill of costs and disbursements as well as detailed invoices for legal services provided by the firm. Falkowski states that the attorneys' services rendered in this action are those of Falkowski. Falkowski billed for legal work performed at an hourly rate of \$350.00, as negotiated between the attorney and the client. Falkowski notes that he prepared and filed an opposition to a prior application by defendants seeking to vacate their default, a summary judgment and order of reference application, and an application for the appointment of a temporary receiver. Based on the foregoing, the Court finds that the law firm of RICHLAND & FALKOWSKI, PLLC has established it incurred legal fees and expenses in the amount of \$16,054.53 (\$13,875.00 plus \$2,179.53), and that these fees are reasonable. Accordingly, since plaintiff has prevailed in this action and the mortgage provides for the payment of reasonable attorneys' fees, costs and disbursements, the amount of \$16,054.53 must be awarded. As such, the Court grants plaintiff's request for fees, costs, and disbursements. It is hereby

ORDERED that plaintiff's motion is granted in accordance with the Judgment of Foreclosure and Sale annexed hereto. It is further

ORDERED that plaintiff shall contact bxforeclosure@nycourts.gov regarding scheduling of the sale. It is further

ORDERED that the foreclosure sale shall be subject to the Court's current sale rules in place at the time of the sale. It is further

ORDERED that the Notice of Sale be served on all defendants and E-Filed at least ten (10) days prior to the scheduled sale date. It is further

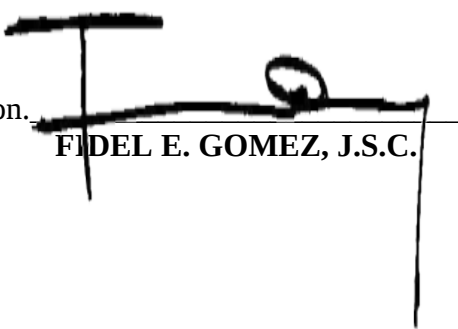
ORDERED that plaintiff serve this Decision and Order with Notice of Entry upon all parties within thirty (30) days hereof.

This constitutes the Decision and Order of this Court.

Dated:

4/15/24

Hon.


FIDEL E. GOMEZ, J.S.C.