

LFC Acquisition 4, LLC v Philomen Realty Corp.
2024 NY Slip Op 35689(U)
February 5, 2024
Supreme Court, Bronx County
Docket Number: Index No. 811454/2021E
Judge: Fidel E. Gomez
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NEW YORK SUPREME COURT - COUNTY OF BRONX
PART 32

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

-----X
LFC ACQUISITION 4, LLC,

Plaintiff,

Index No. **811454/2021E**

Hon. **FIDEL E. GOMEZ**
Justice

- against -

PHILOMEN REALTY CORP., ET AL.,

Defendants.

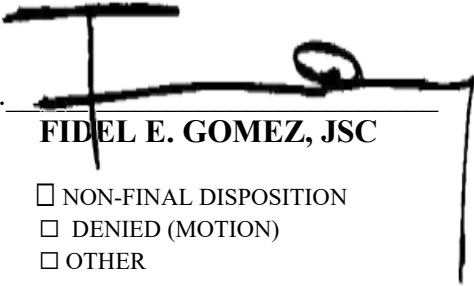
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The following papers numbered 1 to 2, Read on this Motion noticed of 11/03/23, and duly submitted as no. 2 on the Motion Calendar of 11/03/23.

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

Plaintiff's motion is decided in accordance with the Decision and Order annexed hereto.

Dated:

2/5/24

Hon. 

FIDEL E. GOMEZ, JSC

1. CHECK ONE

2. MOTION/CROSS-MOTION IS

3. CHECK IF APPROPRIATE.

X CASE DISPOSED

☐ GRANTED (MOTION)

☐ GRANTED IN PART

☐ SETTLE ORDER

☐ SUBMIT ORDER

☐ DO NOT POST

☐ NON-FINAL DISPOSITION

☐ DENIED (MOTION)

☐ OTHER

☐ FIDUCIARY APPOINTMENT

☐ REFEREE APPOINTMENT

☐ NEXT APPEARANCE DATE:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
LFC ACQUISITION 4, LLC,

Plaintiff,

- against -

DECISION AND ORDER

Index No. **811454/2021E**

**PHILOMEN REALTY CORP.; NEW YORK STATE
DEPARTMENT OF TAXATION AND FINANCE;
NEW YORK CITY DEPARTMENT OF FINANCE;
NEW YORK CITY ENVIRONMENTAL CONTROL
BOARD; URY A. LEID,**

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 directing the distribution of the sale proceeds pursuant to RPAPL §1354. For the reasons that follow hereinafter, plaintiff's motion is granted on default and without opposition.

JUDGMENT OF FORECLOSURE AND SALE

Plaintiff's motion seeking the entry of a judgment of foreclosure and sale pursuant to RPAPL §1351 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]).

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 February 22, 2023, this Court granted plaintiff's motion for summary judgement, default judgment against non-answering defendants, and the appointment of a referee upon plaintiff's establishment of its prima facie case for foreclosure and a showing that its claims 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 \$7,092.50 is granted to the extent that plaintiff has substantiated the legal services rendered and the actual time spent so as to demonstrate that the fees sought are reasonable. Plaintiff's request for statutory costs, allowances, and disbursements totaling \$2,367.44 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], *aff'd 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, section 2.2 of the mortgage provides for the recovery of costs and expenses in a mortgage foreclosure proceeding, including reasonable attorney's fees. Plaintiff submits a bill of costs and disbursements totaling \$2,367.44. Plaintiff submits an affirmation of Natalia Thomas, member of the firm Valley Law PLLC, attorneys for plaintiff, stating that plaintiff seeks attorney's fees in the amount of \$7,092.50 and \$1000 in anticipated fees. In support of its request, plaintiff also submits its record of invoices with the time and rate of services rendered. Based on the foregoing, with the exception of the \$1,000 sought for prospective legal work, the Court finds that the costs and legal fees sought, amply supported by the invoices provided, are reasonable. Moreover, since plaintiff has prevailed in this action and the mortgage provides for the payment of fees, costs, and disbursements, the Court grants plaintiff's request as detailed in plaintiff's Bill of Costs submitted herein.

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

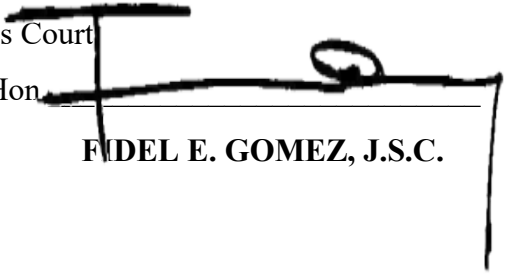
ORDERED that plaintiff shall contact bxforeclosure@nycourts.gov regarding scheduling of the sale; and it is further

ORDERED that the foreclosure sale shall be subject to the Court's current sale rules in place at the time of the sale; and 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; and 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: 2/5/24

Hon. 

FIDEL E. GOMEZ, J.S.C.