

**State of N.Y. Mtge. Agency v 936-938 Cliffcrest Hous.
Dev. Fund Corp.**

2025 NY Slip Op 30290(U)

January 24, 2025

Supreme Court, New York County

Docket Number: Index No. 850011/2013

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. DEBRA A. JAMES

PART 59

Justice

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STATE OF NEW YORK MORTGAGE AGENCY,

Plaintiff,

- v -

936-938 CLIFFCREST HOUSING DEVELOPMENT FUND CORPORATION, THE DEPARTMENT OF THE CITY OF NEW YORK, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, and NEW YORK CITY DEPARTMENT OF FINANCE,

Defendants.

First party action dismissed by Order dated June 29, 2018 (Madden, J.) (NYSCEF Doc No 1108).

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936-938 CLIFFCREST HOUSING DEVELOPMENT FUND CORPORATION,

Third-Party Plaintiff,

-against-

THE WAVECREST MANAGEMENT TEAM LTD., SHUHAB HOUSING DEVELOPMENT FUND CORPORATION, COMMUNITY CAPITAL BANK, LEE WARSHAVSKY, JOHN AND JANE DOES 11-20, THE DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT OF THE CITY OF NEW YORK

Third-Party Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 037) 1590, 1591, 1592, 1596, 1597, 1598, 1599

were read on this motion to/for

DISCOVERY

ORDER

Upon the foregoing documents, it is

ORDERED to the extent that third party plaintiff ("plaintiff") seeks to inspect the original note and mortgage with respect to the premises that are the subject of this action, issued by third-party defendant ("defendant") Department of Housing Preservation and Development of the City of New York ("NYC Department of Housing Preservation and Development"), the motion of plaintiff for post note of issue discovery is granted, and defendant NYC Department of Housing Preservation and Development shall grant plaintiff access to inspect such documents, within forty-five (45) days of service of the herein order with notice of entry; and it is further

ORDERED that to the extent that plaintiff seeks production of the records of defendant NYC Department of Housing Preservation and Development appended to the privilege log, created as of October 31, 2023 by such defendant, which records were reproduced and re-submitted for in camera review on January 24, 2024 (NYSCEF Doc No 1470), the motion of plaintiff is granted, and defendant NYC Department of Housing Preservation and Development shall produce copies of such records to plaintiff, within forty-five (45) days of service of a copy of this order with notice of entry; and it is further

ORDERED that to the extent that plaintiff seeks to discover "investigatory files concerning Walters, Adorno, Provenzano and Enright", within thirty (30) days of service of a copy of this

order with notice of entry, defendant NYC Department of Housing Preservation and Development shall produce an affidavit of a person with knowledge that states that in accordance with the formal policy of the City of New York "no such records exists, as agencies may not investigate allegations of corrupt or criminal conduct involving their staff, absent approval to the contrary by the New York City Department of Investigation or an Inspector General, and no such approval was granted with respect to any conduct by Walters, Adorno, Provenzano and/or Enright"; and it is further

ORDERED that the motion of plaintiff to conduct post note of issue discovery pursuant to 22 NYCRR § 202.21(d) is otherwise denied; and it is further

ORDERED that counsel are directed to continue to confer with the Clerk of the Trial Assignment Part 40 to secure a mediation/trial date.

DECISION

This court disagrees with plaintiff's argument that it need not show "unusual and special circumstances" under 22 NYCRR § 202.21(e) in order to justify the grant of post note of issue discovery, where it seeks such discovery within twenty days of the filing of the note of issue. Instead, the court holds that 22 NYCRR § 202.21(e) requires that a **motion to vacate the note**

of issue be made within twenty days of the filing of the note of issue and certificate of readiness.

Here, it is the plaintiff who filed the note of issue. Plaintiff certainly does not now seek to vacate such note of issue, and thus, the twenty day limitations period of 22 NYCRR § 202.21(e) does not apply. See Price v Brody, 7 AD2d 204 (1st Dept 1959); Price v Bloomingdale's, A Div of Federated Dept Stores, Inc, 166 AD2d 151 (1st Dept 1990); and Bagley v 1122 East 180th Street Corp, 203 AD3d 502 (1st Dept 2022).

It is in the instance where the party demonstrates that "pretrial proceeding has not been completed for [] reason beyond the control of the party" and that there must be "prevention of substantial prejudice", as plaintiff apparently claims here, that, pursuant to 22 NYCRR § 202.(d), such party must show "unusual and special circumstances" in order to be entitled to conduct additional discovery proceedings, while the action remains on the trial calendar. With respect plaintiff's motion pursuant to 22 NYCRR § 202.21(d), this court finds of no moment the qualifications set forth in plaintiff's certificate of readiness that "There are outstanding requests for discovery"; "There has not been reasonable opportunity to complete the foregoing proceedings"; and "There has not been compliance with all orders issued pursuant to 22 NYCRR §

202.12". By Order dated December 23, 2024 (NYSCEF Document Number 1582), this court found, in pertinent part:

More than a dozen discovery conferences have been held over the course of this [decade long] litigation, including several before the undersigned. Reviewing the docket, and given this court's own supervision of discovery since having been assigned this case in April 2021, this court finds that the parties have had ample time to complete discovery over the twelve years since this action was commenced.

Therefore, this court holds that there is no justification for granting plaintiff's motion to take the depositions of two of defendant witnesses post its filing of the note of issue, when the court finds plaintiff's explanations for having conducted no examinations before trial over the past decade unpersuasive. Likewise with respect to production of additional records, not previously sought by plaintiff, the time for plaintiff to have sought such records has passed. See Bagley, at p 504, supra.

Plaintiff is correct to the extent that it argues that, with the denial by the court of defendant NYC Department of Housing Preservation and Development's cross motion for a protective order¹ (NYSCEF Doc No 1582, Order dated December 23, 2024), defendants must produce the records that it previously submitted to the court for its in camera review. Defendant NYC Department of Housing Preservation and Development has filed neither a notice of appeal nor motion to reargue such order,

thereby waiving any confidentiality privilege with respect to the subject records.

In addition, as the court finds no prejudice to defendant NYC Department of Housing Preservation and Development with respect to plaintiff's demand to inspect the original loan documents, such defendant is directed to produce its original loan documents, including the note and mortgage, for inspection by plaintiff. See Cabrera v Abaev, 150 AD3d 588 (1st Dept 2017).

Debra A. James

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1/24/2025

DATE

DEBRA A. JAMES, J.S.C.

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