

NYCTL 2021-A Trust v Yechai LLC

2025 NY Slip Op 32968(U)

June 10, 2025

Supreme Court, Kings County

Docket Number: Index No. 531365/2024

Judge: Derefim B. Neckles

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FRP-2 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, 11201 on the 10th day of June 2025.

P R E S E N T:

HON. DEREKIM B. NECKLES,

Acting Justice.

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NYCTL 2021-A TRUST, AND THE BANK OF NEW YORK MELLON AS COLLATERAL AGENT AND CUSTODIAN FOR THE NYCTL 2021-A TRUST AND NYCTL 1998-2 TRUST, AND THE BANK OF NEW YORK MELLON AS COLLATERAL AGENT AND CUSTODIAN FOR THE NYCTL 1998-2 TRUST,

Plaintiff,

- against -

YECHAI LLC, ET AL

Defendants.

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KINGS COUNTY CLERK
FILED
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The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Affidavits (Affirmations) Annexed
Notice of Cross-Motion/Affidavits (Affirmations) Annexed
Opposition to Cross-Motion
Reply to Opposition to Cross-Motion

31-48
50-79
80
81

Upon the foregoing papers in this proceeding, plaintiff moves (under mot. seq. 2) for an order (1) pursuant to CPLR §3212(b), granting summary judgment in favor of plaintiffs and against defendant Chava Nelkenbaum a/k/a Chava Mezei and striking the answer of said defendant; (2) pursuant to RPAPL §1321, appointing a referee and directing the referee to ascertain and compute the amounts due plaintiffs upon the tax lien being foreclosed in this action, and to examine and report whether the lien property can be sold

in one or more parcels; (3) substituting NYCTL 1998-2 TRUST instead and in place of NYCTL 2021-A TRUST as plaintiff herein without prejudice to any of the proceedings heretofore had herein or to be had herein; and (4) amending the caption to substitute a certain defendant in place of defendant John Doe No.1 and excising from the caption defendants John Doe No.2 through John Doe No.100 and discontinuing the action as against them, all without prejudice to any of the proceedings heretofore had herein.

Defendant cross-moves (under mot. seq. 3) for an order staying this action pending resolution of the action entitled Chava Nelkenbaum, a/k/a Chava Mezei v. Yehuda Nelkenbaum, et. ano., Supreme Court Kings Co. Index Number 509849/2018.

Discussion

I. Summary Judgment

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact (*Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, 501 N.E.2d 572, 574 (1986)). The plaintiff has to establish its prima facie entitlement to foreclosure as a matter of law by submitting proof that defendant made no payments on the tax lien (*NYCTL 2008-A Tr. v. Lee Zhen Xiang*, 121 A.D.3d 1062, 1063 (2014)). Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*Zuckerman v. City of New York*, 427 N.Y.S.2d 595).

Here, plaintiff offers the affidavit of Kurt Shadle, the managing director for plaintiff's servicer, Tower Capital Management, LLC. Shadle testifies to plaintiff's ownership of the tax lien, defendant's default, and that the lien remains outstanding. Plaintiff attaches, as exhibit A, a fully executed servicing agreement, granting Tower Capital Management, LLC, the authority to proceed with a foreclosure action. (*NYCTL 2009-A Tr. v. 273 Brighton Beach Ave. Realty Co.*, 926 N.Y.S.2d 345 (Sup Ct, Kings County 2011); *EMC Mortg. Corp. v. Batista*, 15 Misc.3d 1143(A), (Sup Ct, Kings County 2007)). Accordingly, plaintiff has established its prima facie entitlement to foreclosure as a matter of law.

Here, defendant offers a possibility that there may be documents in existence that may assist defendant in defeating summary judgment. Thus, defendant fails to sufficiently establish a triable issue of fact that would require a trial.

I. Preliminary Injunction

To obtain a preliminary injunction, the moving party must establish by clear and convincing evidence: (1) a likelihood of success on the merits; (2) irreparable injury absent injunctive relief; and (3) that the equities balance in her favor (*see* CPLR 6301; *Herczl v. Feinsilver*, 153 A.D.3d 1338 [2017]).

Here, defendant has failed to establish any of the factors required to be entitled to a preliminary injunction.

Accordingly, it is

ORDERED that plaintiff's motion (mot. seq. 2) is granted in all respects. Long form order to follow; and it is further

ORDERED that defendant's cross-motion (mot. seq. 3) is denied in all respects.

This constitutes the decision and order of the court.

ENTER,



HON. DEREKIM B. NECKLES
A. J. S. C.

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