

**Board of Mgrs. of the 100 W. 93 Condominium v
Slavutsky**

2025 NY Slip Op 32980(U)

June 30, 2025

Supreme Court, New York County

Docket Number: Index No. 850005/2024

Judge: Francis A. Kahn III

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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. FRANCIS A. KAHN, III PART 32

Justice

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INDEX NO. 850005/2024

BOARD OF MANAGERS OF THE 100 WEST 93
CONDOMINIUM ON BEHALF OF ITS UNIT OWNERS,

MOTION DATE _____

Plaintiff,

MOTION SEQ. NO. 001

- v -

ELIZABETH SLAVUTSKY AND VLADAMIR SLAVUTSKY
AS TENANTS IN COMMON, ELAINE SHAY, 22 ASSET
MANAGEMENT HOLDING LLC, YUHA GROUP INC., BLUE
DOG CAFE AT 399 INC., INTERNAL REVENUE SERVICE,
CITY OF NEW YORK PARKING VIOLATIONS BUREAU,
WORKMANS COMPENSATION BOARD, NEW YORK
STATE DEPARTMENT OF TAXATION AND FINANCE,
COMMISSIONER OF LABOR OF THE STATE OF NEW
YORK, CARNEGIE HALL TOWER I LLC, POLINA HANIN,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45, 46, 47, 48, 49, 50, 51, 52

were read on this motion to/for JUDGMENT - DEFAULT.

Upon the foregoing documents, the motion is determined as follows:

Plaintiff commenced this action to foreclose on a lien for common charges encumbering a commercial condominium unit located at 100 West 93rd Street, Unit 25C, New York, New York. Defendants Elizabeth Slavutsky and Vladamir Slavutsky, the unit owners, defaulted in appearing. Defendant Polina Hanin (“Hanin”), an alleged occupant of the premises, answered and pled eight affirmative defenses. Defendant Yuha Group Inc., a purported subordinate lienholder, answered and pled eight affirmative defenses. Now, Plaintiff moves for summary judgment against the appearing parties, a default judgment against the non-appearing parties, striking the appearing parties’ answer and affirmative defenses, appointing a referee to compute, and amending the caption. Defendant Hanin opposes that branch of the motion which seeks an order directing the unit owners or any tenant to pay use and occupancy or for an order of ejection.

“An applicant for a default judgment against a defendant must submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting defendant's failure to answer or appear” (*Deutsche Bank Natl. Trust Co. v Silverman*, 178 AD3d 898, 899 [2d Dept 2019]). A plaintiff needs “only [to] allege enough facts to enable a court to determine that a viable cause of action exists” (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]).

With respect to the cause of action for foreclosure of the lien for common charges, Real Property Law §339-aa provides that such a claim “may be foreclosed by suit authorized by and brought in the name of the board of managers, acting on behalf of the unit owners, in like manner as a mortgage of real property” (see *Board of Mgrs. of the Parkchester N. Condominium v. Alaska Seaboard Partners Ltd. Partnership*, 37 AD3d 332 [1st Dept 2007]). In a foreclosure action, a Plaintiff moving for summary judgment, must establish a *prima facie* case exists to foreclose (see *U.S. Bank, N.A., v James*, 180 AD3d 594 [1st Dept 2020]; *Bank of NY v Knowles*, 151 AD3d 596 [1st Dept 2017]) with proof in evidentiary form (see CPLR §3212[b]; *Tri-State Loan Acquisitions III, LLC v Litkowski*, 172 AD3d 780 [1st Dept 2019]).

In an action to foreclose on a common charge lien, Plaintiff must submit proof of its “authority to collect common charges from the owners of units and, in the event of nonpayment, to add late fees, interest, attorneys’ fees and other costs of collection to the assessment” (*Board of Mgrs. of W. Amherst Off. Park Condominium v RMFSG, LLC*, 153 AD3d 1611 [4th Dept 2017]). In addition, Plaintiff must demonstrate the reliability of or how the amounts were calculated (see *Board of Mgrs. of Natl. Plaza Condominium I v. Astoria Plaza, LLC*, 40 AD3d 564 [2d Dept 2007]). Here, Plaintiff demonstrated with the affidavit of Farhan Naseer, the Authorized Signatory and Managing Agent of Plaintiff, its authority to collect common charges and that its method of calculation was reliable. As such, Plaintiff demonstrated, *prima facie*, its entitlement to summary judgment on its foreclosure cause of action. Similarly, Plaintiff proffered evidence demonstrating entitlement to partial summary judgment on the issue of liability against Defendant on its first, second and third causes of action (see generally RPL §339-aa).

“To defeat a facially adequate CPLR 3215 motion, a defendant must show either that there was no default, or that it has a reasonable excuse for its delay and a potentially meritorious defense” (*Deutsche Bank Natl. Trust Co. v Silverman*, 178 AD3d 898, 901 [2d Dept 2020], citing *US Bank N.A. v Dorestant*, 131 AD3d 467, 470 [2d Dept 2015]; see also CPLR §5015[a][1]; *Bear Stern-Asset-Backed Sec. I Trust 2006 v Ceesay*, 180 AD3d 504 [1st Dept 2020]). Similarly, where an extension of time to answer is sought under CPLR 3012[d], a court, upon such terms as may be just (see *Emigrant Bank v Rosabianca*, 156 AD3d 468, 472 [1st Dept 2017]), upon showing “a reasonable excuse for the delay and demonstrate a potentially meritorious defense to the action” (*Bank of N.Y. Mellon v Tedesco*, 174 AD3d 490, 491 [2d Dept 2019]). When exercising its discretion in determining a motion under this section “a court should consider such relevant factors as the extent of the delay, prejudice or lack of prejudice to the opposing party as well as the strong public policy in favor of resolving cases on the merits (*Orwell Bldg. Corp. v Bessaha*, 5 AD3d 573, 574 [2d Dept 2004][internal citations omitted]).

The branch of the motion for an order directing the unit owners to pay rent is denied as there was no proof advanced that they are in possession of the unit. The relief is unestablished as against Defendant Hanin since Plaintiff failed to proffer any argument in the moving papers in support of this relief. The attempt to offer this argument in reply was improper. In any event, nothing in the by-laws permits collection of rent from an occupant and, more importantly, only a receiver is authorized to collect same (see *Societe Generale v. Charles & Co.*, 157 Misc2d 643 [Sup Ct NY Cty 1993]). To the extent an order of ejectment is sought, that relief is premature (see RPAPL §221).

Accordingly, it is

ORDERED that Plaintiff's motion for summary judgment against the appearing parties and a default judgment against the non-appearing parties is granted; and it is further

ORDERED, ADJUDGED and DECLARED that Plaintiff's May 1, 2019 lien for common charges is superior to any other lien of the named parties hereto; and it is further

ORDERED that Plaintiff may enter a money judgment with the New York County Clerk for \$682,754.41, representing unpaid common charges as of February 18, 2025, together with any interest from that date until the entry of judgment. Plaintiff is also granted costs to be award upon submission to the Clerk of an appropriate bill of costs; and it is further

ORDERED that **Tom Kleinberger, Esq., 411 5th Avenue, New York, New York 10016 (917) 326-5523** is hereby appointed Referee in accordance with RPAPL § 1321 to compute the amount due to Plaintiff and to examine whether the property identified in the notice of pendency can be sold in parcels; and it is further

ORDERED that in the discretion of the Referee, a hearing may be held, and testimony taken; and it is further

ORDERED that by accepting this appointment the Referee certifies that he is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2 (c) ("Disqualifications from appointment"), and §36.2 (d) ("Limitations on appointments based upon compensation"), and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall immediately notify the Appointing Judge; and it is further

ORDERED that, pursuant to CPLR 8003(a), and in the discretion of the court, a fee of \$350 shall be paid to the Referee for the computation of the amount due and upon the filing of his report and the Referee shall not request or accept additional compensation for the computation unless it has been fixed by the court in accordance with CPLR 8003(b); and it is further

ORDERED that the Referee is prohibited from accepting or retaining any funds for himself or paying funds to himself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED that if the Referee holds a hearing, the Referee may seek additional compensation at the Referee's usual and customary hourly rate; and it is further

ORDERED that Plaintiff shall forward all necessary documents to the Referee and to Defendants who have appeared in this case within 30 days of the date of this order and shall *promptly* respond to every inquiry made by the referee (promptly means within two business days); and it is further

ORDERED that if Defendant(s) have objections, they must submit them to the referee within 14 days of the mailing of plaintiff's submissions; and include these objections to the Court if opposing the motion for a judgment of foreclosure and sale; and it is further

ORDERED that failure to submit objections to the referee may be deemed a waiver of objections before the Court on an application for a judgment of foreclosure and sale; and it is further

ORDERED that Plaintiff must bring a motion for a judgment of foreclosure and sale within 45 days of receipt of the referee’s report; and it is further


ORDERED that if Plaintiff fails to meet these deadlines, then the Court may *sua sponte* vacate this order and direct Plaintiff to move again for an order of reference and the Court may *sua sponte* toll interest depending on whether the delays are due to Plaintiff’s failure to move this litigation forward; and it further

ORDERED that counsel for Plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the parties being removed pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address (www.nycourts.gov/suptctmanh)); and it is further

ORDERED that Plaintiff shall serve a copy of this Order with notice of entry on all parties and persons entitled to notice, including the Referee appointed herein.

All parties are to appear for a virtual conference via Microsoft Teams on **November 5, 2025, at 11:40 a.m.** If a motion for judgment of foreclosure and sale has been filed Plaintiff may contact the Part Clerk (SFC-Part32-Clerk@nycourts.gov) in writing to request that the conference be cancelled. If a motion has not been made, then a conference is required to explore the reasons for the delay.

6/30/2025			
DATE			FRANCIS KAHN, III, A.J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> DENIED	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input checked="" type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		