

**Loancore Capital Credit REIT LLC v Suspenders
Bldg. LLC**

2025 NY Slip Op 33060(U)

August 8, 2025

Supreme Court, New York County

Docket Number: Index No. 850395/2024

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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LOANCORE CAPITAL CREDIT REIT LLC,

Plaintiff,

INDEX NO. 850395/2024

MOTION DATE 05/02/2025

- v -

MOTION SEQ. NO. 004

THE SUSPENDERS BUILDING LLC, JACOB CHETRIT,
CITY OF NEW YORK DEPARTMENT OF FINANCE, CITY
OF NEW YORK ENVIRONMENTAL CONTROL BOARD,
JOHN DOE, MARY ROE, AND XYZ CORPORATION,

**DECISION + ORDER ON
MOTION**

Defendants.

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 111, 112, 113, 114, 115, 116, 117, 118, 119, 120

were read on this motion for SUMMARY JUDGMENT, DEFAULT JUDGMENT, REFEREE APPOINTMENT.

Plaintiff Loancore Capital Credit REIT, LLC (“Plaintiff” or “Lender”) moves for an order (i) granting summary judgment against Defendant The Suspenders Building, LLC (“Suspenders” or “Borrower”) pursuant to CPLR 3212, (ii) granting default judgment against Defendants the City of New York Department of Finance and the City of New York Environmental Control Board pursuant to CPLR 3215, (iii) appointing a Referee to compute and report the amount due and owing to the Plaintiff pursuant to RPAPL 1321. The motion is unopposed. For the following reasons, Plaintiff’s motion is **GRANTED IN PART**.

Pursuant to CPLR 3212(b), summary judgment “shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party.” “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” (*Ayotte v Gervasio*, 601 NYS2d 463, 463 [1993]). “If the moving party meets this burden, the burden then shifts to the non-moving party to establish the existence of material issues of fact which require a trial of the action” (*Jacobsen v New York City Health & Hosps. Corp.*, 22 NY3d 824, 833 [2014]). “[T]he allegations contained in pleadings are not acceptable as the evidential proof required to defeat a summary judgment application” (*Indig v Finkelstein*, 29 AD2d 851, 852 [1st Dept 1968]). Rather, the nonmoving party must “offer competent evidence in admissible form establishing the existence of genuine, triable issues of material fact” (*see Quinn v Depew*, 63 AD3d 1425, 1428–29 [3d Dept 2009]).

A plaintiff establishes its prima facie entitlement to judgment as a matter of law on a foreclosure claim by “submitting the mortgage, unpaid note, and proof of defendants’ default” (*see CSMC 2007-C1 Oswego Rd., LLC v Kimbrook Route 31, LLC*, 120 AD3d 1539, 1540 [4th Dept 2014]). Here, Plaintiff has done so (NYSCEF 114 ¶¶ 12, 17-21, 26, 41-44). While Suspenders admits to executing the loan documents in its answer, it denies its failure to pay by the maturity date (NYSCEF 115 ¶¶ 8, 13-15, 17, 37). Suspenders does not, however, provide evidence in admissible form to create an issue of fact as to whether it defaulted. Accordingly, summary judgment is granted to Plaintiff on its cause of action for foreclosure.

As for Plaintiff’s second claim for possession and third claim for entitlement to rents, the loan documents provide that upon default Plaintiff is entitled to possess the mortgaged property and to enforce its interest in the rents of the property and apply such rents to the payment of the loan. Summary judgment is granted to Plaintiff on those claims. Regarding Plaintiff’s claim for the appointment of a receiver, Plaintiff’s motion for summary judgment is denied as moot because the Court has already done so (NYSCEF 58-59).

Having granted summary judgment to Plaintiff on its foreclosure claim, the Court also grants Plaintiff's motion to appoint a referee to compute the amount due under the mortgage pursuant to RPAPL 1321 (*see Bank of East Asia, Ltd. v Smith*, 607 NYS2d 431, 432 [2d Dept 1994]).

Plaintiff also moves for a default judgment against Defendants City of New York Department of Finance ("NYDF") and City of New York Environmental Control Board ("NYECB"). Both parties were served with process on October 31, 2024 (NYSCEF 116, 117), and neither has answered or otherwise moved with respect to the Complaint, and the time for them to do so has expired. NYDF was named as a Defendant to account for the possibility that Suspenders owed unpaid New York City business taxes. NYECB was named as a Defendant because it has a \$1,000 judgment against Suspenders dated after Plaintiff's mortgage. Accordingly, Plaintiff's motion is granted against NYDF and NYECB pursuant to CPLR 3215(a), such that NYDF may not assert any interest in the property before the referee, and NYECB's judgment lien is deemed junior to Plaintiff's.

Therefore, it is

ORDERED that Plaintiff's motion for summary judgment is **granted** as to its claims for possession, entitlement to rents, and foreclosure, and otherwise **denied**; it is further

ORDERED that Plaintiff's motion for default judgment against NYDF and NYECB is **granted**, and default judgment is hereby entered in favor of the Plaintiff and against NYDF and NYECB on all counts of the Complaint based on their failure to appear and to plead in this action; it is further

ORDERED that the Plaintiff is entitled to foreclose defendants' interests in the mortgaged property; it is further

ORDERD that Plaintiff's motion to appoint a referee is **granted**; it is further

ORDERED, and this action be and hereby is referred to Eric Marc Zim, with an office at 260 Madison Avenue, 16th Floor, New York, NY 10016, telephone number 212-644-1857, who is hereby appointed Referee to ascertain and compute the amount due to the Lender under the loan documents set forth in the Complaint in this action and to examine and report whether the mortgaged property can be sold in one parcel or multiple parcels; it is further

ORDERED that the Referee has discretion based on the record presented as to whether it is necessary to hold a hearing or take testimony or evidence, or instead rely upon written submissions; it is further

ORDERED that the Referee shall report to this Court with all convenient speed; it is further

ORDERED that the Plaintiff shall forward all necessary documents to the Referee and to the Borrower within 45 days of the date of this Order; it is further

ORDERED that if the Borrower has objections, it must submit them to the Referee within 21 days of the mailing of the Lender's submissions to the Referee; it is further

ORDERED that the failure of the Borrower to timely submit objections to the Referee shall be deemed a waiver of objections before this Court on a Motion for Judgment of Foreclosure and Sale; it is further

ORDERED that the Lender may move for Judgment of Foreclosure and Sale within 45 days of receipt of the Referee's Report; it is further

ORDERED that upon delivery of the Referee's Report, and pursuant to CPLR 8003(a), the Lender shall pay a fee of \$350 to the Referee for the computation of the amount due, which sum may be recouped as a cost of litigation; it is further

ORDERED that 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); it is further

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

ORDERED that the Referee appointed herein is subject to the requirements of Rule 36.2(c) of the Chief Judge, and if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall notify the Appointing Judge forthwith; 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, Section 36.2(c) (Disqualifications from appointment) and Section 36.2(d) (Limitations on appointments based upon compensation); it is further

ORDERED that the caption of this action be amended to strike the defendants sued herein as fictitious, so that the action is discontinued as against them, all without prejudice to any of the proceedings heretofore had herein or to be had herein; it is further

ORDERED that the caption of this action be amended to strike Defendant Jacob Chetrit who was dismissed from the action by this Court's Decision + Order of Motion dated April 23, 2025 (NYSCEF 108); it is further

ORDERED that the caption of this action, as amended, shall henceforth read as follows:

LOANCORE CAPITAL CREDIT REIT LLC,

Plaintiff,

-against-

THE SUSPENDERS BUILDING LLC, CITY OF NEW YORK
DEPARTMENT OF FINANCE, CITY OF NEW YORK
ENVIRONMENTAL CONTROL BOARD,

Defendants.

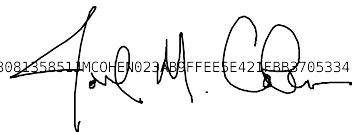
IT IS FURTHER ORDERED that, within 30 days from entry of this order, Lender shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office, who is hereby directed to reflect the change in caption by appropriately marking the court's records; and it is further

ORDERED that such service upon 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); and it is further

ORDERED that a copy of this Order with Notice of Entry shall be served by counsel for the Lender on the designated Referee, counsel for the Borrower, NYDF and NYECB.

This constitutes the decision and order of the Court.

8/8/2025
DATE

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JOEL M. COHEN, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input checked="" type="checkbox"/> REFERENCE