

**U.S. Bank N.A. v 240 Park Ave. S. Owner LP**

2025 NY Slip Op 33720(U)

September 26, 2025

Supreme Court, New York County

Docket Number: Index No. 850406/2024

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. 850406/2024

MOTION DATE

MOTION SEQ. NO. 005

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, IN TRUST FOR THE HOLDERS OF UBS-BARCLAYS MORTGAGE TRUST 2013-C6, COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2013-C6,

Plaintiff,

- v -

240 PARK AVENUE SOUTH OWNER LP, A DELAWARE LIMITED PARTNERSHIP, YITZCHAK TESSLER, STARBUCKS CORPORATION, 240 PARK AVENUE SOUTH CONDOMINIUM, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, 'JOHN DOE' NOS. 1-25,

Defendant.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 129, 130, 144

were read on this motion to/for

JUDGMENT - DEFAULT

Upon the foregoing documents, the motion and cross-motion are determined as follows:

The within action is to foreclose on two mortgage encumbering two parcels of real property located 240 Park Avenue South, Commercial Storage Unit, A/K/A 234/240 Park Avenue South, A/K/A 49/55 East 19 Street New York, New York and 240 Park Avenue South, Commercial Unit, A/K/A 234/240 Park Avenue South, A/K/A 49/55 East 19 Street New York, New York. Both mortgages were given by Defendant 240 Park Avenue South Owner LP ("Park") to non-party UBS Real Estate Securities, Inc. ("UBS"). The mortgages secure two notes memorializing loans of \$14,000,000.00 and \$2,597,713.37, respectively. The transaction is governed by a separate loan agreement. All these documents are dated February 25, 2013, and were executed by Defendant Yitzchak Tessler ("Tessler") as President of non-party 240 Park Avenue South GP LLC ("South GP"), the purported general partner of Park. Concomitantly with these documents, Tessler executed a guaranty or recourse obligations. Plaintiff commenced this action, and pled Defendants defaulted in repayment of the monthly debt service payment and then on the maturity date. Defendants Park and Tessler failed to timely answer. Now, Plaintiff moves for a default judgment against the non-appearing Defendants, appointing a referee to compute and to amend the caption. Defendants Park and Tessler oppose the motion and cross-move for, inter alia, leave to file a late answer pursuant to CPLR §3012[d]. Plaintiff opposes the cross-motion.

As to Plaintiff's motion, "[a]n 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]). Plaintiff established prima

*facie* its entitlement to a default judgment against Park and Tessler, as well as the other Defendants, by submitting proof, via the affidavit of Rod Lauredo (“Lauredo”), an Asset Manager with Rialto Capital Advisors, LLC (“Rialto”), the special servicer for Plaintiff. Annexed to the affidavit was a copy of a power of attorney demonstrating Rialto’s authority to act for Plaintiff (*see eg Deutsche Bank Natl Trust Co v Silverman*, 178 AD3d 898 [2d Dept 2019]). The affidavit and supporting evidence demonstrated the mortgage, the unpaid note, proof of service on each Defendant and that each failed to timely appear or answer (*see* CPLR §3215[f]; *SRMOF II 2012-I Trust v Tella*, 139 AD3d 599, 600 [1<sup>st</sup> Dept 2016]; *U.S. Bank Natl. Assn. v Wolnerman*, 135 AD3d 850 [2d Dept 2016]; *see also Deutsche Bank Natl. Trust Co. v Silverman*, *supra*).

“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*, *supra* at 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 [1<sup>st</sup> 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]).

At the outset, the cross-motion by Park and Tessler is defective as it is not supported by an affidavit or affirmation of someone with personal knowledge of the facts which contains satisfactory factual allegations, rather than conclusory allegations or vague assertions (*see Gorman v English*, 137 AD3d 556 [1<sup>st</sup> Dept 2015]; *Peacock v Kalikow*, 239 AD2d 188, 190 [1<sup>st</sup> Dept 1997]). Even if the assertions made by Defendants’ counsel were accepted as true, at most, Park and Tessler demonstrated mere neglect which is not a reasonable excuse (*OneWest Bank, FSB v Singer*, 153 AD3d 714 [2d Dept 2017]). Absent a reasonable excuse, the Court need not determine whether Park and Tessler have presented a meritorious defense to the action (*see Pina v Jobar U.S.A. LLC*, 104 AD3d 544, 545 [1st Dept 2013]; *Buro Happold Consulting Engrs., PC. v RMJM*, 107 AD3d 602, 602 [1<sup>st</sup> Dept 2013]). In any event, no meritorious defense is established as the cross-motion is supported only by an affirmation of counsel, rather than party affidavit or verified answer (*see Gorman v English*, *supra*; *Peacock v Kalikow*, *supra*).

The branch of Plaintiff’s motion for a default judgment against the other non-appearing parties is granted (*see* CPLR §3215; *SRMOF II 2012-I Trust v Tella*, 139 AD3d 599, 600 [1<sup>st</sup> Dept 2016]).

The branch of Plaintiff’s motion to amend the caption is granted (*see generally* CPLR §3025; *JP Morgan Chase Bank, N.A. v Laszio*, 169 AD3d 885, 887 [2d Dept 2019]).

Accordingly, it is

ORDERED that the motion for a default judgment against the non-appearing parties and the appointment of a referee to compute is granted; and it is further

ORDERED that the cross-motion be Defendants Park and Tessler is denied in its entirety; and it is further

ORDERED that **Mark McKew, Esq., 1725 York Ave, Ste 29A, New York, New York, 212-876-6783** is hereby appointed Referee in accordance with RPAPL § 1321 to compute the amount due to Plaintiff and examine whether the tax parcel 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 or is required to perform other significant services in issuing the report, 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 the failure by defendants to submit objections to the referee shall 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 30 days of receipt of the referee’s report; and it is further

ORDERED, that the caption of the action should be amended by substituting Tessler Developments in place and stead of “John Doe” No. 1 and striking therefrom the remaining defendants sued herein as “John Doe” Nos. 2-25, all without prejudice to the proceedings heretofore had herein; and it is further

ORDERED, that the caption shall read as follows:

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

-----X  
U.S. BANK NATIONAL ASSOCIATION, AS  
TRUSTEE, IN TRUST FOR THE HOLDERS OF  
UBS-BARCLAYS MORTGAGE TRUST 2013-C6,  
COMMERCIAL MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2013-C6

Plaintiff,

-against-

240 PARK AVENUE SOUTH OWNER LP, a  
Delaware limited partnership; YITZCHAK  
TESSLER; STARBUCKS CORPORATION; 240  
PARK AVENUE SOUTH CONDOMINIUM;  
NEW YORK STATE DEPARTMENT OF  
TAXATION AND FINANCE, TESSLER  
DEVELOPMENTS,

Defendants.  
-----X

and it is 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/supctmanh)); 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 **January 28, 2026, at 10:40 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.

9/26/2025

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE



FRANCIS KAHN, III, A.J.S.C.

**HON. FRANCIS A. KAHN III**  
J.S.C.