

**Toorak Capital Partners LLC v West 125 St. Realty
LLC**

2025 NY Slip Op 33996(U)

October 7, 2025

Supreme Court, New York County

Docket Number: Index No. 850311/2024

Judge: Francis A. Kahn III

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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

-----X

INDEX NO. 850311/2024

TOORAK CAPITAL PARTNERS LLC,

MOTION DATE

Plaintiff,

MOTION SEQ. NO. 006

- v -

WEST 125 STREET REALTY LLC, MKM HOLDINGS LLC, PETER RYNIKER HUNGERFORD, BORUCH KLEINMAN, TZVI KLEINMAN, WILMINGTON TRUST, NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE, ODYSSIA GLOBAL COMMUNICATIONS CORPORATION, DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD, THE UNION SAVINGS BANK OF WESTCHESTER COUNTY,

DECISION + ORDER ON MOTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 006) 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 162, 163, 164, 174, 192, 193, 194, 195, 206, 207, 208, 209, 210 were read on this motion to/for APPOINT - REFEREE

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

The within action is to foreclose on a mortgage encumbering a parcel of real property located 543-549 West 125th Street, New York, New York. The mortgage at issue, dated January 15, 2021, were given by Defendants West 125 Street Realty LLC ("Realty") and MKM Holdings LLC ("Holdings") to non-party Icecap Real Estate Loan Fund I, LLC, ("Icecap"). The mortgage secures a note in with original principal amount of \$4,145,000.00. Plaintiff and Mortgagors executed two extension agreements dated June 28, 2023, and March 26, 2024. In those agreements, the Mortgagors acknowledged the indebtedness and assignment of the notes and mortgages to Plaintiff. The note and mortgage were executed by Defendant Boruch Kleinman ("Kleinman") as Manager and Sole Member of Realty and Holdings, respectively. Defendants Kleinman and Peter Ryniker Hungerford ("Hungerford") and Tzvi H. Kleinman ("Tzvi") also signed commercial guarantees of the indebtedness. Plaintiff commenced this action wherein it pled in the amended complaint that Defendants defaulted in repayment of the indebtedness. All the Defendant defaulted in appearing. Now, Plaintiff moves for a default judgment against the non-appearing Defendants, appointing a referee to compute and to amend the caption. Realty, Holdings, Kleiman, and Tzvi oppose the motion and cross-move to vacate their default pursuant to CPLR §5015, and/or 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 by submitting proof, via the affirmation of TR Hansen (“Hansen”), Senior Director of FCI Lender Services, Inc. (“FCI”), the the servicer for Plaintiff, which demonstrated the mortgage, the unpaid note, proof of service on each Defendant as well as their failure to timely appear or answer (see CPLR §3215[f]; *SRMOF II 2012-I Trust v Tella*, 139 AD3d 599, 600 [1st Dept 2016]; *U.S. Bank Natl. Assn. v Wolnerman*, 135 AD3d 850 [2d Dept 2016]; see also *Deutsche Bank Natl. Trust Co. v Silverman*, 178 AD3d 898 [2d Dept 2019]).

“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].

In opposition to the motion and in support of its cross-motion, Defendants proffer only the affirmation of Kleiman. The proffered affidavit, wherein affiant claims confusion regarding what course of action to pursue, was entirely conclusory and uncorroborated in any regard (see *LaSalle Bank N.A. v Calle*, 153 AD3d 801 [2d Dept 2017]; *Lane v Smith*, 84 AD3d 746 [2d Dept 2011]). At most, the affirmation showed nothing more than “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 Defendants presented a meritorious defense to the action (see *Pina v Jobar U.S.A. LLC*, 104 AD3d 544, 545 [1st Dept 2013]). For the same reasons, the branch of the motion to compel Plaintiff to accept a late answer from Defendants pursuant to CPLR §3012[d] fails (see *Bank of N.Y. Mellon v Tedesco*, 174 AD3d 490, 491 [2d Dept 2019]).

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 [1st 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 Defendants cross-motion is denied in its entirety; 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 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 “JOHN DOE” be removed as a party defendant in this action as no occupants reside at the property and the caption of this action be amended to reflect the removal of “JOHN DOE” as a party defendant; and it is further

ORDERED that defendant WILMINGTON TRUST, NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE be removed from the caption pursuant to the stipulation entered into between said parties; and it is further

ORDERED that the caption shall be further amended to include the “also known as” names of Boruch B. Kleiman and Tzvi H. Kleiman, respectively, for defendants BORUCH B. KLEINMAN and TZVI H. KLEINMAN; and it is further

ORDERED, that the amended caption shall read as follows:

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

-----X

TOORAK CAPITAL PARTNERS, LLC,
Plaintiff,
-against-

WEST 125 STREET REALTY LLC; MKM
HOLDINGS LLC; PETER RYNIKER
HUNGERFORD; BORUCH B. KLEINMAN
a/k/a BORUCH B. KLEIMAN, TZVI H.
KLEINMAN a/k/a TZVI H. KLEIMAN;
ODYSSIA GLOBAL COMMUNICATIONS
CORPORATION; DEPARTMENT OF
HOUSING PRESERVATION AND
DEVELOPMENT; CITY OF NEW YORK
ENVIRONMENT AL CONTROL BOARD;
THE UNION SAVINGS BANK OF
WESTCHESTER COUNTY

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 **February 19, 2026 at 11:00 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.

10/7/2025
DATE

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

APPLICATION:

CHECK IF APPROPRIATE:

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input checked="" type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

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