

CPW Townhouse LLC v West 70th Owners Corp.

2025 NY Slip Op 33997(U)

October 7, 2025

Supreme Court, New York County

Docket Number: Index No. 850329/2024

Judge: Francis A. Kahn III

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. FRANCIS A. KAHN, III PART 32

Justice

INDEX NO. 850329/2024

CPW TOWNHOUSE LLC,

MOTION DATE

Plaintiff,

MOTION SEQ. NO. 003

- v -

WEST 70TH OWNERS CORP., SEPI REALTY LLC,ASM
SPV, L.P., RUSSELL ABRAMS, SANDRA PIEDRABUENA,
NEW YORK STATE DEPARTMENT OF TAXATION AND
FINANCE, NEW YORK CITY DEPARTMENT OF FINANCE,
ENVIRONMENTAL CONTROL BOARD OF THE CITY OF
NEW YORK, MARCUS ABRAMS, LISA ABRAMS, BEZNIK
MALECAJ, JOHN DOE NO. 1 TO JOHN DOE NO. 30,
INCLUSIVE, THE LAST THIRTY NAMES BEING
FICTITIOUS AND UNKNOWN TO PLAINTIFF, THE
PERSONS OR PARTIES INTENDED BEING THE
TENANTS, OCCUPANTS, PERSONS OR
CORPORATIONS,

DECISION + ORDER ON
MOTION

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 84, 85, 86, 87, 88,
89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 107, 108, 109, 110, 111, 112,
113, 114, 115, 116, 117, 118, 119, 120, 121, 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

were read on this motion to/for JUDGMENT - SUMMARY

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

This is an action to foreclose on a an amended, restated, consolidated and reaffirmed mortgage
encumbering a parcel of real property located at 450 West 70th Street, New York, New York. The
mortgage secures a loan in the original principal amount of \$7,250,000.00 given by Defendant West 70th
Owners Corp. ("West") to non-party Axos Bank ("Axos"). The indebtedness is memorialized by an
amended, restated, consolidated and reaffirmed note the same date as the mortgage. The loan
documents are dated February 15, 2022, and were executed by Defendant Sandra Piedrabuena
("Piedrabuena") as an Authorized Signatory of West. Concomitantly with these documents,
Piedrabuena and Defendant Russell Abrams ("Abrams") executed a guaranty of the indebtedness.
Plaintiff commenced this action and pled in its amended complaint, inter alia, that Defendants defaulted
in repayment of the loan. Defendants West, Piedrabuena and Abrams answered but pled no affirmative
defenses. Now, Plaintiff moves for inter alia summary judgment against West, Piedrabuena and
Abrams, for a default judgment against the non-appearing parties, appointing a referee to compute and
to amend the caption. Defendants West, Piedrabuena and Abrams oppose the motion and cross-move
pursuant CPLR §3025[b] for leave to amend their answer to assert, inter alia, the affirmative defenses of

equitable estoppel, failure to name a necessary party, impossibility and laches. Plaintiff opposes the cross-motion.

In moving for summary judgment, Plaintiff was required to establish *prima facie* entitlement to judgment as a matter of law though proof of the mortgage, the note, and evidence of Defendants' default in repayment (*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]; *Fortress Credit Corp. v Hudson Yards, LLC*, 78 AD3d 577 [1st Dept 2010]). Proof supporting a *prima facie* case on a motion for summary judgment must be in admissible form (*see* CPLR §3212[b]; *Tri-State Loan Acquisitions III, LLC v Litkowski*, 172 AD3d 780 [1st Dept 2019]). A plaintiff may rely on evidence from persons with personal knowledge of the facts, documents in admissible form and/or persons with knowledge derived from produced admissible records (*see eg U.S. Bank N.A. v Moulton*, 179 AD3d 734, 738 [2d Dept 2020]). No specific business records must be proffered, provided the admissibility requirements of CPLR 4518[a] are fulfilled and the records evince the facts for which they are relied upon (*see eg Citigroup v Kopelowitz*, 147 AD3d 1014, 1015 [2d Dept 2017]).

Plaintiff's motion was supported with an affirmation from Thomas Hooker, ("Hooker"), a Manager of Plaintiff. Hooker avers that his submission was based upon a review of the records of Plaintiff and Axos, as well as his knowledge of Plaintiff's record keeping practices. Hooker's affidavit laid a proper foundation for the admission of the records of Plaintiff into evidence under CPLR §4518 by sufficiently showing that the records relied upon "reflect[ed] a routine, regularly conducted business activity, and that it be needed and relied on in the performance of functions of the business", "that the record [was] made pursuant to established procedures for the routine, habitual, systematic making of such a record" and "that the record [was] made at or about the time of the event being recorded" (*Bank of N.Y. Mellon v Gordon*, 171 AD3d 197, 204 [2d Dept 2019]; *see also Bank of Am v Brannon*, 156 AD3d 1 [1st Dept 2017]). The records of prior servicers, like Axos, were also admissible since Hooker established that those records were received from the makers and incorporated into the records Plaintiff kept and that it routinely relied upon such documents in its business (*see eg U.S. Bank N.A. v Kropp-Somoza*, 191 AD3d 918 [2d Dept 2021]). Further, the records referenced by Hooker were annexed to the moving papers (*cf. Deutsche Bank Natl. Trust Co. v Kirschenbaum*, 187 AD3d 569 [1st Dept 2020]).

Proof of the loan documents, including the note and mortgage, was established in the first instance through the affirmation of Hooker and the annexed documents (*cf. 938 St. Nicholas Ave. Lender LLC v 936-938 Cliffcrest Hous. Dev. Fund Corp.*, 218 AD3d 417 [1st Dept 2023]). A defendant's default, "is established by (1) an admission made in response to a notice to admit, (2) an affidavit from a person having personal knowledge of the facts, or (3) other evidence in admissible form" (*Deutsche Bank Natl. Trust Co. v McGann*, 183 AD3d 700, 702 [2d Dept 2020]). Hooker's affidavit and the loan history demonstrated the mortgagor's default in repayment under the note (*see eg ING Real Estate Fin. (USA) LLC v Park Ave. Hotel Acquisition, LLC*, 89 AD3d 506 [1st Dept 2011]; *see also Bank of NY v Knowles*, *supra*; *Fortress Credit Corp. v Hudson Yards, LLC*, *supra*). Accordingly, Plaintiff established, *prima facie*, its entitlement to summary judgment on its foreclosure claim and for the appointment of a referee to compute.

In opposition, and in support of the cross-motion, Defendants seek to assert affirmative defenses for the first time. Leave to amend a pleading under CPLR §3025[b] is to be freely given "absent prejudice or surprise resulting directly from the delay" (*see e.g. O'Halloran v Metropolitan Transp. Auth.*, 154 AD3d 83 [1st Dept 2017]; *Anoun v City of New York*, 85 AD3d 694 [1st Dept 2011]; *see also Fahey v County of Ontario*, 44 NY2d 934, 935 [1978]). All that need be shown is that "the proffered

amendment is not palpably insufficient or clearly devoid of merit” (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499 [1st Dept 2010]). To justify denial of such a motion, the opposing party “must overcome a heavy presumption of validity in favor of [allowing amendment]” (*McGhee v Odell*, 96 AD3d 449, 450 [1st Dept 2012]).

Concerning the proposed defense of equitable estoppel, this doctrine exists “to prevent the infliction of unconscionable injury and loss upon one who has relied on the promise of another” (*American Bartenders School v 105 Madison Co.*, 59 NY2d 716, 718 [1983]; *see also Nassau Trust Co. v Montrose Concrete Prods. Corp.*, 56 NY2d 175, 184 [1982]). “To establish an estoppel, a party must prove that it relied upon another's actions, its reliance was justifiable, and that, in consequence of such reliance, it prejudicially changed its position” (*Flushing Unique Homes, LLC v Brooklyn Fed. Sav. Bank*, 100 AD3d 956, 958 [2d Dept 2012]). Absence of any of these essential elements renders an estoppel defense deficient (*see Fundamental Portfolio Advisors, Inc. v Tocqueville Asset Mgmt., L.P.*, 7 NY3d 96, 106 [2006]). In this case, Defendants do not explain, much less plead, what actions by Plaintiff were relied on to its detriment (*cf. King Penguin Opportunity Fund III, LLC v Spectrum Group Mgt. LLC*, 187 AD3d 688, 689 [1st Dept 2020]; *Marine Midland Bank-Western v. Center of Williamsville, Inc.*, 48 AD2d 764 [4th Dept 1975]).

The claim Plaintiff failed to join an indispensable party is facially insufficient. CPLR §1001[a] defines a necessary party as “[p]ersons who ought to be parties if complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action shall be made Plaintiffs or Defendants.” In this context, Article 13 of the Real Property Actions and Proceedings Law defines necessary, representative, and permissive defendants to a foreclosure action (RPAPL §§1311, 1312, 1313). “In making the determination whether an absentee need be joined as an indispensable party, it must be decided if the proposed party has such an interest in the litigation that the court cannot settle the controversy without necessarily considering the interests of the proposed party” (*see Joanne S. v Carey*, 115 AD2d 4, 7 [1st Dept 1986]). “Moreover, dismissal for nonjoinder is a last resort . . . [and] the factors mentioned in CPLR 1001 (b) [must] tip overwhelmingly in favor of dismissal” (*JPMorgan Chase Bank, Natl. Assn. v Salvage*, 171 AD3d 438, 439 [1st Dept 2019]). In the absence of such a party, the preferred remedy is joinder of the missing party (*see NRZ Pass-Through Trust IV v Tarantola*, 192 AD3d 819 [2d Dept 2021]). Here, Defendants have not identified which parties are absent and why they are indispensable.

A defense of impossibility also is patently deficient as Defendants failed to plead that “‘destruction of the subject matter’ of the loan agreements [occurred]’ or that their reasons for performing under the loan agreements ceased to exist” (*Pentagon Fed. Credit Union v Popovic*, 217 AD3d 480, 481 [1st Dept 2023]).

The right to assert a defense of laches was expressly waived under sections 7.3[c] and 8.6[b] of the mortgage (*see Weiss v Phillips*, 157 AD3d 1 [1st Dept 2017]; *Parasram v DeCambre*, 247 AD2d 283 [1st Dept 1998]; *Chemical Bank New York Trust Co. v Batter*, 31 AD2d 802 [1st Dept 1969]; *see also U.S. Bank N.A. v Kahn Prop. Owner, LLC*, 206 AD3d 855, 858 [2d Dept 2022]; *Bernstein v Dubrovsky*, 169 AD3d 410 [1st Dept 2019]). “Courts have held that the waiver of the right to assert defenses, counterclaims or setoffs is enforceable and thus not violative as against public policy” (*Weiss v Phillips*, supra at 10).

As such, all the proffered affirmative defenses are clearly devoid of merit and the cross-motion to amend is denied.

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

ORDERED that Defendants' cross-motion is denied in its entirety; and it is further

ORDERED that **Paul Sklar, Esq., 551 5th Avenue, Ste 2200, New York, New York 10176-0001- (212) 972-8845** 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 the mortgage and any necessary loan documents related to such Mortgage be, and the same hereby are, reformed by substituting therein the intended Legal Description of the mortgaged premises, which is the correct description, in place of the mortgage premises description which is erroneous (a copy of the Intended Mortgaged premises is attached); 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 the JOHN DOE defendants are excised as parties and the caption is amended as follows:

SUPREME COURT STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

CPW TOWNHOUSE LLC,

Plaintiff,

-against-

WEST 70TH OWNERS CORP., SEPI REALTY LLC,
ASMS PV, L.P., RUSSELL ABRAMS, SANDRA
PIEDRABUENA A/K/A SANDRA ABRAMS A/K/A
SANDRAPIEDRABUENA ABRAMS, NEW
YORKSTATEDEPARTMENTOFTAXATION
AND FINANCE, NEW YORK CITY DEPARTMENT
OFFINANCE, ENVIRONMENTALCONTROL
BOARDOFTHECITY OF NEW YORK, MARCUS
ABRAMS, LISA ABRAMS, individually and as
trustee for the LISA MARIEABRAMSREVOCABLE
TRUST, BESNIK MALECAJ

Defendants.

-----X

and it is

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 25, 2026, at 10:00 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:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

CHECK IF APPROPRIATE:

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

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