

**Emigrant Bank v Narkis**

2025 NY Slip Op 34465(U)

November 20, 2025

Supreme Court, New York County

Docket Number: Index No. 850169/2024

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. 850169/2024

EMIGRANT BANK,

MOTION DATE

Plaintiff,

MOTION SEQ. NO. 001

- v -

CHAIM NARKIS, E. Z. LOR REALTY LLC A/K/A E.Z.LOR REALTY LLC A/K/A LOR REALTY COMPANY, LLC, EYAL ZIVYON A/K/A EYAL ZVION, JAMES OSHINS, PATRICK BATCHOUKOU, BOARD OF MANAGERS OF THE OLMSTED CONDOMINIUM, BOARD OF MANAGERS OF THE 392 CENTRAL PARK WEST CONDOMINIUM, SHMUEL BERGSTEIN A/K/A BARRY BERGSTEIN, SHLOMO NARKIS, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, NEW YORK CITY DEPARTMENT OF FINANCE, JOHN DOE #1 THROUGH JOHN DOE #20,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76

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 six parcels of real property identified as follows: (1)382 Central Park West, Unit 4T, NY, NY, (2) 392 Central Park West Unit, 2E, NY, NY, (3) 392 Central Park West, Unit 7V, NY, NY, (4) 400 Central Park West, Unit 12U, NY, NY, (5) 400 Central Park West, Unit 14B, NY, NY and (6) 555 West 23rd Street, NY, NY. The mortgage, dated May 14, 2018, was given by Defendant EZ Lor Realty LLC ("EZ Lor") to non-party Emigrant Mortgage Company ("Emigrant Mortgage"). The note and mortgage were executed by Defendant Shmuel Bergstein a/k/a Barry Bergstein ("Bergstein") as Authorized Signatory of EZ Lor. Concomitantly with these documents, Defendant Eyal Zivyon a/k/a Eyal Zvion ("Zivyon") executed, via Bergstein, a limited guaranty of the indebtedness.

Apparently, Defendant EZ Lor transferred title of three of the encumbered premises<sup>1</sup> by deeds in lieu of foreclosure, dated July 6, 2020, to Defendant Chaim Narkis ("Narkis"). Less than a month later, EZ Lor Zivyon commenced two actions to inter alia void these deeds pursuant to Article 15 of the Real Property Actions and Proceedings Law (see NY Cty Index Nos 155528/2020 and 155714/2020).

<sup>1</sup> 382 Central Park West, Unit 4T, 392 Central Park West, Unit 2E, and 392 Central Park West Unit 7V.

Defendant Narkis' motions to dismiss the complaints in both actions, as well as EZ Lor's cross-motions to amend, are *sub judice* before Justice Lori S. Sattler.

Plaintiff commenced this action on May 24, 2024, wherein it pled in the that Defendants defaulted in repayment of the indebtedness. All the Defendant defaulted in appearing. Plaintiff, EZ Lor and Zivyon executed a forbearance agreement, dated October 7, 2024, wherein the Mortgagors acknowledged the indebtedness, the validity of the loan documents and their default in repayment thereunder. Plaintiff agreed to forego prosecution of the foreclosure action during the forbearance period which expired by its express terms on December 1, 2024. The agreement states that Plaintiff was entitled to resume prosecution of this action "without additional notice" to Mortgagors. Nearly four months after that agreement expired, Plaintiff moved for a default judgment against the non-appearing Defendants, appointing a referee to compute and to amend the caption. Defendants EZ Lor and Zivyon opposed the motion and cross-moved for leave to file a late answer pursuant to CPLR §3012[d] and to stay this action pending the determination of the motions in the quiet title actions. Plaintiff opposed 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 Greg Williamson ("Williamson"), an Assistant Treasurer for Plaintiff, along with corroborating documentation, 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 [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*, 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 [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]).

In opposition to the motion, and in support of its cross-motion, Defendants proffered no viable excuse for their failure to appear or answer. Indeed, in the forbearance agreement, EZ Lor and Zivyon acknowledged they "have no defense, counterclaim, or set-off which could provide a basis to contest or object to the relief sought in the Foreclosure Action initiated by Emigrant, including the absence of any basis to object to or seek a stay of any future foreclosure sale". This provision defeats any proffered excuse or claimed meritorious defense to the action. As such, the branch of the cross-motion to compel

Plaintiff to accept a late answer from Defendants pursuant to CPLR §3012[d] fails (*see eg Bank of N.Y. Mellon v Tedesco*, 174 AD3d 490, 491 [2d Dept 2019]).

Concerning the request for a stay, “[t]o impose a stay in one action pending the resolution of a related action, there must be a complete identity of parties, claims, and reliefs sought in the two actions” (*Green Tree Fin. Servicing Corp. v Lewis*, 280 AD2d 642, 643 [2d Dept 2001]). Contrary to Movants’ assertion, the pendency of the quiet title action does not satisfy this standard. In any event, since the disputed deeds post-date the recording of the mortgage herein, it would seem for the purposes of this action, without holding same, that the dispute as to ownership of the premises is inconsequential to continuation of this action (*see Campbell v Smith*, 309 AD2d 581 [1st Dept 2003][“[a] recorded mortgage itself gives notice of an encumbrance on the property”]; *Goldstein v Gold*, 106 AD2d 100, 102 [2d Dept 1984][“a purchaser stands in the shoes of the vendor and can obtain no better title than the vendor”]; *see also* RPL §291; *see; Varon v Annino*, 170 AD2d 445 [2d Dept 1991]; *Empire Trust Co. v Park-Lexington Corp.*, 243 AD 315 [1<sup>st</sup> Dept 1934]).

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

ORDERED that **Elaine Shay, Esq., 800 Third Avenue, Ste. 2800, New York, New York 10022, 212-520-2690** 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 any request to retain a "Doe" Defendants is denied and these Defendants are stricken as the New York County Clerk will not accept a judgment for filing with a “Doe” defendant in the caption; 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  
EMIGRANT BANK,

Plaintiff,

-against-

CHAIM NARKIS, E. Z. LOR REALTY LLC a/k/a  
E.Z.LOR REALTY LLC a/k/a LOR REALTY COMPANY,  
LLC, EYAL ZIVYON a/k/a EYAL ZVION, JAMES A.  
OSHINS, PATRICK N. BATCHOUKOU, BOARD OF  
MANAGERS OF THE OLMSTED CONDOMINIUM, BOARD  
OF MANAGERS OF THE 392 CENTRAL PARK WEST  
CONDOMINIUM, SHMUEL BERGSTEIN a/k/a BARRY  
BERGSTEIN, SHLOMO NARKIS, NEW YORK STATE  
DEPARTMENT OF TAXATION AND FINANCE, NEW YORK  
CITY DEPARTMENT OF FINANCE,

Defendants.  
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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/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 **March 26, 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](mailto: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.

11/20/2025

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.