

Board of Directors of Bridle Ridge HOA, Inc. v Qureishi
2025 NY Slip Op 35406(U)
March 7, 2025
Supreme Court, Westchester County
Docket Number: Index No. 64107/2023
Judge: Janet C. Malone
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To commence the statutory time period
For appeals as of right (CPLR 5513[a]),
you are advised to serve a copy of this
order, with notice of entry, on all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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BOARD OF DIRECTORS OF BRIDLE RIDGE HOA, INC.

INDEX NO. 64107/2023

Plaintiff,

DECISION AND ORDER

-against-

ANWER K. QUREISHI, LUISA QUREISHI a/k/a
LUISA ORTIZ-QUREISHI; AJAX MORTGAGE LOAN
TRUST 2019-G, MORTGAGE-BACKED SECURITIES,
SERIES 20190G, BY U.S. BANK NATIONAL
ASSOCIATION, AS INDENTURE TRUSTEE;
NYS DEPARTMENT OF TAXATION AND
FINANCE,

MOTION SEQ. NO. 2

Defendants.

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MALONE, J.

In this condominium lien foreclosure action, commenced on July 25, 2023, Plaintiff seeks a judgment for all outstanding unpaid condominium common charges and other assessments; to enforce a lien filed July 12, 2023 in the amount of \$18,380.48 for unpaid condominium common charges filed with the Westchester County Clerk (NYSCEF Doc. No. 38); to foreclose on Defendants Answer K. Qureishi, Luisa Qureishi A/K/A Luisa Ortiz-Qureishi (“the Qureishis”) condominium unit located at 3145 Stoneleigh Court, Yorktown Heights, NY 10598 (the “property”); to sell the property subject to the first mortgage of Defendant Ajax Mortgage Loan Trust 2019-G (“Ajax”); to obtain additional unpaid common charges, attorney’s fees, assessments and other charges due through the foreclosure sale date pursuant to the Condominium by-Laws and obtain a money judgment for all outstanding amounts due (Summons and Complaint, NYSCEF Doc. No. 35). None of the Defendants answered the complaint or otherwise appeared.

Now before the Court is Plaintiff’s unopposed motion (Sequence No. 2) seeking an Order pursuant to CPLR 3215 for a default judgment against non-appearing Defendants Ajax and New

York State Department of Taxation and Finance (“NYS”); a default money judgment in the amount of \$22,330.48 against the non-appearing Qureishis; a judgment of foreclosure and sale; the appointment of a referee to sell the property, which is the subject of this action; and such other and further relief as the Court deems proper (NYSCEF Doc. No 31-50).

Upon a review of the foregoing moving papers, the motion is determined as follows:

“On a motion for leave to enter a default judgment, pursuant to CPLR § 3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting party’s default in answering or appearing (see CPLR § 3215[f]; *Allstate Ins. Co. v Austin*, 48 A.D.3d 720, 720); *Atlantic Cas. Ins. Co. v RJNJ Services, Inc.* 89 A.D.3d 649 (2nd Dept. 2011)). Nonetheless, “CPLR § 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and failure to appear have been shown. Some proof of liability is also required to satisfy the Court as to the prima facie validity of the uncontested cause of action.” *Joosten v Gale*, 129 A.D.2d 531, 535 (1st Dept. 1987); *see Martinez v Reiner*, 104 A.D.3d 477 (1st Dept. 2013).

Plaintiff establishes prima facie entitlement to hold all non-appearing Defendants, including the Qureishis, in default by submitting proof of service the summons and complaint; additional notices as required by CPLR 3215(g)(3)(i); service of the notice of motion (NYSCEF Doc. Nos. 39-42; 50); and all the Defendants failure to answer as well as the Qureishis’ non-military status (NYSCEF Doc. No. 44).

Plaintiff also establishes proof of the facts constituting the claim through Jamie Sweeney, of Katonah Management Services, Inc. (“KMS”) (Affirmation, NYSCEF Doc. No. 45), who is authorized to speak of Plaintiff’s behalf (*see* Management agreements between KMS and Plaintiff dated October 4, 2017, September 15, 2020 and November 21, 2023, NYSCEF Doc. Nos. 46-48), evidence of Plaintiff’s authority to collect common charges (Bylaws and Declaration, NYSCEF Doc. Nos. 36-37), and owner’s failure to pay (Lien, NYSCEF Doc. No. 38).

Therefore, Plaintiff’s motion for a default judgment is granted.

Plaintiff further requests that this Court forego the appointment of a referee to calculate the amount due and owing to Plaintiff and enter a money judgment on the lien without the appointment of referee because the amount due, \$18,340.48, is minimal, and is reflected on the account statement as of June 1, 2023. *See* Real Property Law (“RPL”) § 339(aa).

The Court finds Plaintiff's reliance on RPL §339(aa) misplaced as this section, provides for the statutory authorization for the commencement of a foreclosure action based on a lien for common charges. More applicable here is RPAPL §1321 which provides that "if the defendant fails to answer... upon motion of the plaintiff, the court shall ascertain and determine the amount due, or direct a referee to compute the amount due to the plaintiff and to such of the defendants as are prior incumbrancers of the mortgaged premises, and to examine and report whether the mortgaged premises can be sold in parcels and, if the whole amount secured by the mortgage has not become due, to report the amount thereafter to become due."

RPAPL §1321(2) also provides that when moving for judgment, "the plaintiff shall show whether any of the defendants who have not appeared are absentees." Finally, RPAPL § 1309 permits a plaintiff to seek an expedited judgment of foreclosure and sale when the property is abandoned and vacant and provides the mechanism to seek such request.

Here, Plaintiff has failed to establish entitlement to an expedited judgment of foreclosure and sale as Plaintiff has failed to show that the Qureishis are absentee or that the property is abandoned or vacant.

Additionally, the account history submitted by Plaintiff ends with a June 1, 2023 balance of \$18,380.48 (NYSCEF Doc. No. 49); and upon review, the Qureishis did make payments between December 27, 2021 and June 1, 2023 and Plaintiff fails to provide any evidence of any payments made by the Qureishis from July 2023 through the filing date of this motion.

Plaintiff's application for a money judgment in the amount of \$22,380.48, which includes the lien of \$18,380.48 and seeks \$4000,00 in legal fees is denied as Plaintiff failed to provide any invoices or a retainer agreement.

Accordingly, it is hereby

ORDERED, that all non-appearing defendants are in default; and it is further

ORDERED, that pursuant to RPAPL 1321, **JUDITH REARDON, ESQ., FIDUCIARY NO. 484164, 61 OSLO DRIVE, YORKTOWN HEIGHTS, NY 10598-3349 (914) 666 – 5566; JUDITH@REARDON-LAW.COM** is hereby appointed Referee to ascertain and compute the amount to due plaintiff for common charges, assessments, miscellaneous charges, late fees, fines, penalties, legal fees and additional charges incurred by plaintiff as a result of the default by unit

owner in the payment of common charges, assessments, storage fees, late fees, legal fees and additional charges, and other monies due under the Condominium Documents from December 17, 2021, as well as the amount of ongoing monthly common charges, assessments to determine amounts due on the first mortgage, if any, legal fees and additional charges; and to examine whether the subject premises can be sold in one or more parcels; and it is further

ORDERED that by accepting this appointment, the Referee certifies that she is in compliance with Part 36 of the Rules of the Chief Judge, 22 NYCRR Part 36, including but not limited to, § 36.2 (“Disqualification from Appointment”) and § 36.2 (d) (“Limitation on Appointments Based upon Compensation”); and it is further

ORDERED that plaintiff’s motion to award a money judgment in favor of plaintiff and against defendant is granted, and plaintiff is awarded a judgment against defendant in an amount to be determined by the referee, including charges and fees that may subsequently come due through the date of the unit’s auction; and it is further

ORDERED, that the Referee is entitled to a fee for \$350.00 for the computation report; \$250.00 for any sale that is canceled on less than 24 hours’ notice to the Referee; \$250.00 for any third party closing and \$500.00 upon the sale; and it is further

ORDERED, that the Referee is prohibited from accepting or retaining any funds for himself/herself or paying funds to himself/herself, without compliance with Part 36 of the Rules 7 of the Chief Administrative Judge; and it is further

ORDERED, that the Referee shall complete and submit the computation report within thirty (30) days of the date of the Order of Reference; and it is further

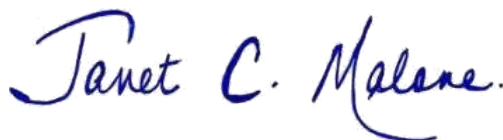
ORDERED, that Plaintiff shall make application for Judgment of Foreclosure and Sale no later than ninety (90) days of the date of this Order, unless the Court for good cause shown grants extension; it is further

[INTENTIONALLY LEFT BLANK]

ORDERED, that Plaintiff shall serve a copy of this Decision and Order with Notice of Entry on the owner of the equity of redemption, any tenants named in this action, and any and all other parties or persons entitled to service or notice, including the Referee appointed herein, with proof of service filed on NYSCEF within five days thereafter.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York
March 7, 2025



HON. JANET C. MALONE
Justice of the Supreme Court