

**Emigrant Funding Corp. v 18 W. 16th St. Corp.**

2026 NY Slip Op 30168(U)

January 13, 2026

Supreme Court, New York County

Docket Number: Index No. 850520/2023

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. 850520/2023

MOTION DATE

MOTION SEQ. NO. 001

EMIGRANT FUNDING CORPORATION,

Plaintiff,

- v -

DECISION + ORDER ON MOTION

18 W. 16TH STREET CORP., SHERYL SIEGEL, MARK SIEGEL, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, NEW YORK CITY PARKING VIOLATIONS BUREAU, NEW YORK CITY DEPARTMENT OF FINANCE, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, CAPITAL ONE BANK (USA) NA, CAVALRY SPV I LLC, JOHN DOE #1 THROUGH JOHN DOE #20 THE LAST TWENTY NAMES BEING FICTITIOUS AND UNKNOWN TO PLAINTIFF, THE PERSONS OR PARTIES INTENDED BEING THE TENANTS, OCCUPANTS, PERSONS OR CORPORATIONS, IF ANY, HAVING OR CLAIMING AN INTEREST IN OR LIEN UPON THE PREMISES,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83

were read on this motion to/for

JUDGMENT - SUMMARY

The present matter is an action to foreclose on a consolidated, extended and modified mortgage encumbering a parcel of real property located at 18 West 16th Street, New York, New York. The mortgage secures a loan in the original principal amount of \$900,000.00 given by Defendant 16 W. 16th Street Corp ("Mortgagor") to Plaintiff Emigrant Funding Corporation ("Emigrant") which is memorialized by an amended and restated note. The mortgage and note, both dated May 31, 2013, were executed by Defendant Sheryl Siegel as Vice-President of the Mortgagor. Concomitantly with the loan documents, Defendants Sheryl Siegel and Mark Siegel executed guarantees of payment of the indebtedness. On March 19, 2019, Mortgagor and Emigrant executed an extension of the maturity date as provided for in the note. Thereafter, the parties executed forbearances and amendments to the loan because of the Covid-19 pandemic.

Plaintiff commenced this action, and pled in the complaint, inter alia, Defendants defaulted in repayment of the indebtedness beginning on or about November 1, 2022. The Mortgagor and Guarantor Defendants answered and pled thirteen affirmative defenses, including lack of standing and criminal usury. Now, Plaintiff moves for inter alia summary judgment against the appearing Defendants, for a default judgment against the non-appearing parties, striking the appearing Defendants' affirmative defenses, appointing a referee to compute and to amend the caption. In a clumsy and ill-advised effort, Plaintiff lumped an application for the appointment of a temporary receiver into its motion. Defendants oppose the 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 [1<sup>st</sup> Dept 2020]; *Bank of NY v Knowles*, 151 AD3d 596 [1<sup>st</sup> Dept 2017]; *Fortress Credit Corp. v Hudson Yards, LLC*, 78 AD3d 577 [1<sup>st</sup> 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 [1<sup>st</sup> Dept 2019]). Also, based on the affirmative defenses pled, Plaintiff was required to demonstrate its standing (see *eg Wells Fargo Bank, N.A. v Tricario*, 180 AD3d 848 [2<sup>nd</sup> Dept 2020]). 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 [1<sup>st</sup> 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]).

On the branches of the motion for summary judgment and a default judgment and appointment of a referee, Plaintiff established the mortgage, note, and evidence of Mortgagor's default in repayment via the affirmation of Maryann Monteserrato, ("Monteserrato"), an Assistant Vice President of Plaintiff, which was sufficiently supported by admissible business records annexed thereto (see *eg Bank of NY v Knowles*, 151 AD3d 596 [1<sup>st</sup> Dept 2017]; *Fortress Credit Corp. v Hudson Yards, LLC*, 78 AD3d 577 [1<sup>st</sup> Dept 2010]). Concerning standing, since Plaintiff was lender when the consolidated note and mortgage were given, it was in direct privity with the mortgagor when the action was commenced, and, therefore, unquestionably had standing (see generally *Wilmington Sav. Fund Socy., FSB v Matamoro*, 200 AD3d 79, 90-91 [2d Dept 2021]). Likewise, the submissions proved that all the statutory and contractual pre-foreclosure requisites were fulfilled (see generally *United States Bank Trust, N.A. v Mehl*, 195 AD3d 1054 [2d Dept 2021]; *Citimortgage, Inc. v Ustick*, 188 AD3d 793, 794 [2d Dept 2020]).

Accordingly, Plaintiff established its *prima facie* entitlement to summary judgment with proof of the mortgage, note, and evidence of mortgagor's default in repayment and its standing. This shifted the burden to Defendants to raise a bona fide issue of fact as to one of their affirmative defenses to foreclosure (see *Bernstein v Dubrovsky*, 169 AD3d 692 [1<sup>st</sup> Dept 2019]).

In opposition, Defendants do not deny the validity of the loan documents or their default in repayment. As such, uncontradicted facts established in support of a motion for summary judgment are "deemed to be admitted" (*Bank of Am NA v Brannon*, 156 AD3d, 1, 6 [1<sup>st</sup> Dept 2017]). The sole argument proffered by Defendants in support of its affirmative defenses is that the rate of interest in the note is criminally usurious under Penal Law §§ 190.40 and 190.42 as well as General Obligations Law §5-521[3]. "To successfully raise the defense of usury, a debtor must allege and prove by clear and convincing evidence that a loan or forbearance of money, requiring interest in violation of a usury statute, was charged by the holder or payee with the intent to take interest in excess of the legal rate" (*Blue Wolf Capital Fund II, L.P. v American Stevedoring Inc.*, 105 AD3d 178, 183 [1<sup>st</sup> Dept 2013]). Ordinarily, an affirmative defense of usury fails as it is not available to a corporation or an individual guarantor of such an entity's debt (see General Obligations Law §5-521; *Schneider v Phelps*, 41 NY2d 238, 242; *Bankers Trust Co. v Braten*, 184 AD2d 239 [1st Dept 1992]). However, criminal usury is available to both individual and corporate borrowers (see *Adar Bays, LLC v GeneSYS ID, Inc.*, 37 NY3d 320, 330 [2021]). A loan is criminally usurious when it imposes interest at "a rate exceeding twenty-five per centum per annum or the equivalent rate for a longer or shorter period." (Penal Law §190.40; see also 1 Bergman on New York Mortgage Foreclosures § 6.03[7] [2026]).

The amended and restated note is not criminally usurious on its face as it contains an interest rate of 4.875% per annum and the extension agreement increased that rate to 6.25% per annum (*see Blue Wolf Capital Fund II, L.P. v American Stevedoring Inc.*, 105 AD3d 178, 182 [1<sup>st</sup> Dept 2013]). Further, upon occurrence of a default, the note provides that “Payee shall be entitled to receive and Maker shall pay interest on the entire Debt at the rate of twenty-four (24%) percent per annum or at the maximum rate of interest which Maker may by law pay, whichever is lower”. In any event, since the overwhelming amount of interest accrued after Defendants’ admitted default, “[t]he defense of usury does not apply where the terms of a promissory note impose a rate of interest in excess of the statutory maximum only after maturity of the note” (*Klapper v Integrated Agricultural Management Co.*, 149 AD2d 765, 767 [3d Dept 1989], *citing Flynn v Dick*, 13 AD2d 756 [1<sup>st</sup> Dept 1961]).

Defendants’ argument that “Emigrant is attempting to collect interest that amounts to \$48.13% of the principal balance” is misplaced. Defendants reach this ratio by, *inter alia*, comparing the total principal balance with the total interest to be collected. However, this logic is completely flawed. The quotient of this calculation does not derive a “per annum” interest rate as it omits to divide the interest by the term over which it was calculated<sup>1</sup>. Defendants’ attempt to fold the contract late fees into its arithmetic is also unavailing. “As a matter of uncontradicted case law, late charges are not computable as interest and do not run afoul of usury proscriptions. Stated in parallel terms, a late charge is neither a loan nor a forbearance so that the usury statute does not apply” (2 Bergman on New York Mortgage Foreclosures § 20.04[c] [2026]).

All the other affirmative defenses were abandoned as specific legal arguments were not proffered in support of same (*see U.S. Bank N.A. v Gonzalez*, 172 AD3d 1273, 1275 [2d Dept 2019]; *Flagstar Bank v Bellafore*, 94 AD3d 1044 [2d Dept 2012]; *Wells Fargo Bank Minnesota, N.A v Perez*, 41 AD3d 590 [2d Dept 2007]).

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 [1<sup>st</sup> Dept 2016]). The branch of Plaintiff’s motion to amend the caption is granted only to the extent provided *infra* (*see generally CPLR §3025; JP Morgan Chase Bank, N.A. v Laszlo*, 169 AD3d 885, 887 [2d Dept 2019]).

Accordingly, it is

ORDERED that Plaintiff is awarded summary judgment against the appearing Defendants and a default judgment against the non-appearing defendants; and it is further

ORDERED that that **Clark Whitsett, Esq., 66-05 Woodhaven Blvd., Rego Park, New York 11374, 718-850-0003** 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

<sup>1</sup> “Expressed verbally, the formula to be used in arriving at the effective rate of interest is as follows: Take the annual interest borne by the note, plus the total of all prepaid finance charges (these include points and other charges properly includable as interest, but not to include prepaid interest, and are referred to in *Band Realty* as the “discount”), *with the latter to be divided by the term of the loan in years*” (1 Bergman on New York Mortgage Foreclosures § 6.02[4] [2026][emphasis added]).

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 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 "Doe" Defendants are stricken as the New York County Clerk will not accept a judgment for filing with a "Doe" or "Name Refused" defendant in the caption and the relief requested pursuant to CPLR §306-b is denied; and it is further

ORDERED that the caption shall read as follows:

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

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EMIGRANT FUNDING CORPORATION,

Plaintiff,

-against-

18 W. 16TH STREET CORP., SHERYL K. SIEGEL  
a/k/a SHERYL SIEGEL, MARK E. SIEGEL a/k/a  
MARK SIEGEL, NEW YORK CITY  
ENVIRONMENTAL CONTROL  
BOARD, NEW YORK CITY PARKING  
VIOLATIONS BUREAU, NEW YORK CITY  
DEPARTMENT OF FINANCE,  
NEW YORK STATE DEPARTMENT OF  
TAXATION AND FINANCE, CAPITAL ONE BANK  
(USA) NA, CAVALRY SPV I LLC,

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/supctmanh)); and it is further

ORDERED that the motion for the appointment of a Temporary Receiver is granted without opposition; and it is further

ORDERED that **Gregory M. Laspina, Borchert & Laspina, P.C., 1902 Whitestone Expy, STE 302, Whitestone, NY 11357-3099, 718-767-3333, evincent@blpcny.com** is hereby appointed with the usual powers and directions of a Temporary Receiver for the benefit of Plaintiff of all the rents and profits now due and unpaid or become due during the pendency of this action and issuing out the mortgaged property mentioned located at 518 West 44<sup>th</sup> Street, New York, New York; and it is further

ORDERED that the Temporary Receiver is authorized to take charge and enter into possession of the property; and it is further

ORDERED that before entering her/his duties, the Temporary Receiver shall be sworn to fairly and faithfully discharge the duties committed to him and shall execute to the People of the State of New York and file with the Clerk of the Court an undertaking in the sum of **\$50,000.00** conditioned for the faithful discharge of the duties of Temporary Receiver; and it is further

ORDERED that the Temporary Receiver is hereby directed to demand, collect and receive from the occupants, tenants and licensees in possession of said premises, or other persons liable therefor, inclusive of the mortgagor, all the rents and license fees thereof now due or unpaid or hereafter that become fixed or due and the Temporary Receiver is authorized to institute and carry on all legal proceedings necessary for the protection of said premises or to recover possession of the whole, or any part thereof, and apply to this Court to fix reasonable rental value and license fee value and to compel the tenants and occupants to attorn to the Temporary Receiver; and it is further

ORDERED that the Temporary Receiver may institute and prosecute suits for the collection of rent, license fees and other charges now due or hereafter to become due and fixed, and summary proceedings for the removal of any tenants or licensees or other persons therefrom; and it is further

ORDERED that pursuant to the General Obligation Law section 7-105, anybody holding any deposits or advances of rental as security under any lease or license agreement affecting space in the premises affected by this action shall turn same over to said Temporary Receiver within five (5) days after said Temporary Receiver shall be qualified; and thereupon the said Temporary Receiver shall hold such security subject to such disposition thereof as shall be provided in an Order of the Court to be made and entered in this action; and it is further

ORDERED that anybody in possession of same shall turn over to said Temporary Receiver all rent lists, orders, unexpired and expired leases, agreements, correspondence, notices and registration statements relating to rental spaces or facilities in the premises; and it is further

ORDERED that notwithstanding anything to the contrary contained in this order, the Temporary Receiver shall not, without the further, prior order of this Court, upon prior notice to the plaintiff, make improvements or substantial repairs to the property at a cost in excess of \$5,000.00, *except* that in an emergency, if funds need to be expended in excess of \$5,000.00 or would otherwise require Court intervention, no Court approval will be necessary if counsel for plaintiff agrees in writing that the receiver may make such disbursement; and it is further

ORDERED that the Temporary Receiver shall deposit all monies received by her/him into any FDIC-insured bank where she has an account for this purpose and such account shall show the name of this action and the Temporary Receiver shall furnish plaintiff's attorneys with monthly statements of the receipts and expenditures of the Receivership together with a photocopy of the monthly statements received from said depository and no withdrawals shall be made therefrom except as directed by the Court or on a draft or check signed by the Temporary Receiver; and it is further

ORDERED that the Temporary Receiver is authorized from time to time to rent and lease any part of the premises for terms not exceeding five (5) years or such longer terms as may be required by applicable laws or regulations; to keep the premises insured against loss by damage or fire; to pay the taxes, assessments, water rates, sewer rates, vault rents, salaries of employees, supplies and other charges; to comply with all lawful requirements of any municipal department or other authority of the municipality in which the mortgaged premises are situated and to procure such fire, liability and other insurance as may be reasonably necessary; and it is further

ORDERED, that the tenants, licensees or other persons in possession of said premises attorn to the Temporary Receiver and pay over to the Temporary Receiver all rents, license fees, and other charges of such premises now due and unpaid or that may hereafter become due; and that the defendants be enjoined and restrained from collecting the rents, license fees and other charges of said premises from interfering in any manner with the property or its possession; and from transferring, removing or in any way disturbing and of the occupants or employees; and that all tenants, occupants, employees and licensees of the premises and other persons liable for the rents be and hereby are enjoined and restrained from paying any rent or license fees or other charges for such premises to the defendants, their agents, servants or attorneys; and it is further

ORDERED that the Temporary Receiver is prohibited from incurring obligations in excess of the monies in her hands without further Order of this Court or written consent of Plaintiff's attorney and Plaintiff may advance money, which can be recouped in this litigation; and it is further

ORDERED that the Owner turn over to the Temporary Receiver all rents collected from and after the date of this Order; and it is further

ORDERED that all persons now and hereafter in possession of said premises, or any part thereof, and not holding such possession under valid and existing leases or tendencies, do forthwith surrender such possession to the Temporary Receiver, subject to emergency laws, if any, and it is further

ORDERED that the Temporary Receiver after paying the expenses of the management and care of the said premises as above provided retain the balance of the monies which may come into his hands until the sale of the said premises under the judgment to be entered in this action and/or until further Order of this Court, and it is further

ORDERED that the Temporary Receiver, or any party hereto, may at any time, on proper notice to all parties who have appeared in this action, apply to the Court for further and other instructions or powers necessary to enable the Temporary Receiver to properly fulfill her duties or for interim fee payments; and it is further

ORDERED that the appointed named herein shall comply with Section 35a of the Judiciary Law, Sections 6401-6404 of the CPLR, Section 1325 of RPAPL and Rule 36 of the Chief Judge; and it is further

ORDERED that notwithstanding any other provision of this order, the Temporary Receiver shall not appoint an attorney, managing agent, appraiser, auctioneer or accountant without prior order of this Court, and that the receiver shall apply to the court and file a separate application for appointment of a managing agent, attorney or other managing services pursuant to 36.1 of the Uniform Court Rules.

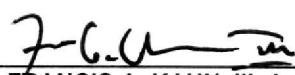
All parties are to appear for a virtual conference via Microsoft Teams on **May 14, 2026 @ 10:20 a.m.** If a motion for judgment of foreclosure and sale has been filed Plaintiff may contact the Part Clerk Tamika Wright ([tswright@nycourt.gov](mailto:tswright@nycourt.gov)) in writing to request that the conference be cancelled. If a motion has not been made, then a conference is required to explore the reasons for the delay.

1/13/2026  
DATE

CHECK ONE:  CASE DISPOSED  DENIED  NON-FINAL DISPOSITION  OTHER

APPLICATION:  GRANTED  SETTLE ORDER  SUBMIT ORDER

CHECK IF APPROPRIATE:  INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT  REFERENCE

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