

**175 W. 76th St. LLC v Lichter Real Estate No. One,
L.L.C.**

2026 NY Slip Op 31466(U)

March 4, 2026

Supreme Court, New York County

Docket Number: Index No. 850233/2024

Judge: Gerald Lebovits

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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. GERALD LEBOVITS PART 07

Justice

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175 WEST 76TH STREET LLC,

Plaintiff,

INDEX NO. 850233/2024

MOTION DATE 11/26/2025

MOTION SEQ. NO. 003

- v -

LICHTER REAL ESTATE NUMBER ONE, L.L.C., SUZETTE SCHWARTZ, SUZETTE SCHWARTZ AS EXECUTOR OF THE ESTATE OF CLAIRE LICHTER, JOSEPH SCHWARTZ AS EXECUTOR OF THE ESTATE OF CLAIRE LICHTER, CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD, NEW YORK CITY DEPARTMENT OF FINANCE, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, NEW YORK SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS, and JOHN DOE #1 THROUGH JOHN DOE # 100,

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 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, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181

were read on this motion for JUDGMENT - SUMMARY.

Kriss & Feuerstein LLP, New York, NY (Jerold C. Feuerstein, Michael J. Bonneville, and Michael A. Giannini of counsel), for plaintiff.

Goldberg Weprin Finkel Goldstein LLP, New York, NY (Matthew Hearle of counsel) for defendants Lichter Real Estate Number One, L.L.C, Suzette Schwartz, Suzette Schwartz as executor of the estate of Claire Lichter, and Joseph Schwartz as executor of the estate of Claire Lichter.

Gerald Lebovits, J.:

Plaintiff, 175 West 76th Street LLC, seeks to foreclose on a Manhattan residential apartment building owned by defendant Lichter Real Estate Number One, L.L.C. to finance the purchase of the building, Lichter obtained a \$37 million loan on which it allegedly defaulted.

Plaintiff now moves for (1) summary judgment on its claims against Lichter; dismissing Lichter’s six affirmative defenses; and appointing a referee to determine damages and whether the property can be sold in one or more parcels; (2) summary judgment dismissing counterclaims alleged by Lichter and defendants Suzette Schwartz, Suzette Schwartz as executor of the estate of Claire Lichter, and Joseph Schwartz as executor of the estate of Claire Lichter (defendants or

Lichter and Schwartz defendants); (3) a temporary receiver to preserve the building and collect rent or profits; (4) amending the caption to include nonparties Bluemercury, Joe and the Juice, and Chopt as defendants; and (5) default judgment against defendants City of New York Environmental Control Board, New York City Department of Finance, New York State Department of Taxation and Finance, New York SMSA Limited Partnership d/b/a Verizon Wireless, Bluemercury, Joe and the Juice, and Chopt. (NYSCEF No. 125 at 1-2 [notice of motion].)

Defendants cross-move for summary judgment dismissing the complaint based on plaintiff's alleged lack of standing and to sever their counterclaims.

The motion is granted in part and denied in part. The cross-motion is denied.

I. Branch of Motion for Summary Judgment and Branch of Cross-Motion for Summary Judgment

Plaintiff brings three causes of action against Lichter: (i) foreclosure on the mortgage; (ii) conditional right to seek a deficiency judgment following foreclosure, as against defendants Suzette Schwartz (individually and as executor of the estate of Claire Lichter) and Joseph Schwartz (as executor of the estate of Claire Lichter), who have guaranteed Lichter's obligations under the note and mortgage; and (iii) foreclosure of personal property owned by Lichter that is located at or related to the building.

Plaintiff previously moved for summary judgment on its claims (mot seq 002). Plaintiff argued that Lichter was indebted on the note to which plaintiff was assignee. According to plaintiff, Lichter originally entered into the note agreement with Capital One, N.A. in October 2018; Capital One then assigned the note to PT ATL SPV Grantor Trust in September 2021; and PT ATL assigned the note to plaintiff in May 2024.

This court denied that motion, because plaintiff did not establish that the 2021 assignment had occurred and therefore that it had standing to pursue its claims. Plaintiff had provided no agreement evincing assignment of the note from Capital One to PT ATL. Instead, plaintiff provided an assignment of *mortgage* and an allonge under which the original lender endorsed the note to PT ATL. (*See 75 W. 76th St. LLC v Lichter Real Estate No. One, L.L.C.*, 87 Misc 3d 601, 604-606 [Sup Ct, NY County 2025].) This court held that an assignment of *mortgage* did not show an assignment of the *note*, as required for plaintiff to have standing. (*See id.* at 604-605.) This court also held that plaintiff had not shown that the allonge between Capital One and PT ATL (executed on an unknown date in May 2024) (1) was executed before AT PTL assigned the note to plaintiff (also in May 2024) (*see id.* at 605-606) or (2) that the allonge became effective by being physically affixed to the note (*see id.* at 607-608).

Plaintiff *now* produces the note-assignment agreement under which original lender assigned the note to PT ATL in September 2021. (*See* NYSCEF No. 153 [note-assignment agreement].) Notably, plaintiff did not provide this note-assignment agreement on motion sequence 002. In addition, plaintiff also provides a May 2024 omnibus assignment under which PT ATL assigned the note to plaintiff in May 2024. (*See* NYSCEF No. 145 [omnibus note

agreement].) This is sufficient to demonstrate standing. And, combined with plaintiff's manager's representation that defendants defaulted under the note, (*see* NYSCEF No. 128 at 12), plaintiff has made out a *prima facie* case for summary judgment.¹

In opposition, defendants do not dispute that Lichter defaulted on the note. Nor do defendants contest the authenticity of the 2021 agreement in their briefing. Only at oral argument did defendants' counsel argue that the signatures on the agreement were "not dated, and the only date that's there is [is] a stamp that was added, I don't know when it was added, but it doesn't, in my review, establish, one, a contemporaneous document from 2021." (NYSCEF No. 181 at 14 oral argument transcript.) This court is unpersuaded that this *post hoc* argument is sufficient to raise an issue of fact about the authenticity of the 2021 agreement. Moreover, defendants do not suggest that, even considering the 2021 note-assignment agreement, plaintiff would still lack standing.

Plaintiff is entitled to summary judgment on liability on its claims against Lichter, with damages to be determine by special referee. The branch of Lichter's cross-motion for summary judgment dismissing plaintiff's claims is denied.

II. Branch of Motion for Summary Judgment to Dismiss Affirmative Defenses

The branch of plaintiff's motion for summary judgment dismissing defendants' affirmative defenses is granted. The first affirmative defense (failure to state a cause of action) and the second affirmative defense (lack of standing) are dismissed for the reasons set forth above. The third (use of confidential land proprietary information), fourth (unclean hands), fifth (alleged violation of prescription against champerty), and sixth (inflation of amounts owed) are dismissed as unopposed.

III. Branch of Summary Judgment to Dismiss Counterclaims and Branch of Cross-Motion to Sever Counterclaims

The branch of plaintiff's motion dismissing the Lichter and Schwartz defendants' counterclaims—breach of confidentiality agreement and unfair competition—is granted.

On their first counterclaim, defendants allege that they disputed alleged late charges and certain payments owed to PT ATL and that those parties entered into an agreement to govern negotiation of the disputes. (NYSCEF No. 58 at 9-10 [answer].) As part of that agreement, PT ATL and defendants agreed that proprietary information and documents about Lichter and its property would remain confidential. (*See id.*) Defendants allege that in breach of that agreement "PT [ATL] wrongfully disclosed [Lichter's] confidential information to potential purchasers of the subject Loan including, without limitation, Plaintiff" and that "[t]his breach of the parties' agreement and the wrongful use of Borrower's confidential information has materially damaged Borrower." (*Id.* at ¶¶ 68-69.)

¹ Because plaintiff produces a valid 2021 assignment agreement between Capital One and PT ATL, this court does not reach the question of whether the note was otherwise assigned by allonge.

In the same vein, defendants allege on their second counterclaim that “PT [ATL] and Plaintiff used [Lichter’s] confidential and proprietary information, the product of Borrower’s time, labor and expenditure, to market and acquire respectively the subject Loan for their own financial benefit, and subsequently profited therefrom, all at the expense of Borrower.” (*Id.* at ¶ 74.)

Defendants’ breach-of-contract counterclaim is dismissed. Plaintiff argues that it was not a party this agreement and therefore could not have breached it. (*See* NYSCEF No. 129 at 17.) Defendant does not oppose this contention. The breach-of-contract counterclaim is dismissed.

Defendants’ unfair competition claim is also dismissed. Plaintiff argues that it had no obligation to keep defendants’ information confidential, particularly once PT ATL assigned the note over to plaintiff. (*See id.*) Defendants do not oppose this contention either. The unfair-competition counterclaim is dismissed.

The branch of plaintiff’s motion to dismiss the counterclaims is granted. The branch of defendants’ cross-motion to sever their counterclaims is therefore denied.

IV. Branch of Motion for a Temporary Receiver

Plaintiff also moves for a temporary receiver. Section 2.04 of the mortgage provides that, in the event of default, while the default continues, and after foreclosure proceedings have begun, the mortgagee may, without notifying “any other party and without regard to the adequacy or inadequacy of any security for the indebtedness secured hereby, forthwith either before or after declaring the unpaid principal of the Note to be due and payable, to the appointment of such a receiver or receivers.” (NYSCEF No. 332 at ¶ 2.04 [mortgage].)

Defendants do not dispute the applicability of section 2.04. They contend that plaintiff lacks standing and therefore is not entitled to a temporary receivership. They also argue that imposing a temporary receiver is plainly unnecessary and will confuse the building’s tenants by making unclear to whom they should pay rent and thus cause them to withhold rent. (NYSCEF No. 174 at 9-10.) Defendants urge this court to exercise its discretion and deny this branch of plaintiff’s motion.

Under Real Property Law § 254 (10), a mortgage clause ““that the holder of this mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver”” means “that the mortgagee . . . in any action to foreclose the mortgage, shall be entitled, without notice and without regard to adequacy of any security of the debt, to the appointment of a receiver of the rents and profits of the premises covered by the mortgage.” (*Accord 1240 El Grant Highway LLC v 1240 Edward Grant LLC*, 240 AD3d 425, 426 [1st Dept 2025] [explaining that under § 254 (10), the appointment of a receiver is required “in the event of any default, so long as the mortgage documents contain language in which the parties agree to the appointment”].) When § 254 (10) applies, the movant need not demonstrate why a receivership is necessary. (*See Naar v I.J. Litwak & Co., Inc.*, 260 AD2d 613, 614 [2d Dept 1999] [holding that a mortgage agreement containing “a covenant which mandates the appointment of a receiver upon default” entitles the

mortgagee “to the appointment of a receiver regardless of proving the necessity for the appointment”). Yet, “a court of equity, in its discretion and under appropriate circumstances, may deny such an application” (*ADHY Advisors LLC v 530 W. 152nd St. LLC*, 82 AD3d 619, 619 [1st Dept 2011].) The burden, however, shifts to the nonmovant to show why the court should not impose a temporary receivership. (*See Shaw Funding, LP v Bennett*, 185 AD3d 857, 858 [2d Dept 2020].)

Plaintiff is entitled to the appointment of a temporary receiver. Section 2.04 of the mortgage provides that in the event of Lichter’s ongoing default, plaintiff may seek the appointment of a temporary receiver. And defendants have not sufficiently shown why tenants’ possible confusion about their rental payments cannot be assuaged after the appointment of a receiver.

The branch of plaintiff’s motion for a receiver is granted.

V. Branch of Motion Amend Caption and Default Judgment

Plaintiff does not explain why it seeks to add nonparties Bluemercury, Joe and the Juice, and Chopt as defendants to the complaint. Nor does plaintiff explain why this court should grant the portion of its motion for default judgment against these proposed defendants and defendants City of New York Environmental Control Board, New York City Department of Finance, New York State Department of Taxation and Finance, and New York SMSA Limited Partnership d/b/a Verizon Wireless. These branches of plaintiff’s motion are denied.

Accordingly, it is

ORDERED that the branch of plaintiff’s motion for summary judgment on its claims against Lichter is granted; and it is further

ORDERED that the issues of plaintiff’s damages and whether the mortgaged property can be sold in one or more parcels is referred to a special referee to hear and report; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk of the General Clerk’s Office for placement at the earliest possible date upon the calendar of the Special Referee’s part which, in accordance with the Rules of that Part, shall assign this matter at the initial appearance to a special referee to hear and report as specified above; and it is further

ORDERED that the branch of plaintiff’s motion for summary judgment dismissing the Lichter and Schwartz defendants’ affirmative defenses is granted; and it is further

ORDERED that the branch of plaintiff’s motion for summary judgment for dismissing the Lichter and Schwartz defendants’ counterclaims is granted; and it is further

ORDERED that the branch of plaintiff’s motion for a temporary receiver is granted, and plaintiff shall settle a proposed order accordingly; it is further

ORDERED that the branch of plaintiff's motion to add Bluemercury, Joe and the Juice, and Chopt as defendants to the action is denied; and it is further

ORDERED that the branch of plaintiff's motion for default judgment is denied; and it is further

ORDERED that the balance of claims in this action is severed and shall continue; and it is further

ORDERED that plaintiff shall serve notice of entry on plaintiff; and shall serve notice of entry on the office of the County Clerk (using the NYSCEF filing event "Notice to the County Clerk - CPLR § 8019 (c)"), which shall enter judgment accordingly.

3/4/2026
DATE


HON. GERALD LEBOVITZ
J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input checked="" type="checkbox"/>
					<input type="checkbox"/>
					OTHER
					REFERENCE