

Lex 54 Condominium by its Bd. of Mgrs. v Schneider

2026 NY Slip Op 31900(U)

April 30, 2026

Supreme Court, New York County

Docket Number: Index No. 159881/2023

Judge: Emily Morales-Minerva

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 42M

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THE LEX 54 CONDOMINIUM BY ITS BOARD OF MANAGERS,

Plaintiff,

- v -

LISA SCHNEIDER, NEW YORK CITY DEPARTMENT OF FINANCE, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE,

Defendants.

INDEX NO. 159881/2023

MOTION DATE 12/02/2024

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51

were read on this motion to/for

JUDGMENT - FORECLOSURE & SALE

APPEARANCES:

Rukab Brash PLLC, New York, NY (Lindsay Anne Alfano, Esq., of counsel) for plaintiff.

EMILY MORALES-MINERVA, J.S.C.

In this action to foreclose on a lien for unpaid common charges, plaintiff THE LEX 54 CONDOMINIUM BY ITS BOARD OF MANAGERS moves (motion sequence number 02), unopposed, to confirm the October 11, 2024 report¹ of Referee Elaine Shay, Esq., and for the issuance of a judgment of foreclosure and sale.

¹ Though the report is dated October 1, 2024, it was not filed until October 23, 2024 (see New York State Court Electronic Filing System [NYSCEF] Doc. No. 39, referee report of amount due).

BACKGROUND

On July 30, 2024, the court (S. Adams, J.S.C.) granted plaintiff's unopposed motion (seq. no. 01) for a default judgment against defendants LISA SCHNEIDER, NEW YORK CITY DEPARTMENT OF FINANCE, and NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE (see NYSCEF Doc. No. 36, decision and order, July 30, 2024 [S. Adams, J.S.C]). Therein, the court, among other things, (1) ordered that the October 16, 2019 lien filed against the premises -- 135 East 54th Street, Unit 15M New York, New York -- be foreclosed; (2) directed that the premises be sold; and (3) referred the action to Referee Elaine Shay, Esq. to ascertain and compute the amount due to plaintiff for common charges, assessments, and interest, and to examine and report whether the subject premises should be sold in parcels (see id).

On October 23, 2024, Referee Elaine Shay, Esq. filed her report with the Court (see NYSCEF Doc. No. 39, referee's report dated October 11, 2024). Referee Shay determined that the amount due and owing to plaintiff totaled \$96,120.02, and reported that the condominium unit "should be sold in one parcel as it consists of one residential condominium unit and one tax lot" (id.).

Now, plaintiff moves (mot. seq. no. 02), unopposed, to confirm the report of Referee Elaine Shay, Esq., and for the issuance of

a judgment of foreclosure and sale. Plaintiff further seeks attorneys' fees in the amount of \$47,187.00.

ANALYSIS

Section 4403 of the CPLR provides:

"Upon the motion of any party or on his own initiative, the judge required to decide the issue may confirm or reject, in whole or in part, the verdict of an advisory jury or the report of a referee to report; may make new findings with or without taking additional testimony; and may order a new trial or hearing. The motion shall be made within fifteen days after the verdict or the filing of the report and prior to further trial in the action. Where no issues remain to be tried the court shall render [a] decision directing judgment in the action."

The report and recommendations of a referee should be confirmed where the referee's findings are substantially supported by the record, and the referee has clearly defined the issues and resolved matters of credibility (see AC 31, LLC v Fawer, 232 AD3d 454, 454-455 [1st Dept 2024] [holding that "Supreme Court properly confirmed the Referee's report, as the Referee had clearly defined the issues, resolved matters of credibility, and made findings substantially supported by the record"]; see also HSBC Bank USA, N.A. v Wu, 242 AD3d 599, 601 [1st Dept 2025] [finding that "Supreme Court appropriately

confirmed the Referee's report as the Referee's findings are substantially supported by the record").

In the proceeding before the referee, a plaintiff may rely upon "an affidavit from a person having personal knowledge of the facts' or [] other evidence 'in admissible form'" (U.S. Bank N.A. v Moulton, 179 AD3d 734, 738 [2d Dept 2020] [internal citations omitted]; see also Nationstar Mortgage LLC v Vassi, ___ NYS3d ___, 2026 NY Slip Op 02375, *1 [1st Dept, April 21, 2026] [finding that "the evidence before the referee -- specifically, [the assistance vice president's] February 25, 2022 affidavit and [the mortgage servicer's] business records -- substantially supported the report's findings on the amount due"]; cf. Citimortgage, Inc. v Kidd, 148 AD3d 767, 769 [2d Dept 2017] [holding that "referee's finding with respect to the total amount due [] were not substantially supported by the record inasmuch as the computation was premised upon unproduced business records"]). Further, the party seeking to confirm or reject the report must file the referee's report with the Court and annex the record before the referee, i.e., the documentary evidence submitted (see CPLR § 4320 [b]; see also Bd. of Managers of OT Sun Mansion Condo. v Fujian XI Bian Qiao Lian Inc., 2025 WL 3636414, *1 [Sup Ct NY Cnty 2025]).

Here, plaintiff's unopposed motion to confirm Referee Shay's report and for a judgment of foreclosure and sale is

granted.² Plaintiff annexes Referee Shay's report to its motion, along with the documentary evidence submitted to the Referee, including: (1) the affirmation of Michael Lynch, president of plaintiff, who attests to having personal knowledge of the amounts due by defendant LISA SCHNEIDER, and plaintiff's By-Laws; (2) a certified copy of the unit deed; (3) plaintiff's By-Laws; (4) a certified copy of the NYC Department of Finance, Office of the City Register, lien of common charges, with exhibits attached; (5) the payment ledger for defendant; and (6) the verified complaint (see U.S. Bank N.A. v Young, 214 AD3d 841, 843 [2d Dept 2023]). Additionally, defendants failed to appear before the Referee, and did not submit any evidence to the contrary. Therefore, Referee Shay's findings and calculations are substantially supported by the record, and the October 11, 2024 report is confirmed.

Further, with respect to Referee Shay's finding as to whether the premises should be sold as one or multiple parcels, "the answer to that issue is facially apparent, as it is undisputed that the subject property is a single [residential] condominium unit" and

² The Court notes that plaintiff moved to confirm the Referee's report on November 13, 2024 -- six days beyond the statutory deadline prescribed in CPLR § 4403. However, in consideration of this relatively short delay, the fact that the instant motion is unopposed, and defendants failure to appear and participate in the instant action, the Court exercises its discretion to consider the motion (see Hon. Mark C. Dillon, Prac Commentaries, McKinney's Cons Laws of NY, CPLR C4403:2] ["the 15-day period for a CPLR § 4403 motion is not ironclad"]).

one tax lot (Ottaviano v 215 West 138th Street LLC, 2026 WL 246060, *2 [Sup Ct NY Cnty 2026]; see also NYSCEF Doc. No. 42, lien [with property data included]; 41st Rd. Properties, LLC v Wang Real Prop., LLC, 164 AD3d 455 [2d Dept 2018]).

Though plaintiff is entitled to attorneys' fees pursuant to Article V, Section 6 of plaintiff's By-Laws, the court shall direct a hearing to determine the amount.

Accordingly, it is hereby

ORDERED and ADJUDGED that plaintiff's motion (seq. no. 02) for a judgment of foreclosure and sale and to confirm the Referee Elaine Shay's October 11, 2024 report is granted; it is further

ORDERED that the issue of the amount of reasonable attorneys' fees that plaintiff may recover against defendants is referred to a Special Referee to hear and determine; it is further

ORDERED that plaintiff shall, within 30 days from the date of this order, serve a copy of this order with notice of entry, together with a completed Information Sheet, upon the Special Referee Clerk in the General Clerk's Office (Room 119), who is directed to place this matter on the calendar of the Special Referee's Part for the earliest convenient date; and it is further

ORDERED that such service upon the Special Referee Clerk 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); it is further

ORDERED that the premises described in the complaint and as described in this judgment, or such part thereof as may be sufficient to discharge the lien, the expenses of the sale, and the costs of this action as provided in the RPAPL be sold, in one parcel, at a public auction at the New York County Courthouse located at 60 Centre Street, New York, New York under the direction of Elaine Shay, Esq., who is appointed Referee for this purpose, that the said Referee shall set the date of sale and give public notice of the time and place in accordance with RPAPL § 231 in an official publication, to wit: The New York Beacon; 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 (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; it is further

ORDERED that the Referee is prohibited from receiving any funds without compliance with Part 36 of the Rules of the Chief Administrative Judge; it is further

ORDERED that said Referee shall accept at such sale the highest bid offered by a bidder, who shall be identified upon the court record, and shall require that such successful bidder immediately pay to the Referee in cash or certified or bank check payable to such Referee, ten percent (10%) of the sum bid, and shall execute the Terms of Sale for the purchase of the Unit, unless such successful bidder is the Plaintiff herein, in which case, no deposit against the purchase price shall be required; it is further

ORDERED that notwithstanding the previous paragraph, the Referee shall have the right to refuse cash payments and require a bank or certified check from the successful bidder and the Referee shall be entitled to qualify bidders and require bidders to show proof of funds before or during the auction; it is further

ORDERED, that if the first successful bidder fails to immediately pay the ten percent (10%) deposit as provided herein or fails to execute the terms of sale immediately following the

bidding upon the Unit, the Unit shall thereafter immediately, on the same day, be reoffered at auction; it is further

ORDERED that the Referee shall deposit the down payment and proceeds of sale, as necessary in an FDIC-insured bank where the Referee has an account for that purpose in accordance with CPLR § 2609; it is further

ORDERED that after the balance of the purchase price is paid or credited and the property is sold, the Referee shall execute a deed to the purchaser in accordance with RPAPL § 1353 and the terms of sale (which shall be deemed a binding contract); it is further

ORDERED that in the event a party other than Plaintiff becomes the purchaser at the sale, the closing of title shall be held no later than 30 days after the date of such sale; it is further

ORDERED that, pursuant to RPAPL § 1353 (1), if Plaintiff (or its affiliate as defined in paragraph [a] of subdivision one of section six-1 of the banking law) is the purchaser, the property shall be placed back on the market for sale or other occupancy within 180 days of the execution of the deed of sale or within 90 days of construction, renovation, or rehabilitation of the property, provided that such construction, renovation or rehabilitation proceeded diligently to completion, whichever

comes first, provided that this court grants an extension upon a showing of good cause; it is further

ORDERED that the Referee, after receiving the proceeds of the sale, shall pay (from the proceeds) the taxes, assessments, sewer rents, or water rates, which are, or may become, liens on the property in accordance with their priority according to law with such interest or penalties which may have lawfully accrued thereon to the date of payment; it is further

ORDERED that the Referee shall deposit the balance of the proceeds from the sale in his or her own name as Referee in an FDIC-insured bank where the Referee has an account for that purpose and shall make the following payments in accordance with RPAPL § 1354:

1. The Referee's fees for conducting the sale: \$1,100.00
(see Uniform Rules of the Chief Judge § 36.4 [e] [1]).

Plaintiff shall also compensate the Referee in the sum of \$350 for each adjournment or cancellation made on less than two business days' notice unless the Referee caused the delay;

2. All taxes, assessments and water rates that are liens upon the property and monies necessary to redeem the property from any sales for unpaid taxes, assessments or water rates and any other amounts due in accordance with RPAPL § 1354 (2). The purchaser shall be responsible for

interest and penalties accrued after the sale. The Referee shall not be responsible for the payment of penalties or fees pursuant to this appointment. The purchaser shall hold the Referee harmless from any such penalties or fees assessed;

3. The expenses of the sale and the advertising expenses as shown on the bills presented and certified by the Referee to be correct, copies of which shall be annexed to the report of sale;

4. The Referee shall also pay to the plaintiff or its attorneys the following:

a. Amount Due from the Referee's Report: \$96,120.22, and plaintiff may add to the amount due any and all inspection fees, maintenance charges, further accrued common charges, taxes, insurance premiums, interest, or other advances necessary to preserve the Unit provided proof is given to the satisfaction of the Referee;

b. Costs and Disbursements: _____

(to be filled in by the Clerk) to Plaintiff for costs and disbursements in this action with interest at the statutory judgment rate from the date of entry of this judgment;

c. The amount of attorneys' fees and expenses to be awarded to plaintiff shall be determined at an inquest;

5. Surplus monies from the sale shall be paid into Court by the Referee within five days after receipt in accordance with RPAPL § 1354 (4); it is further

ORDERED that if Plaintiff is the purchaser of the property, or in the event that the rights of the purchasers at the sale and the terms of sale under this judgment shall be assigned to or be acquired by Plaintiff, and a valid assignment is filed with the Referee, the Referee shall not require Plaintiff to pay in cash the entire amount bid at sale, but shall execute and deliver to Plaintiff or its assignee, a deed or deeds of the property sold upon the payment to said Referee of the amounts specified as 1, 2, and 3 above, and the Referee shall allow Plaintiff to pay the amounts specified in 2 and 3 above when it is recording the deed; that the balance of the bid, after deducting the amounts paid by Plaintiff, shall be applied to the amount due to Plaintiff as specified in 4 above; that Plaintiff shall pay any surplus after applying the balance of the bid to the Referee, who shall deposit it in accordance with 5 above; it is further

ORDERED that all expenses of recording the Referee's deed, including real property transfer taxes, which is not a lien upon

the property at the time of sale, shall be paid by the plaintiff from the sale proceeds; it is further

ORDERED that Plaintiff may seek to recover a deficiency judgment in accordance with RPAPL § 1371 if applicable; it is further

ORDERED that the property be sold in one parcel in "as is" physical order and condition, subject to any condition that an inspection of the property would disclose; any facts that an accurate survey of the property would show; any covenants, restrictions, declarations, reservations, easements, right of way, and public utility agreements of record, if any; any building and zoning ordinances of the municipality in which the mortgaged property is located and possible violations of same; any rights of tenants or persons in possession of the subject property; prior liens of record, if any, except those liens addressed in RPAPL § 1354, any equity of redemption of the United States of America to redeem the property within 120 days from the date of sale, any rights pursuant to CPLR §§ 317, 2003 and 5015 or any appeal of the underlying action or additional litigation brought by any defendant or its successor or assignee contesting the validity of this foreclosure; it is further

ORDERED that the purchaser be let into possession of the property upon production in hand of the Referee's Deed or upon

personal service of the Referee's deed in accordance with CPLR § 308; it is further

ORDERED that Defendants in this action and persons claiming through them and any person possessing a junior interest in the property after the Notice of Pendency was filed are barred and foreclosed of all right, claim, lien, title, and interest in the property after the sale of the property; it is further

ORDERED that within 14 days after completing the sale and executing the proper conveyance to the purchaser, the Referee shall file with the clerk a report under oath of the disposition of the proceeds of the sale and upload the report to NYSCEF; it is further

ORDERED that if the purchaser or purchasers at said sale default upon the bid or terms of sale, the Referee may place the property for resale without prior application to this Court, unless Plaintiff's attorney elects to make such an application, and the deposit of the recalcitrant bidder shall be forfeited and retained by Plaintiff as liquidated damages; it is further

ORDERED that Plaintiff shall serve a copy of this judgment with notice of entry upon the owner of the equity of redemption, any tenants named in this action, and any other parties entitled to service, including the Referee appointed herein; it is further

ORDERED that nothing herein shall be deemed to relieve Plaintiff of any obligation imposed by RPAPL §§ 1307 or 1308 to secure and maintain the property until ownership of the property has been transferred and the deed duly recorded; it is further

ORDERED that when the Referee files a report of sale, she or he shall also file a Foreclosure Action Surplus Monies Form and also upload this document to NYSCEF; and it is further

ORDERED that, without further order of the Court, the referee shall be entitled to an additional fee of \$950.00 for conducting and attending a closing with a purchaser other than plaintiff, plus, if such a closing is scheduled for the referee's conference room, then the referee shall be entitled to a reasonable fee for use thereof, without further order of the Court; and it is further

ORDERED a schedule of the Subject Premises is annexed hereto as Schedule A.

4/30/2026
DATE


EMILY MORALES-MINERVA, J.S.C.

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

SCHEDULE A

BEGINNING at the corner formed by the intersection of the westerly side of Lexington Avenue and the northerly side of 54th Street;

running thence Northerly along the westerly side of Lexington Avenue, 100 feet 5 inches to the center line of the block between 54th Street and 55th Street;

thence Westerly and parallel with 54th Street along the center line of the block, 146 feet 2 inches;

thence Southerly and parallel with Lexington Avenue and part of the distance through a party wall, 100 feet 5 inches to the northerly side of 54th Street;

and thence Easterly along the said northerly side of 54th Street, 146 feet 2 inches to the point or place of **BEGINNING**.

TOGETHER with an undivided .33270 percent interest in the common element of the property as described in the Declaration (hereinafter called the "common elements") recorded in Reel 1233 P. 1118.