

United Overseas Bank Ltd. v Park Ave. Prop. LLC

2012 NY Slip Op 32077(U)

July 30, 2012

Sup Ct, NY County

Docket Number: 810315/2011

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. EILEEN A. RAKOWER
Justice

PART 15

Index Number : 810325/2011
UNITED OVERSEAS BANK LTD
vs.
PARK AVENUE PROPERTY LLC
SEQUENCE NUMBER : 001
APPT REF COMPUTE/EXAM ACCT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

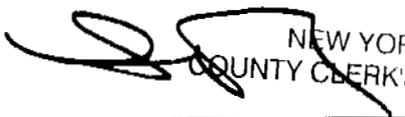
Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____	No(s). <u>1</u>
Answering Affidavits — Exhibits _____	No(s). <u>2</u>
Replying Affidavits _____	No(s). <u>3</u>

Upon the foregoing papers, it is ordered that this motion is

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

FILED

AUG 07 2012


NEW YORK
COUNTY CLERK'S OFFICE
J.S.C.

Dated: 7/30/12

HON. EILEEN A. RAKOWER

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

UNITED OVERSEAS BANK LIMITED, A
SINGAPORE BANK ACTING THROUGH ITS
LOS ANGELES AGENCY,

Index No. 810315/2011

Plaintiff,

DECISION AND ORDER

- v -

PARK AVENUE PROPERTY LLC, BEST
ASCENT INVESTMENTS LTD, BOARD OF
MANAGERS OF 260 PARK AVENUE
SOUTH CONDOMINIUM, SAM A. TISCH,
and JOHN DOE #1 through JOHN DOE #10,

Mot. Seq. 001

Defendants.

FILED

AUG 07 2012

HON. EILEEN A. RAKOWER

NEW YORK
COUNTY CLERK'S OFFICE

This is an action to foreclose upon a first fee mortgage encumbering certain real property generally known as Unit No. 11G of the 260 Park Avenue Condominium in the building designated by the street address of 260 Park Avenue South, New York, New York 10010 (the "Premises"). The Summons and Verified Complaint commencing this action were filed on November 21, 2011. Defendants are Park Avenue Property LLC ("Park Avenue"), the borrower, Best Ascent Investments Ltd, Board of Managers of 260 Park Avenue South Condominium, and Sam A. Tisch.

Presently before the Court is plaintiff's motion for an Order pursuant to CPLR §3212 granting summary judgment in its favor and against Park Avenue, striking the Verified Answer to Complaint filed by Park Avenue, granting judgment against defendants Best Ascent Investments Ltd, Board of Managers of 260 Park Avenue South Condominium, and Sam A. Tisch pursuant to RPAPL §1321 for all relief requested in the Verified Complaint, referring this action to a referee to ascertain and

compute sums due and owing to plaintiff, and amending the caption of the action.

Plaintiff submits the following in support of its motion: the Affirmation of Regularity of Robert A. Wolf, Esq. and the Affidavit of Hoong Chen, an Executive Director and General Manager of United Overseas Bank Limited. Plaintiff asserts that under the Mortgage, Note, and attendant loan documents (copies of which are annexed to the supporting affirmation and affidavit), the maturity date for payment of all outstanding indebtedness due thereunder was October 11, 2011. Plaintiff asserts that Park Avenue, the borrower, failed to comply with its obligations pursuant to the loan documents by failing to make payment to the plaintiff by the maturity date of October 11, 2011 of all outstanding indebtedness, including all unpaid principal in the amount of \$827,906.36, unpaid interest, and unpaid fees, charges and costs, due under the loan documents despite demand made.

Park Avenue submits the attorney affirmation of Christopher E. Chang (“the Chang Affirmation”). The Chang Affirmation does not oppose any of the relief sought in plaintiff’s motion and states specifically: “PAP [Park Avenue Property LLC] does not dispute that it is in default in payment of the mortgage in question. What PAP does question is the accurate and exact amount due and owing on said mortgage and, as such, requests that this matter be referred to as a Special Referee to conduct a computation hearing to hear and report on the amount due and owing on said mortgage.”

Defendants Best Ascent Investments Ltd, Board of Managers of 260 Park Avenue South Condominium, and Sam A. Tisch do not oppose. Plaintiff states that they have failed to answer the Verified Complaint after having been properly served. Plaintiff requests judgment pursuant to CPLR §3215 and submits that “it is entitled to default judgment against these parties foreclosing any interest that they may assert in the Premises; provided, however, that any leasehold interest of Sam A. Tisch that is properly evidenced in a writing shall remain in full force and effect for the remaining term if any of such lease.”

Where a moving party makes a *prima facie* showing of entitlement to summary judgment, “[t]he party opposing the [summary judgment] motion must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which the opposing claim rests.” (*Frank Corp. v. Federal Ins. Co.*, 70 N.Y.2d 966, 967, 525 N.Y.S.2d 793, 520 N.E.2d 512 [1988].) Bald, conclusory

allegations, even if believable, are not enough. (*Id.*; *Ehrlich v. American Moninger Greenhouse Mfg. Corp.*, 26 N.Y.2d 255, 309 N.Y.S.2d 341, 257 N.E.2d 890 [1970]; *Edison Stone Corp. v. 42nd Street Development Corp.*, 145 A.D.2d 249, 251-252, 538 N.Y.S.2d 249 [1st Dept. 1989]).

In mortgage foreclosure actions, it is well settled that a mortgagee makes a *prima facie* showing of entitlement to judgment as a matter of law when it “produce[s] the mortgage documents underlying the transaction and undisputed evidence of nonpayment (*Red Tulip, LLC v. Neiva*, 2007 NY Slip Op 6340, *5 [1st Dept. 2007]) (citation omitted). Once a mortgagee fulfills its initial burden, it becomes incumbent on the party opposing summary judgment to come forward with competent evidence of any defenses to raise an issue of fact (*see Barcov Holding Corp. v. Bexin Realty Corp.*, 16 A.D.3d 282, 283 [1st Dept. 2005]). Here, plaintiff has made its *prima facie* showing of entitlement to summary judgment. Plaintiff annexes copies of the governing mortgage and loan documents underlying the Premises, and has submitted proof of nonpayment in the form of the Affirmation of Regularity of Robert A. Wolf, Esq. and the Affidavit of Hoong Chen, an Executive Director and General Manager of United Overseas Bank Limited.

Accordingly, the burden shifted to defendants to submit competent evidence establishing the existence of an issue of material fact. Here, defendant Park Avenue “does not dispute that it is in default in payment of the mortgage in question” but questions “the accurate and exact amount due and owing on said mortgage and, as such, [also] requests that this matter be referred to as a Special Referee to conduct a computation hearing to hear and report on the amount due and owing on said mortgage.” The other defendants do not oppose.

It is hereby:

ORDERED that plaintiff United Overseas Bank Limited’s motion for summary judgment is granted; and it is further

ORDERED that plaintiff is awarded summary judgment against defendant Park Avenue, LLC; and it is further

ORDERED that plaintiff’s motion for entry of a default judgment against defendants Best Ascent Investments Ltd, Board of Managers of 260 Park Avenue South

Condominium, and Sam A. Tisch is granted; and it is further

ORDERED that the caption be amended by deleting the names of "John Doe" defendants; and all other papers and proceedings heretofore filed herein shall be deemed amended accordingly; and it is further

ORDERED that the caption as amended shall read as follows:

UNITED OVERSEAS BANK LIMITED, A
SINGAPORE BANK ACTING THROUGH ITS
LOS ANGELES AGENCY,

Index No. 819325/2011

Plaintiff,

- v -

PARK AVENUE PROPERTY LLC, BEST
ASCENT INVESTMENTS LTD, BOARD

OF MANAGERS OF 260 PARK AVENUE
SOUTH CONDOMINIUM, and SAM A. TISCH,

Defendants.

ORDERED that this action be and the same is hereby referred to Thomas R. Purcell, Esq., 263 W. 90th Street, New York, NY 10024, Tel: (212) 873-1701, as Referee to Compute the amount due to the plaintiff, to ascertain and compute the amount due to the plaintiff for principal, interest, and other disbursements advances as provided for in the note and mortgage upon which this action was brought, to examine and report whether or not the mortgaged premises can be sold in one parcel, and that the referee make his/here report to the Court with all convenient speed; and it is further

ORDERED that by accepting this appointment the referee certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to, section 36.20 (Disqualifications From Appointment), and

section 36.2(d) (Limitations on Appointments Based on Compensation); and it is further

ORDERED that the Referee's hearing be had in the County of New York; and it is further


ORDERED that plaintiff's attorney serve a conformed copy of this order upon the County Clerk and the Trial Support Office for amendment of their records.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

FILED

AUG 07 2012

DATED: 7/30/12


NEW YORK
COUNTY CLERK'S OFFICE

EILEEN A. RAKOWER, J.S.C.