UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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EASTERN SAVINGS BANK, FSB,

Plaintiff,

-against-

FRANCIS RABITO, NEW YORK CITY PARKING VIOLATIONS BUREAU, CONNOR DOE, SARA CHESTER, THOMAS MARTIN, AND BRIAN ROBIN,

Defendants.

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ORDER ADOPTING REPORT AND RECOMMENDATION

11-CV-2501(KAM)(VVP)

MATSUMOTO, United States District Judge:

On May 24, 2011, plaintiff Eastern Savings Bank, FSB ("Eastern") commenced this foreclosure action against defendants Francis Rabito, New York City Parking Violations Bureau, and twelve John Doe defendants, tenants at the property.[1] The action arose out of Mr. Rabito's failure to make required mortgage payments on a $400,000 loan from Eastern secured by a residential property located at 394 Graham Avenue in Brooklyn, New York. (*See generally* ECF No. 1, Complaint.) On August 16, 2012, this court granted plaintiff's motion for summary judgment and ordered the foreclosure and sale of the mortgaged property and directed plaintiff to submit supporting documentation in

[1] The case caption was later amended to replace John Does #1-4 with four individuals who plaintiff served, Connor "Doe," Sara Chester, Thomas Martin, and Brian Robin, in order to reflect the true identities of the tenants at the mortgaged property. (*See* ECF No. 26, Order Granting Motion for Summary Judgment dated 8/16/12, at 9.) John Does #5-12 were dismissed from the action. (*Id.*)

order for the court to determine the accuracy of plaintiff's proposed damages. (See ECF No. 26, Order Granting Motion for Summary Judgment.)

After plaintiff submitted the requested documentation and moved for entry of judgment against Rabito (*see* ECF No. 27, Motion for Entry of Judgment dated 8/31/12), this court referred plaintiff's motion to the Honorable Viktor V. Pohorelsky for a report and recommendation. (See Electronic Order dated 4/1/13.) Judge Pohorelsky issued a report and recommendation on September 5, 2013 (ECF No. 29, Report and Recommendation (the "2013 R&R")), again finding plaintiff's submissions and documentation to be deficient and recommending that plaintiff be granted a final opportunity to remedy those deficiencies and establish its damages; this court adopted the 2013 R&R on September 26, 2013 (*see* ECF No. 31, Order Adopting 2013 R&R).

On December 5, 2013, plaintiff renewed its motion for entry of judgment against Rabito, with additional documentation of damages, and moved for default judgment against the Parking Violations Bureau, Connor "Doe," Chester, Martin, and Robin[2] to foreclose their interest in the mortgaged property. (*See* ECF No. 32, Motion for Default Judgment and Declaration of Regularity In Support Of Renewal Motion for Judgment.)

[2] The Clerk of Court entered default against (1) the Parking Violations Bureau on July 19, 2012, (2) Connor "Doe," Martin and Robin on August 20, 2012 and (3) Sara Chester on September 6, 2012, because they had failed to appear or otherwise defend this action after being served with process.

On December 6, 2013, this court referred plaintiff's motions to Judge Pohorelsky for a Report and Recommendation. (Order dated 12/6/13.) On September 10, 2014, Judge Pohorelsky issued a Report and Recommendation (ECF No. 533, Report and Recommendation dated 9/10/14 ("R&R")), in which he recommended that plaintiff's motion for default judgment against the Parking Violations Bureau, Connor "Doe," Chester, Martin and Robin be granted, and that judgment be entered against Rabito in the following amounts: (1) $400,000 for repayment of the loan principal, (2) $144,064.10 in interest on the principal through October 15, 2013, (3) $39,669.24 for the negative escrow balance, (4) $7,298.76 in interest on the negative escrow balance through October 15, 2013, and (5) $5,643 for attorneys' fees and $1,634.70 for costs. (R&R at 13.)

In evaluating plaintiff's motion for entry of judgment against Rabito, Judge Pohorelsky also recommended that plaintiff's application for $863.55 in late charges be denied as the judge was unable to make an independent determination of the accuracy of the amount sought from the documentation submitted by plaintiff. (*Id.* at 7-8.) Finally, the R&R recommended that plaintiff be directed to submit a revised proposed Judgment of Foreclosure and Sale consistent with the above recommendations. (*Id.* at 13.)

The R&R, which was served on Rabito on September 10,

2014 and on the Parking Violations Bureau, Connor "Doe," Chester, Martin and Robin by overnight mail on September 11, 2014 (*see* ECF No. 34, Affidavit of Service), notified the parties of the right to file written objections within 14 days of receipt, pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b). (R&R at 13.)

In reviewing a Report and Recommendation, the district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1)(C). Where no objection to the Report and Recommendation has been filed, the district court "need only satisfy itself that that there is no clear error on the face of the record." *Urena v. New York*, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985) (citations omitted)).

Upon a review of the Report and Recommendation and considering that the parties have not objected to any of Judge Pohorelsky's thorough and well-reasoned recommendations, the court finds no clear error in Judge Pohorelsky's Report and Recommendation and hereby affirms and adopts the Report and Recommendation as the opinion of the court.

Accordingly, plaintiff's motion for default judgment against defendants Parking Violations Bureau, Connor "Doe," Sara Chester, Thomas Martin and Brian Robin is granted, and

defendant's motion for the entry of judgment against defendant Francis Rabito is granted, except as to $863.55 in late charges, which are denied. Judgment is to be entered for plaintiff and against Rabito as follows: (1) $400,000 for repayment of the loan principal, (2) $144,064.10 in interest on the principal through October 15, 2013, (3) $39,669.24 for the negative escrow balance, (4) $7,298.76 in interest on the negative escrow balance through October 15, 2013, and (5) $5,643 for attorneys' fees and $1,634.70 for costs.

Plaintiff is ordered to submit a revised proposed Judgment of Foreclosure and Sale consistent with this Order by October 30, 2014. Counsel for plaintiff is requested to mail a copy of this Order to defendants and note service on the docket.

SO ORDERED.

Dated: September 26, 2014
Brooklyn, New York

/s/
Kiyo A. Matsumoto
United States District Judge