

Emigrant Mtg. Co., Inc. v Daniels

2011 NY Slip Op 32236(U)

August 12, 2011

Supreme Court, New York County

Docket Number: 105057/2008

Judge: Paul G. Feinman

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

PRESENT: HON. PAUL G. FEINMAN PART 12

J.S.C.

Emigrant Mortgage Company, Inc.

INDEX NO.

105057/08

MOT. DATE

- v -

Eugene R. Daniels, III,
Charlene G. Daniels, et al.

MOT. SEQ. NO.

004

MOT. CAL. NO.

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

Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits
Answering Affidavits — Exhibits
Replying Affidavits

PAPERS NUMBERED

FILED

CROSS-MOTION: Yes No

AUG 17 2011

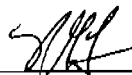
Upon the foregoing papers, It is

ORDERED that

**MOTION IS DENIED IN ACCORDANCE WITH
THE ANNEXED DECISION AND ORDER.**

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 8/12/2011



J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

PC DATE _____ CC Date _____

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 12

-----X
EMIGRANT MORTGAGE COMPANY, INC.,

Plaintiff,

Index Number 105057/2008

Mot. Seq. No. 004

against

EUGENE R. DANIELS III, CHARLENE G. DANIELS,
NEW YORK CITY PARKING VIOLATIONS
BUREAU, CHERYL COPELAND, CHARLENE
JACKSON, RSZ INC., CHERYL LYN GLOVER a/k/a
CHERYL JONES, NEW YORK STATE COMMISSION
OF TAXATION AND FINANCE, NEW YORK CITY
DEPARTMENT OF TAXATION AND FINANCE,
and HORACE COPELAND,

DECISION AND ORDER

FILED

AUG 17 2011

Defendants.

-----X

NEW YORK
COUNTY CLERK'S OFFICE

For the Plaintiff:
Belkin Burden Wenig & Goldman, LLP
By: William M. Rifkin, Esq.
270 Madison Avenue
New York NY 10016

For the Daniels Defendants:
Eugene R. Daniels III and Charlene G. Daniels, *pro se*
408 West 145th Street
New York NY 10031

Papers considered in review of this motion to renew motion seeking judgment of foreclosure and sale:

Papers	Document Number
Notice of Motion to Renew, Affidavits , Exhibits	1

PAUL G. FEINMAN, J.:

Plaintiff renews its motion seeing an order confirming the March 8, 2010 report by Referee Regina L. Darby, Esq., as to the amount due to plaintiff, and for a judgment of foreclosure and sale of the mortgaged premises at issue, as well as an award of attorneys' fees and expenses. The motion is unopposed. For the reasons which follow, the motion is granted without opposition.

As previously set forth in the court's decision and order dated October 1, 2010, and filed on October 4, 2010, plaintiff commenced a foreclosure action against defendants Eugene R.

Daniels III and Charlene G. Daniels on April 8, 2008 (Mot. Ex. 2, Ex. A). The action pertains to an adjustable rate loan note and mortgage signed on April 20, 2007, in which the Daniels agreed to pay plaintiff a total principal sum of \$ 845,653.51. The mortgaged premises are known as 408 West 145th Street, New York, New York 10031, bearing tax map designation of Block 2050, Lot 50 (Referee's Oath & Report, Mot. Ex. 2, Ex. G). The property is recorded by the Office of the City Register of the NYC Department of Finance as consisting of a "4-6 family with store/office." (*Id.*).

Each of the defendants was served with process thereafter (Mot. Ex. C [affidavits of service]). The Daniels answered the summons and complaint by their attorney on about June 30, 2008 (Mot. Ex. 2, Ex. D). None of the other individual or governmental defendants apparently answered or otherwise appeared.

Plaintiff thereafter moved for summary judgment; the court held the motion in abeyance pending court-ordered settlement negotiations. After negotiations proved unfruitful, the court by decision and order dated January 13, 2010, granted the motion for summary judgment, and ordered the appointment of Regina L. Darby, Esq., as referee to ascertain and compute the amounts owed upon the note and mortgage being foreclosed in this action and determine whether the property can be sold in one parcel.

Referee Darby submitted her Combined Oath of Referee and Referee's Report of Computation dated March 8, 2010 (Mot. Ex. 2, Ex. G). Included in her Report are copies executed by the Daniels and given to plaintiff of the adjustable rate note dated April 20, 2007, and the mortgage as recorded by the New York City Department of Finance, Office of the City Register under CFRN 2007000248323, as well as the Computation Affidavit prepared by

plaintiff's Assistant Treasurer, Joel Marcano, dated February 18, 2010. Marcano's affidavit states that since commencement of the action, no payments have been made to the principal sum or of interest, and as of February 15, 2010, there was due and owing \$845,653.51 in principal, and \$328,502.48 in interest, and that interest accrues at 18% annually. Marcano also indicates that the Daniels have in addition incurred escrow debt for real estate taxes (\$6,140.20), fire insurance (\$8,512.00), late charges (\$509.88), appraisals (\$350.00), and inspections (\$425.00), and that as of February 15, 2010, there was due and owing to plaintiff the total amount of \$1,190,093.07, in addition to attorney's fees and expenses (Ref. Oath & Report Mot. Ex. 2, Ex. G, Marcano Aff. ¶¶ 5-8; and Ex. D, itemized computation schedule). This is the amount determined by Referee Darby to be due and owing as of February 15, 2010 (Ref. Oath & Report ¶¶ 3-4). The referee recommends that the mortgaged premises be sold as one parcel (*Id.* ¶ 4).

Plaintiff's previous motion was denied based on insufficient proof of the non-military status of the defaulting individual defendants, who are necessary parties in this proceeding (RPAPL § 1311 [1]). Plaintiff now provides copies of affidavits and printouts from the Department of Defense Manpower Data Center showing that investigations were made as to each of the individual defendants and that none of them are in the military (Mot. Ex. 4).

The March 8, 2010 report by Referee Regina L. Darby, Esq., is confirmed as to the amount due to plaintiff, and the branch of the motion seeking a judgment of foreclosure and sale of the mortgaged premises is granted. Plaintiff provides an affirmation of regularity by William Rifkin, Esq., setting forth in narrative the legal work done in this litigation and explaining the fee structure of plaintiff's law firm, Belkin Burden Wenig & Goldman, LLP, and attaches copies of the itemized billing records (Mot. Ex. 2, Ex. H), to detail and explain the request for a total of

\$27,468.98 in attorney's fees accrued from April 1, 2008 through March 26, 2010, and including an estimated 8 hours of additional work in making the instant motion; preparing the Notice of Sale, the closing documents, and the Report of Sale; and attending the Sale and the closing. This branch of plaintiff's motion seeking attorney's fees is granted without opposition.

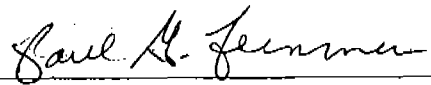
ORDERED that the branch of the motion to confirm the March 8, 2010 report of Referee Regina Darby, Esq., is granted without opposition; and it is further

ORDERED that the branch of the motion seeking an order granting a judgment of foreclosure and sale is granted without opposition; and it is further

ORDERED that the branch seeking attorney's fees in the amount of \$27,468.98 is granted without opposition.

This constitutes the decision and order of the court. Settle Judgment of Foreclosure and Sale appointing Regina L. Darby, Esq. on all parties.

Dated: August 12, 2011
New York, New York



J.S.C.

FILED

AUG 17 2011

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COUNTY CLERK'S OFFICE