

NYCTL 2016-A Trust v 294 Eighth Ave. Realty Corp.
2017 NY Slip Op 32506(U)
November 27, 2017
Supreme Court, New York County
Docket Number: 153048/2017
Judge: Robert D. Kalish
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: Hon. Robert D. KALISH
Justice

PART 29

**NYCTL 2016-A TRUST and THE BANK OF NEW YORK
MELLON as Collateral Agent and Custodian for the
NYCTL 2016-A Trust,**

INDEX NO. 153048/2017

MOTION DATE 10/3/17

MOTION SEQ. NO. 001

Plaintiffs,

- v -

294 EIGHTH AVE. REALTY CORP., et al.,

Defendants.

The following papers, numbered 9-21, were read on this motion for entry of a default judgment.

**Notice of Motion – Proposed Order – Affidavit in Support – Exhibits A-B –
Affirmation of Regularity – Exhibits A-E – Affidavit of Service – RJJ**

Nos. 9-21

Motion by Plaintiffs NYCTL 2016-A Trust and The Bank of New York Mellon for an order: (i) discontinuing this action against defendants “John Doe No. 1” through “John Doe No. 100;” (ii) granting the entry of a default judgment against Defendants 294 Eighth Ave. Realty Corp (“294 Realty”), The City of New York – Department of Finance, The State of New York – Department of Taxation and Finance, and The City of New York – Bureau of Highway Operations pursuant to CPLR 3215; and (iii) appointing a referee to compute the amounts due to Plaintiffs is granted, there being no opposition submitted.

BACKGROUND

Plaintiffs brought this action to foreclose on a real estate tax lien. Plaintiffs allege that they hold the lien pursuant to a Tax Lien Certificate 1A dated August 3, 2016 and recorded on August 24, 2016 as CFRN 2016000292383. (Aff of Meyer ¶ 3, Meyer aff, exhibit B.) The lien allegedly encumbers property known as Block 774, Lot 83 on the tax map of New York County having a street address of 294 Eighth Avenue, New York, New York 10001 (the “Property”). (Aff of Meyer ¶ 4.)

Plaintiffs allege that they are entitled to foreclose on the lien pursuant to the aforementioned certificate and the Administrative Code of the City of New York

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

§§ 11-332 and 11-335. (*Id.* ¶ 6.) Plaintiffs further allege that 294 Realty is the fee owner of the Property and failed to pay the semi-annual interest which has accrued on the lien balance more than six months after the sale date of the lien. (*Id.*) Plaintiffs further allege that, having elected that the lien be due and payable, the following is due and owing to Plaintiffs: (i) \$132,433.55 with interest at 18% compounded daily (a) from May 23, 2016 in the case of sewer rents, sewer surcharges, and water rents listed under heading “CIS” on Schedule A to Tax Lien Certificate 1A and (b) from May 12, 2016 in the case of all real property taxes, assessments, and all other New York City charges, including sewer taxes, sewer surcharges, and water rents listed under heading “Environ” on Schedule A to Tax Lien Certificate 1A; (ii) all real property taxes, assessments, and any other New York City charges; and (iii) attorney’s fees for maintaining this action pursuant to Administrative Code § 11-335. (*Id.* ¶ 7; Meyer aff, exhibit B, at 6.)

Plaintiffs commenced this action on March 31, 2017 by e-filing a summons and complaint. (Affirmation of Stich ¶ 10; Stich affirmation, exhibit C.) Plaintiffs allege that the Notice of Pendency was also filed on March 31, 2017. (Affirmation of Stich ¶ 11; Stich affirmation, exhibit D.) Plaintiffs further allege that Defendants were served process pursuant to Business Corporation Law § 306 between April 24, 2017 and May 3, 2017. (Affirmation of Stich ¶ 12; Stich affirmation, exhibit E.) The instant motion was served upon Defendants on August 31, 2017.

As Defendants have not appeared in this action, Plaintiffs now move for an order: (i) discontinuing this action against defendants “John Doe No. 1” through “John Doe No. 100”; (ii) granting the entry of a default judgment against Defendants 294 Eighth Ave. Realty Corp (“294 Realty”), The City of New York – Department of Finance, The State of New York – Department of Taxation and Finance, and The City of New York – Bureau of Highway Operations pursuant to CPLR 3215; and (iii) appointing a referee to compute the amounts due to Plaintiffs.

DISCUSSION

CPLR 3215 (a) provides, in pertinent part, that “[w]hen a defendant has failed to appear, plead or proceed to trial . . . the plaintiff may seek a default judgment against him.” On a motion for a default judgment under CPLR 3215 based upon a failure to answer the complaint, a plaintiff demonstrates entitlement to a default judgment against a defendant by submitting: (1) proof of service of the

summons and complaint; (2) proof of the facts constituting its claim; and (3) proof of the defendant's default in answering or appearing. (See CPLR 3215 [f]; *Matone v Sycamore Realty Corp.*, 50 AD3d 978 [2d Dept 2008]; *Allstate Ins. Co. v Austin*, 48 AD3d 720 [2d Dept 2008]; see also *Liberty County Mut. v Avenue I Med., P.C.*, 129 AD3d 783 [2d Dept 2015].)

On the instant motion, Plaintiffs presents proof of adequate service of process pursuant to Business Corporation Law § 306. In addition, for the purposes of the instant unopposed motion, Plaintiffs offer adequate proof of the facts constituting its claim by means of its affidavit in support. Further, Defendants have not appeared in the instant action. As such, Plaintiffs have shown prima facie entitlement to entry of a default judgment against Defendants.

CONCLUSION

Accordingly, it is

ORDERED that Plaintiffs NYCTL 2016-A Trust and The Bank of New York Mellon's motion for an order: (i) discontinuing this action against defendants "John Doe No. 1" through "John Doe No. 100;" (ii) granting the entry of a default judgment against Defendants 294 Eighth Ave. Realty Corp ("294 Realty"), The City of New York – Department of Finance, The State of New York – Department of Taxation and Finance, and The City of New York – Bureau of Highway Operations pursuant to CPLR 3215; and (iii) appointing a referee to compute the amounts due to Plaintiffs is granted without opposition submitted; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Plaintiffs; and it is further

ORDERED that defendants "John Doe No. 1" through "John Doe No. 100" are hereby dismissed without prejudice from this action; and it is further

ORDERED that the action shall bear the following caption:

-----X
NYCTL 2016-A TRUST and THE BANK OF NEW
YORK MELLON as Collateral Agent and Custodian
For the NYCTL 2016-A Trust,

Plaintiffs,

- against -

294 EIGHTH AVE. REALTY CORP.; THE CITY
OF NEW YORK – DEPARTMENT OF FINANCE;
THE STATE OF NEW YORK – DEPARTMENT OF
TAXATION AND FINANCE; and THE CITY OF NEW
YORK – BUREAU OF HIGHWAY OPERATIONS,

Defendants.
-----X

And it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158M), who are directed to mark the court’s records to reflect the change in parties; and it is further

ORDERED that the action is referred to Michael J. Roberts, Esq., having an office at 401 Broadway Apartment 1902, New York, New York 10013, telephone number (212) 226-4925, as Referee, to compute the amount due to Plaintiffs, and that the Referee make his Report to the Court no later than sixty days of the date of this order and that, except for good cause shown, Plaintiffs shall move for judgment no later than sixty days of the date of the Report; and it is further

ORDERED that upon submission of the Report, Plaintiff shall pay \$500 to the Referee as compensation for his services, which sum may be recouped as a cost of litigation; and it is further

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


ORDERED that the Referee appointed herein is subject to the requirements of Rule 36.2 (c) of the Chief Judge, and if the Referee is disqualified from receiving an appointment pursuant to the provision of that Rule, the Referee shall notify the Appointing Judge forthwith; and it is further

ORDERED that, by accepting this appointment, the Referee certifies that he is compliant with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to, Section 36.2 (e) ("Disqualifications from appointment") and Section 36.2 (d) ("Limitations on appointments based upon compensation"); and it is further

ORDERED that Plaintiffs serve a copy of this order with notice of entry upon the Clerk of the Court and upon Defendants within 20 days of entry of this order.

The foregoing constitutes the decision and order of the Court.

Dated: November 27, 2017
New York, New York


J.S.C.
HON. ROBERT D. KALISH

- 1. Check one:.....
- 2. Check if appropriate:..... MOTION IS:
- 3. Check if appropriate:.....

- CASE DISPOSED NON-FINAL DISPOSITION
- GRANTED DENIED GRANTED IN PART OTHER
- SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE