

**Board of Mgrs. of the Beaumont Condominium v
Kay**

2018 NY Slip Op 30598(U)

April 3, 2018

Supreme Court, New York County

Docket Number: 151074/2013

Judge: Joan A. Madden

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At IAS _____ Part 11 of the Supreme Court of the State of New York held in and for the County of New York, at the Courthouse thereof, located at, 60 Centre Street, NY NY 10007, on the 3 day of April 2018.

HON. JOAN A. MADDEN, J.S.C.

THE BOARD OF MANAGERS OF THE BEAUMONT CONDOMINIUM on behalf of all unit owners

Index No. 151074/2013

ORDER

Plaintiff,

-against-

Premises:
30 West 61st street, Unit 12A
New York, New York 10023

BRIAN KAY, JPMORGAN CHASE N.A., UNITED STATES INTERNAL REVENUE SERVICE, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, CHASE HOME FINANCE LLC, NEW YORK CITY PARKING VIOLATIONS BUREAU, DEBORAH KAY, D P CONSTRUCTION, D P & SON PAINTING INC., HEADS UP FIRE SPRINKLER, INC.

Block: 1113, Lot: 1049

Motion Seq. 004
Motion Seq. 005
Motion Seq. 006

Defendants

WHEREAS, Plaintiff, the Board of Managers of the Beaumont Condominium ("Plaintiff"), having appeared by its attorneys, Braverman Greenspun, P.C., is the duly constituted Board of Managers of the Beaumont Condominium (the "Condominium");

WHEREAS, Plaintiff brought this action against Brian Kay ("Defendant") as a result of his ongoing failure to pay common charges assessed to Condominium unit 12A located at 30 West 61st Street, Unit 12A, New York, New York 10023 (hereinafter "Premises"), which up until September 27, 2017, Defendant owned at the Condominium;

WHEREAS, Defendant, and defendants New York State Department of Finance, New York City Parking Violations Bureau, Deborah Kay, D P Construction, D P & Son Painting Inc., and Heads Up Fire Sprinkler, Inc. have not answered or otherwise appeared in this action and have defaulted;

WHEREAS, defendants United States of America and JPMorgan Chase Bank, N.A. have answered and appeared in this action;

WHEREAS, pursuant to orders dated March 24, 2015 and as amended on March 26, 2015 and May 1, 2015, Michael Roberts, Esq., as temporary receiver (the "Receiver"), was appointed by the Court to rent the Premises and remit a portion of said rent to the Plaintiff for the payment of current and prospective common charges until the Premises was foreclosed on or otherwise sold according to law (hereinafter, the "Receivership");

WHEREAS, the Premises was auctioned as a result of a judgment and foreclosure obtained by USROF 11 Legal Title 2015-1 by U.S. Bank National Association, as Legal Title Trustee ("U.S. Bank") in the action captioned U.S. Bank v. Brian Kay, et al., Index No.850202/2014 (Supreme Court, New York County);

WHEREAS, U.S. Bank took title to the Premises by Referee's Deed dated September 27, 2017 and recorded in the Office of the City Register of the City of New York under CFRN 2017000445643;

WHEREAS, pending before the Court are three motions, each having been fully submitted to the Court without opposition: (i) Motion Seq. 004: Plaintiff's motion to confirm the referee's report dated May 24, 2016 (the "Referee's Report"), scheduling an inquest to determine the total

amount of attorneys' fees due to Plaintiff, and entering a judgment of foreclosure of the Premises in favor of the Plaintiff; (ii) Motion Seq. 005: the Receiver's motion seeking to approve the Receiver's final accounting, discharge the Receiver's bond, award costs of the aforesaid motion, and direct U.S. Bank to prepare an assignment of rent in connection with the Receiver's lease of the Premises; and (iii) Motion Seq. 006: Plaintiff's motion requesting the Court direct the Receiver to disburse the balance remaining in his hands after the final accounting is settled to Plaintiff and directing U.S. Bank to reimburse Plaintiff for the attorneys' fees, costs and disbursements of this motion (hereinafter collectively referred to as the "Pending Motions").

NOW, upon the Pending Motions, it is hereby:

ORDERED, that the Receivership Order dated March 24, 2015 (Motion seq. 002) is hereby further amended nunc pro tunc to reflect that rent collected by the Receiver for the Premises may be remitted to the Plaintiff for payment of current and past due common charges, assessments, and late fees due for the Premises; and it is further

ORDERED, that Plaintiff's Motion Seq. 004 seeking, inter alia, to confirm the Referee's Report is granted to the extent that the Referee's Report dated May 24, 2016 is confirmed and as reflected in the Report, Plaintiff is due common charges, assessments, late fees and legal fees for the Premises from April 2010 through February 29, 2016 in the amount of One Hundred Nine Thousand, Two Hundred Thirty-Seven Dollars and Thirty-Four Cents (\$109,237.34) [hereinafter, the "Confirmed Award"] (This amount takes into account the monthly common charge payments by the Receiver for the period from June 2015 through February 29, 2016); and it is further

ORDERED, that the remaining requested relief in Plaintiff's Motion Seq. 004 is denied as moot; and it is further

ORDERED, that the Receiver's Motion Seq. 005 is granted to the extent that the final accounting, based on the Affirmation of Michael Roberts, Esq., dated February 26, 2018, the Supplemental Affirmation of Michael Roberts dated March 27, 2018 and the exhibits to his Affirmation and supporting documents submitted on April 3, 2018, is approved in all respects, and Michael Roberts, Esq., as Receiver, shall disburse the sum of One Hundred Twenty-Seven Thousand Five Hundred Twenty-Seven Dollars and Sixty-Eight Cents (\$127,527.68) as provided for herein; and it is further

ORDERED, that Michael Roberts, Esq., as Receiver, is hereby directed to remit Eleven Thousand Thirty-Eight Dollars and Seventy-Two Cents (\$11,038.72) to Michael DeRosa, Esq. of Friedman Vartolo LLP, 85 Broad Street, Suite 501, New York, New York 10004, as attorneys for U.S. Bank, representing the balance of the rental payments due to U.S. Bank as the new record owner of the Premises, which were received by the Receiver for the months of December 2017 and January 2018 (hereinafter, the "Accrued Rent"); and it is further

ORDERED, that Michael Roberts, Esq., as Receiver, is hereby entitled to receive payment in the amount of Nine Thousand Nine Hundred Five Dollars and zero cents (\$9,905.00), representing the total compensation, commissions and fees due in his capacity as Receiver of the Premises (\$9,860.00) and the costs of making Motion Seq. 005 (\$45.00) [hereinafter, the "Compensation"]; and it is further

ORDERED, that U.S. Bank and Michael Robeffs, Esq., as Receiver, shall undertake to execute an assignment of lease for the Premises, and upon receipt of a fully executed original of said assignment of lease, Michael Roberts, Esq., as Receiver, is directed to transfer the security deposit being held for the current tenant of the Premises in the amount of Six Thousand Dollars and zero cents (\$6,000.00) [hereinafter, the "Security Deposit"] to Michael DeRosa, Esq. of

Friedman Vartolo LLP, 85 Broad Street, Suite 501, New York, New York 10004, as attorneys for U.S. Bank; and it is further

ORDERED, that Plaintiff's Motion Seq. 006 seeking, inter alia, to direct the Receiver to remit the balance of the final accounting to Plaintiff is granted to the extent that Michael Roberts, Esq., as Receiver, is directed to remit payment in the amount of One Hundred Thousand Five Hundred Eighty-Three Dollars and Ninety-Six Cents (\$100,583.96), the total balance remaining in the hands of the Receiver after the Accrued Rent, the Compensation and the Security Deposit are disbursed, to Plaintiff c/o Lauren Piechocki, Esq. Braverman Greenspun P.C., attorneys for Plaintiff, 110 East 42nd Street, New York, New York 10017, in partial satisfaction of the Confirmed Award; and it is further

ORDERED, that the foregoing partial satisfaction of the Confirmed Award shall not limit Plaintiff's rights at law and in equity, if any, to recover the balance of the Confirmed Award from Defendant Brian Kay; and it is further

ORDERED, that Plaintiff's requested relief under Motion Seq. 006 seeking attorney's fees, costs and disbursements in connection with Motion Seq. 006 as against U.S. Bank, is hereby denied as Plaintiff, by its counsel Braverman Greenspun, P.C., made an oral application to withdraw the foregoing relief during the March 8, 2018 teleconference before the Hon. Joan A. Madden, J.S.C, Friedman Vartolo LLP, attorneys for U.S. Bank, and the Receiver; and it is further

ORDERED, that the above-entitled action be and the same is hereby discontinued with prejudice and without costs to either party as against the other; and it is further

ORDERED, that Michael Roberts, Esq., as Receiver in this action, be and hereby is released and discharged from his duties as said Receiver; and it is further

ORDERED, that the Receivership is hereby terminated, the Receiver's bond issued by SureTec Insurance Company and duly filed with this Court is hereby cancelled and discharged,

and the Receiver is relieved of any further duties and liability with respect to the Receivership; and
it is further

ORDERED, that Carol Lilienfeld, Esq., heretofore appointed Referee in this action, be and
hereby is released and discharged from her duties as said Referee; and it is further

ORDERED, that a copy of this Order with notice of entry be served upon all parties entitled
to notice.

ENTER:



HON. JOAN A. MADDEN, J.S.C.

Index #
151074/2013

HON. JOAN A. MADDEN
J.S.C.