

NYCTL 1998-2 Trust v East 115th St. Assoc.
2018 NY Slip Op 33257(U)
December 17, 2018
Supreme Court, New York County
Docket Number: 651512/2017
Judge: Carmen Victoria St. George
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY - - PART 34

NYCTL 1998-2 TRUST, and THE BANK OF
NEW YORK MELLON as Collateral Agent
and Custodian for the NYCTL 1998-2 Trust,

Plaintiffs,

Index No.: 651512/2017
Motion Sequence No.: 002

- against -

DECISION/ORDER

EAST 115TH STREET ASSOCIATES,
YOUSEF YAHUDAIL, FLUSHING SAVINGS
BANK, FSB, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD and
"JOHN DOE no. 1" through "JOH DOE No.
100, the names of the last 100 defendants being
unknown to plaintiff, it being intended to
designate fee owners, tenants or occupants of
the lien premises and/or persons or parties
having or claiming an interest in or a lien upon
the lien premises, if the aforesaid individual
defendants are living, and if any or all of said
individual defendants be dead, their heirs at
law, next of kin, distributes, executors,
administrators, trustees, committees, devisees,
legatees, and the assignees, lienors, creditors
and successors in interest of them, and
generally all persons having or claiming
under, by, through, or against the said
defendants named as a class, of any right, title
or interest in or lien upon the premises described
in the complaint herein,

Defendants.

ST. GEORGE, CARMEN VICTORIA, J.S.C.:

Plaintiffs hold the tax and other liens encompassed by Tax Lien Certificate No. 1A, which
is dated August 6, 2014, and which on August 20, 2014 was recorded under City Register File
Number (CRFN) 2014000278021 (the Tax Lien). On April 26, 2016, plaintiffs acquired the lien
by a tax lien certificate, which was recorded on May 11, 2016 under CRFN 2016000162668. This
action seeks to foreclose on the lien because East 115th Street Associates, the owner of the

property, has not paid the balance due under the lien. Plaintiffs served all the parties who are designated by name in the caption, and all but one of them have defaulted. The remaining defendant, Yousef Yahudaii, appeared and submitted a notice of claim for surplus money.

Currently, plaintiffs move to amend the complaint and caption to remove Yousef Yahudaii as a defendant and add True Gate Holding Ltd. (True Gate). Plaintiffs explain that True Gate is a necessary party to the action by virtue of its status as an assignee of the \$250,000 mortgage for 77 East 115th Street, the building in question. Plaintiffs' affirmation in support explains that True Gate acquired the mortgage on March 20, 1999 (recorded on April 26, 1999, Reel 2862, page 615), and assigned it to Yahudaii on April 26, 1998 (recorded on January 10, 2008, CRFN 2008000011597). However, plaintiffs explain, Justice Marcy S. Friedman invalidated the transfer from True Gate to Yahudaii after a nonjury trial. In the action, Yahudaii had sought to foreclose on the underlying mortgage as against East 115th Street Associates, Nourallah Baroukhian, and other defendants. Because the transfer was invalid, Justice Friedman's order dismissed the case without prejudice. The First Department affirmed the decision (*Yahudaii v Baroukhian*, 137 AD3d 539 [1st Dept 2016]). Accordingly, plaintiffs contend, True Gate rather than Yahudaii is a real party in interest under RPAPL § 1311 (1). Unless True Gate is a party to this lawsuit, plaintiffs state, any judgment they obtained would be deficient and this problem would thwart their plan to sell the property (*see Board of Managers of Parkchester North Condominium v Alaska Seaboard Partners Ltd. Partnership*, 37 AD3d 332, 370-71 [1st Dept 2007]).

Nourallah Baroukhian, a partner in defendant East 115th Street Associates, opposes this motion. Baroukhian refers to the foreclosure action described above. He also notes that plaintiff's prior case was dismissed based on plaintiffs' failure to properly serve all parties, and he refers to a pending foreclosure action between True Gate and Baroukhian. Baroukhian makes many

statements concerning Yahudaii's purportedly illicit motives and fraudulent conduct, and notes that True Gate has been dissolved. He argues that Yahudaii cannot commence a foreclosure action in True Gate's name because his partner, Mehry Noghrei, did not give his consent. Baroukhian also challenges the validity of True Gate's mortgage. Yahudaii's counsel, while noting these arguments are not pertinent to the motion to amend the caption and add True Gate as a party, briefly responds to the allegations asserted against his client, alleging, inter alia, that most of these issues have been resolved in other litigations in Yahudaii's favor. The parties have submitted sur- and sur-sur replies, which this Court reviewed but does not consider.

The Court grants plaintiff's motion. Baroukhian's papers do not assert a relevant challenge to the motion, as the arguments relate to other cases not before this Court and address issues which have nothing to do with the caption and party change. On the contrary, his statement that Yahudaii does not belong in this lawsuit supports plaintiffs' motion. Moreover, plaintiffs have submitted sufficient evidence to show that True Gate rather than Yahudaii is the proper defendant. Any challenges which Baroukhian may have, including challenges to service upon him and East 115th Associates, must be asserted in the context of the lawsuit and are not a proper basis to prevent plaintiffs from discontinuing against Yahudaii and adding True Gate. Baroukhian's other arguments are not relevant to plaintiffs' request to amend the caption and complaint to include the proper party, but instead relate to the ongoing disputes at the heart of the various cases involving these parties. Furthermore, it is for True Gate, not Baroukhian, to raise any arguments regarding True Gate's status.¹ Accordingly, it is

ORDERED that the motion is granted and True Gate Holding Ltd is joined as a party defendant in this action; and it is further

¹ The Court notes that Mehry Noghrei's attorney has filed a letter in this case stating that True Gate has been dissolved.

ORDERED that plaintiffs shall serve True Gate with a copy of the complaint by proper service within 45 days of the date of this order; and it is further

ORDERED that the action as against Yousef (Joseph) Yahudaii is severed and dismissed; and it is further

ORDERED that the caption is amended to reflect these changes, and the new caption shall read:

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EAST 115TH STREET ASSOCIATES,
TRUE GATE HOLDING LTD, FLUSHING
SAVINGS BANK, FSB, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD and
"JOHN DOE no. 1" through "JOH DOE No.
100, the names of the last 100 defendants being
unknown to plaintiff, it being intended to
designate fee owners, tenants or occupants of
the liened premises and/or persons or parties
having or claiming an interest in or a lien upon
the liened premises, if the aforesaid individual
defendants are living, and if any or all of said
individual defendants be dead, their heirs at
law, next of kin, distributes, executors,
administrators, trustees, committees, devisees,
legatees, and the assignees, lienors, creditors
and successors in interest of them, and
generally all persons having or claiming
under, by, through, or against the said
defendants named as a class, of any right, title
or interest in or lien upon the premises described
in the complaint herein,

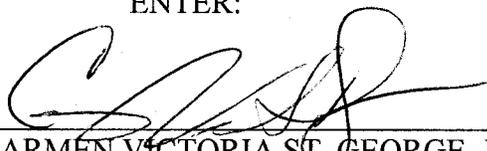
Defendants.

All subsequent papers shall use the amended caption; and it is further

ORDERED that counsel for plaintiffs 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 158), who are directed to amend the caption accordingly.

Dated: *December 17th, 2018*

ENTER:



CARMEN VICTORIA ST. GEORGE, J.S.C.

HON. CARMEN VICTORIA ST. GEORGE
J.S.C.