

Bank of N.Y. Mellon v Hua Zhang
2019 NY Slip Op 31338(U)
May 8, 2019
Supreme Court, New York County
Docket Number: 850055/2018
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 32

Justice

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THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS SUCCESSOR INDENTURE TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS INDENTURE TRUSTEE FOR THE CWHEQ REVOLVING HOME EQUITY LOAN TRUST, SERIES 2005-E,

Plaintiff,

- v -

HUA ZHANG, BIN LU, THE BOARD OF MANAGERS OF 425 FIFTH AVENUE CONDOMINIUM HOMEOWNERS ASSOCIATION, CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD, CITY OF NEW YORK PARKING VIOLATIONS BUREAU, CITY OF NEW YORK TRANSIT ADJUDICATION BUREAU, JOHN DOE, SAID NAME BEING FICTITIOUS, IT BEING THE INTENTION OF PLAINTIFF TO DESIGNATE ANY AND ALL OCCUPANTS OF PREMISES

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46

were read on this motion to/for ORDER OF REFERENCE/REFERENCE TO COMPUTE

DECISION AND ORDER OF REFERENCE

The motion for a default judgment by plaintiff is granted. Although defendant the Board of Managers of 425 Fifth Avenue Condominium Homeowners Association ("Board") offers opposition, the Board simply wants to pursue its lien for common charge arrears (NYSCEF Doc. No. 42). Of course, the Board may pursue its common charge lien by seeking surplus money (assuming the property is sold at auction). The Board appears to have already done this (*see* NYSCEF Doc. No. 18 [Notice of Appearance and Claims to Surplus Monies]). The Board's claim for common charges against defendants Zhang and Lu does not provide a reason to deny plaintiff's motion.

ORDERED that plaintiff's motion for a default judgment against all defendants is granted and plaintiff is awarded summary judgment against the Board of Managers of 425 Fifth Avenue

Condominium Homeowners Association to the extent that NYSCEF Doc. No. 18 is deemed an answer; and it is further

ORDERED that Thomas Kleinberger, 411 5th Avenue, New York, New York, 10016 (917) 326-5523 is hereby appointed Referee in accordance with RPAPL § 1321 to compute the amount due to Plaintiff for principal, interest and other disbursements advanced as provided for in the note and mortgage upon which this action is brought, and to examine whether the mortgaged property can be sold in parcels; and it is further

ORDERED that the Referee may take testimony pursuant to RPAPL § 1321; and it is further

ORDERED that by accepting this appointment the Referee certifies that she/he is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2 (c) (“Disqualifications from appointment”), and §36.2 (d) (“Limitations on appointments based upon compensation”), and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall immediately notify the Appointing Judge; and it is further

ORDERED that, pursuant to CPLR 8003(a), and in the discretion of the court, a fee of \$350 shall be paid to the Referee for the computation of the amount due and upon the filing of her/his report and the Referee shall not request or accept additional compensation for the computation unless it has been fixed by the court in accordance with CPLR 8003(b); and it is further;

ORDERED that the Referee is prohibited from accepting or retaining any funds for herself/himself or paying funds to him/herself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED that plaintiff shall forward all necessary documents to the Referee within 30 days of the date of this order and shall promptly respond to every inquiry made by the referee (promptly means within two business days); and it is further

ORDERED that plaintiff must bring a motion for a judgment of foreclosure and sale within 30 days of receipt of the referee's report; and it is further

ORDERED that if plaintiff fails to meet these deadlines, then the Court may sua sponte vacate this order and direct plaintiff to move again for an order of reference and the Court may sua sponte toll interest depending on whether the delays are due to plaintiff's failure to move this litigation forward; and it further

ORDERED that the caption be amended to substitute a new plaintiff and to remove John Doe as a defendant and the caption shall read as follows;

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

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THE BANK OF NEW YORK MELLON, fka THE BANK OF NEW YORK, AS SUCCESSOR INDENTURE TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS INDENTURE TRUSTEE ON BEHALF OF THE NOTEHOLDERS OF THE CWHEQ REVOLVING HOME EQUITY LOAN TRUST, SERIES 2005-F,

Plaintiff,

v.

HUA ZHANG, BIN LU, THE BOARD OF MANAGERS OF 425 FIFTH AVENUE CONDOMINIUM HOMEOWNERS ASSOCIATION, CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD, CITY OF NEW YORK PARKING VIOLATIONS BUREAU, CITY OF NEW YORK TRANSIT ADJUDICATION BUREAU,

Defendant(s).
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and it is further


ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being substituted and removed; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address (ww.nycourts.gov/supctmanh)).

ORDERED that Plaintiff shall serve a copy of this Order with notice of entry on all parties and persons entitled to notice, including the Referee appointed herein.

Next Conference: September 17, 2019 at 2:15 p.m. If plaintiff has moved for a judgment of foreclosure and sale before the conference, then plaintiff can seek an adjournment. Please consult the part's rules for information about how to obtain an adjournment. An appearance is required if a motion for a JFS has not been made; counsel appearing for plaintiff must come prepared to explain the delay or interest may be tolled.

5-8-19
DATE


ARLENE P. BLUTH, J.S.C.
HON. ARLENE P. BLUTH

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE