

<b>JPMorgan Chase Bank, N.A. v Tir Na Nog Realty LLC</b>
2019 NY Slip Op 31368(U)
May 13, 2019
Supreme Court, New York County
Docket Number: 850129/2017
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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**INDEX NO. 850129/2017**

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,

**MOTION DATE N/A**

Plaintiff,

**MOTION SEQ. NO. 002**

- v -

TIR NA NOG REALTY LLC, STATE OF NEW YORK, 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

**DECISION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60

were read on this motion to/for

ENFORCEMENT

The motion to enforce a settlement agreement is granted in part. Plaintiff is entitled to a judgment of foreclosure and sale and is directed to submit a proposed order and judgment of foreclosure and sale as well as an affidavit of the amount due (along with supporting documentation). Defendant may respond to plaintiff's submission; if defendant chooses to respond, that response must be submitted within ten days of plaintiff's submission. Plaintiff's request for costs and fees is granted inasmuch as a bill of costs will be submitted to the judgment clerk at the proper time. The cross-motion by defendant Tir Na Nog Realty LLC ("Defendant") for a stay is denied.

## Background

In this foreclosure action, the parties entered into a settlement agreement on the record before Justice McMahon on May 29, 2018 (NYSCEF Doc. No. 52). The terms were as follows: “Plaintiff is going to withdraw their motion for Summary Judgment without prejudice, in exchange for a \$100,000 payment from the Defendants. This will allow a six-month period of time for the Defendants to attempt to sell the property, with the idea being they pay off the loan in full. During that time, if they don’t meet the deadline of that six-month date, which I believe is November 30, the Defendant agrees that Plaintiff would be able to proceed with the foreclosure action and actually consent to a Judgment of Foreclosure and sale” (*id.* at 4). Counsel for Defendant assented to the agreement as read onto the record (*id.* at 7).

Plaintiff claims that the property was never sold and it now moves to enforce the settlement agreement. In opposition and in support of its cross-motion to stay, Defendant claims that there is pending litigation about the control of Defendant; apparently, two of the members used to be married and there is a dispute over one member’s removal from Defendant. Defendant claims that this dispute prevented it from selling the apartment and argues that the premises is not suited for a foreclosure sale because it is worth over \$9 million.

Defendant does not deny that it agreed to the settlement on May 29, 2018. Instead, Defendant contends that there was no process discussed for how plaintiff would proceed with the foreclosure action if the property was not sold within 6 months and emphasizes that Defendant did not agree to withdraw its answer.

The Court finds that the settlement agreement stated on the record compels the Court to grant the motion and deny the cross-motion. Defendant consented to the entry of a judgment of foreclosure and sale if it did not sell the property in 6 months and there is no dispute that the property was never sold. The fact that it did not agree to withdraw its answer is immaterial given that it consented to a judgment of foreclosure and sale. Obviously, if Defendant agreed to a judgment of foreclosure and sale, then it consented to withdrawing its answer.

And the fact that there was no specific procedure regarding how the judgment of foreclosure and sale would be entered is of no moment. The Court hereby sets the procedure. Pursuant to RPAPL 1321(1), the Court can ascertain the amount due; it does not have to appoint a referee to compute. Therefore, plaintiff is directed to submit a proposed order and judgment of foreclosure and sale to the Court and include therewith documentation supporting the requested amount due.<sup>1</sup> This order should also award plaintiff summary judgment, strike Defendant's answer, award a default judgment as to the non-appearing defendants and provide for a referee to sell the property at auction (leave a blank and the Court will fill in the referee to be appointed). Plaintiff must submit this proposed order and judgment via e-filing, and also provide a hard copy to the Court, on or before June 25, 2019. Defendant's response, if any, is limited to challenging the amount claimed due. Proof of payments claimed not credited must be properly documented.

Plaintiff's request for attorneys' fees in bringing this motion is denied. There is no indication that Defendant exhibited bad faith. Rather, it appears that Defendant was unable to sell the property because it could not sort out who controlled the Defendant. There is no

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<sup>1</sup> The proposed order submitted by plaintiff (NYSCEF Doc. No. 56) does not mention the amount due.

question that there are complicated issues surrounding the ownership interests in Defendant. While that does not justify granting Defendant's cross-motion to stay the case, it does not show a willful or intentional breach of the settlement agreement. And Defendant is entitled to challenge the amount due; that amount has not even been set forth by plaintiff.

Plaintiff may do so earlier, but must submit the information set forth in this decision no later than June 25, 2019 and defendant, if it chooses to do so, may submit a challenge to the amount claimed due no later than ten days after plaintiff's submission. The parties must serve each other by efilng but must provide hard copies directly to the courtroom.

5.13.19

_____ DATE		_____ ARLENE P. BLUTH, J.S.C. <b>HON. ARLENE P. BLUTH</b>
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input checked="" type="checkbox"/> SUBMIT ORDER & JUDGMENT
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE