

SD Second Ave. Prop., LLC v Liggio

2019 NY Slip Op 32984(U)

October 7, 2019

Supreme Court, New York County

Docket Number: 157018/2019

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2EFM

Justice

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INDEX NO. 157018/2019

SD SECOND AVENUE PROPERTY, LLC,

MOTION DATE 11/23/2019

Plaintiff,

MOTION SEQ. NO. 001

- v -

VINCENT LIGGIO, as Co-Executor of the Estate of Helen B. Andrews, a/k/a Helen Barrett Andrews, INDIVIDUALLY, and as Executrix of the Estate of James J. Andrews And 21ST STREET LENDER, LLC

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, this motion is decided as follows:

Plaintiff SD Second Avenue Property, LLC, as the owner of real property known as 351-359 Second Avenue a/k/a Block 901, lots 29, 30 and 34, County, City and State of New York, (hereinafter the "Property"), brings the within action pursuant to RPAPL Article 15, to extinguish the mortgage against the portion of said property known as Block 901, Lot 31, made on April 27, 1911 by William J. Ludwig and Henrietta Ludwig in favor of American Mortgage Company, in the amount of \$11,000.00 and recorded in Liber 213, Page 403 of the City Register of New York County. The entire history of all subsequent Mortgages on the subject property are fully set forth in the Complaint and will not be repeated here, except as related to this motion. (Doc. 1, pages 4, 5 and 6).

The last recorded mortgage on the subject property was made on January 2, 1975 between Andrett Realty Corporation, as Mortgagor, and Helen Barrett Andrews and James J. Andrew, as Mortgagees, who entered into an Extension and Spreader Agreement which spread the Mortgage to cover that portion of the property now known as Block 901, Lot 30 (old lots 30, 31 and 32) and which was recorded in Reel 333, Page 120, on January 8, 1975.

Joshua Schuster, as the authorized agent of plaintiff, who avers in his annexed Affidavit (Doc. 4) that he has personal knowledge of the matters herein, on information and belief, represents that, subsequent to the said Mortgage, all routine and timely payments were made toward satisfaction of the same. He further states that all amounts due on the said Mortgage were paid. Additionally, Schuster claims that Helen B. Andrews a/k/a Helen Barrett Andrews a/k/a Helen M. Andrews, individually and as Executrix of the Estate of James J. Andrews, failed to properly record a Satisfaction of Discharge of the Mortgage with the Office of the City Register of New York County. Id, ¶16. Further, he represents that no demand has been made for payment of the Mortgage for at least ten years prior to the filing of this action, nor has any payment of the Mortgage been made to any party in at least ten years. Id ¶¶ 18, 19.

Finally, 21st Street Lender, LLC. (“21st Street”), was named as a party to this action as Agent for itself and such other co-lenders as may exist from time to time, as recorded with the Office of the City Register of New York County, on August 6, 2019 at CRFN #2019000248194.

Schuster states that, at the closing of the Mortgage with 21st Street Lender, it was discovered that the Mortgage had not been satisfied, thereby leaving a cloud on the title to the

property, and the captioned action was then commenced to extinguish the Mortgage and to clear title to the property. Id ¶¶ 20, 21, and 22.

Also annexed hereto is the Affidavit of William J. Turkish, Esq., a member of the law firm of Braunstein Turkish LLP, attorneys for plaintiff, who bases his knowledge upon communications with the plaintiff and the contents of his file. Doc. 5, ¶1. He represents that defendant 21st Street has acknowledged and consented to the relief requested herein, (See Doc. 8). He further avers that defendant Vincent Liggio (“Liggio”), as Co-Executor of the Estate of Helen B. Andrews a/k/a Helen Barrett Andrews a/k/a Helen M. Andrews Individually and as Executrix of the Estate of James J. Andrews, was properly served a copy of the summons and complaint on July 29, 2019 (See Docs. 2 and 7), and has failed to appear or answer and that the time to do so has expired. Id at ¶¶ 3, 5, and 6. Additionally, service of the instant motion was made on Liggio by mail on August 30, 2019. Doc. 9.

Turkish now moves, pursuant to CPLR 3215 (a), for a default judgment against Liggio, as well as against 21st Street, based on its consent to the relief sought herein, extinguishing the Mortgage pursuant to RPAPL Article 15.

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.” It is well settled that a party moving for a default judgment pursuant to CPLR 3215 must establish proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the default in answering or appearing. *See Gantt v North Shore-LIJ Health Sys.*, 140 AD3d 418 (1st Dept

2016). Moreover, a default in answering the complaint is deemed to be an admission of all factual statements contained in the complaint and all reasonable inferences that flow from them. See *Woodson v Mendon Leasing Corp.*, 100 NY2d 63 (2003).

Based on the foregoing facts, plaintiff has established proof of service, proof of the facts constituting the claim and proof of the default of defendant Liggio. Additionally, defendant 21st Street Lender LLC has clearly consented to the relief requested by plaintiff in this motion.

Therefore, in light of the foregoing, it is hereby:

ORDERED that the motion by plaintiff SD Second Avenue Property, LLC for a default judgment against defendant Vincent Liggio, Co-Executor of the Estate of Helen B. Andrews a/k/a Helen Barrett Andrews a/k/a Helen M. Andrews Individually and as Executrix of the Estate of James J. Andrews, is granted; and it is further

ORDERED that the motion is granted as against defendant 21st Street Lender, LLC, which has consented to the relief sought therein; and it is further


ORDERED that a certain Mortgage dated February 15, 1955 by Andrett Realty Corporation, as Mortgagor and Francis Barrett Tolman, as Mortgagee, assigned on June 27, 1967 to Helen Barrett Andrews and James J. Andrews on the property known as 351-359 Second Avenue, New York, New York a/k/a Block 901, Lots 29, 30, and 34 County of New York be and the same is hereby, extinguished of record, and any rights, title or interest of the Defendant Vincent

Liggio, as Co-Executor of the Estate of Helen B. Andrews a/k/a Helen Barrett Andrews a/k/a Helen M. Andrews Individually and as Executrix of the Estate of James J. Andrews, in the property are hereby terminated; and it is further

ORDERED that, within twenty (20) days of the entry of this order, plaintiff shall serve a copy of the same on defendants; and it is further

ORDERED that this constitutes the decision and order of this Court.

10/7/2019
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: