

Capital One, N.A. v Banfill

2019 NY Slip Op 33348(U)

November 7, 2019

Supreme Court, New York County

Docket Number: 850225/2016

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART IAS MOTION 32

Justice

INDEX NO. 850225/2016
MOTION DATE 10/30/2019
MOTION SEQ. NO. 004

CAPITAL ONE, N.A., SUCCESSOR BY MERGER TO ING BANK, FSB,

Plaintiff,

- v -

ANDREW BANFILL, NATIONAL CITY BANK, MANUFACTURERS AND TRADERS TRUST COMPANY, BOARD OF MANAGERS OF THE 520 WEST 110TH STREET CONDOMINIUM, ANNABELLE FISCHER, AMERICAN EXPRESS CENTURION BANK, PARTNERS DYNAMIC SECURITY TRANSPORTATION INC. DBA PARTNERS EXECUTIVE TRANSPORTATION, HSBC BANK USA NATIONAL ASSOCIATION, MIDLAND FUNDING LLC, CITIBANK (SOUTH DAKOTA) NA, UNITED STATES OF AMERICA O/B/O INTERNAL REVENUE SERVICE, JOHN DOE #1 THROUGH #6, AND JANE DOE #1 THROUGH #6, THE LAST TWELVE NAMES BEING FICTITIOUS, IT BEING THE INTENTION OF PLAINTIFF TO DESIGNATE ANY AND ALL OCCUPANTS, TENANTS, PERSONS OR CORPORATIONS, IF ANY, HAVING OR CLAIMING AN INTEREST IN OR LIEN UPON,

Defendant.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 190 were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, it is

ORDERED that plaintiff is awarded a default judgment against all non-appearing defendants and against defendant Banfill (who withdrew his answer); and it is further

ORDERED that Mark McKew, Esq. with an address of 1725 York Ave #29A NY NY 10128 212-876-6783 is hereby appointed Referee in

accordance with RPAPL § 1321 to compute the amount due to Plaintiff and to examine whether the tax parcel can be sold in parcels; and it is further

ORDERED that the Referee shall hold no hearing and take no testimony or evidence other than by written submission; the Court is the ultimate arbiter and the Referee's report is merely an advisory finding; and it is further

ORDERED that by accepting this appointment the Referee certifies that 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 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 himself or paying funds to himself 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 and to defendants who have appeared in this case 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 if defendant(s) have objections, they must submit them to the referee within 14 days of the mailing of plaintiff's submissions; and include these objections to the Court if opposing the motion for a judgment of foreclosure and sale; and it is further

ORDERED the failure by defendants to submit objections to the referee shall be deemed a waiver of objections before the Court on an application for a judgment of foreclosure and sale; 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 Ballymena LLC be substituted for plaintiff in this action and the caption shall read as follows:

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

-----X
BALLYMENA, LLC,

Plaintiff,

v.

ANDREW BANFILL, NATIONAL CITY BANK,
MANUFACTURERS AND TRADERS TRUST
COMPANY, BOARD OF MANAGERS OF THE 520
WEST 110TH STREET CONDOMINIUM,
ANNABELLE FISCHER, AMERICAN EXPRESS
CENTURION BANK, PARTNERS DYNAMIC
SECURITY TRANSPORTATION INC. DBA
PARTNERS EXECUTIVE TRANSPORTATION,
HSBC BANK USA NATIONAL ASSOCIATION,
MIDLAND FUNDING LLC, CITIBANK (SOUTH
DAKOTA) NA, UNITED STATES OF AMERICA
O/B/O INTERNAL REVENUE SERVICE, JOHN
DOE #1 THROUGH #6, AND JANE DOE #1

THROUGH #6, THE LAST TWELVE NAMES BEING FICTITIOUS, IT BEING THE INTENTION OF PLAINTIFF TO DESIGNATE ANY AND ALL OCCUPANTS, TENANTS, PERSONS OR CORPORATIONS, IF ANY, HAVING OR CLAIMING AN INTEREST IN OR LIEN UPON,

Defendant(s). _____X

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 pursuant hereto; 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 (www.nycourts.gov/supctmanh)); and it is further

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: March 31, 2020 @ 2:15 p.m. If a motion for judgment of foreclosure and sale has been filed, plaintiff may seek an adjournment of the conference. Please consult this part's rules for information on how to obtain an adjournment. If a motion has been made, then a conference is required to explore the reasons for the delay.

11/7/19

DATE

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

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	REFERENCE
<input type="checkbox"/>	SUBMIT ORDER		
<input checked="" type="checkbox"/>	FIDUCIARY APPOINTMENT		

APPLICATION:

CHECK IF APPROPRIATE:

HON. ARLENE P. BLUTH

by 11/30/19