

**Board of Mgrs. of the Nolita Place Condominium v
Texas Entertainment LLC**

2020 NY Slip Op 30285(U)

February 4, 2020

Supreme Court, New York County

Docket Number: 155849/2018

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

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INDEX NO. 155849/2018

BOARD OF MANAGERS OF THE NOLITA PLACE
CONDOMINIUM,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 002

- v -

TEXAS ENTERTAINMENT LLC, EDWARD BRADY, JOHN
DOES NOS. 1-20,

**DECISION + ORDER ON
MOTION, JUDGMENT OF
FORECLOSURE AND SALE**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 50

were read on this motion to/for JFS

Upon the foregoing documents, it is

ORDERED and ADJUDGED that the motion by plaintiff for a judgment of foreclosure and sale and to confirm the referee's report is granted; and it is further

ORDERED that the liened premises described in the complaint and as described in this judgment shall be sold within 90 days of this judgment, in one parcel, at a public auction at the New York County Courthouse located at 60 Centre Street, New York, New York under the direction of Lorraine Nadel, 527 Madison Avenue, Floor 7, New York, NY 10022 (212) 317-9500, who is appointed Referee for this purpose; and it is further

ORDERED that the Referee shall give public notice of the time and place of sale in accordance with RPAPL 231(2) in the following publication: *New York Law Journal*; and the referee need not conduct the sale unless plaintiff shall provide the referee with proof of publication of the notice of sale, and if the sale is adjourned due to plaintiff's failure to provide

such proof, then said adjournment shall not be considered at the referee's request; and it is further

ORDERED that by accepting this appointment the Referee certifies that she 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 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 the Referee shall conduct the foreclosure sale only if Plaintiff, its successors and/or assignees or its representatives is present at the sale or the Referee has received a written bid and Terms of Sale from Plaintiff, its successors and/or assigns, or its representatives; and it is further

ORDERED that if the Referee cannot conduct the sale within 90 days of the date of this judgment, plaintiff must make a motion to extend the time to sell the subject property explaining the reasons for the delay; and it is further

ORDERED that at the time of sale the Referee may accept a written bid from the Plaintiff or the Plaintiff's attorney, just as though Plaintiff were physically present to submit said bid; and it is further

ORDERED that the Referee shall accept the highest bid offered by a bidder who shall be identified upon the court record, and shall require that the successful bidder immediately execute

Terms of Sale for the purchase of the property, and pay to the Referee in cash, certified check or bank check, ten percent (10%) of the sum bid, unless the successful bidder is Plaintiff, in which case no deposit against the purchase process shall be required and it is further

ORDERED that notwithstanding the previous paragraph, the Referee shall have the right to refuse cash payments and require a bank or certified check from the successful bidder and the Referee shall be entitled to qualify bidders and require bidders to show proof of funds before or during the auction; and it is further

ORDERED that in the event the first successful bidder fails to execute the Terms of Sale or fails to immediately pay the ten percent (10%) deposit as required, the property shall be immediately reoffered at auction on the same day; and it is further

ORDERED the Referee shall deposit the down payment and proceeds of sale, as necessary in an FDIC-insured bank where the Referee has an account for that purpose in accordance with CPLR 2609; and it is further

ORDERED that after the property is sold, the Referee shall execute a deed to the purchaser in accordance with RPAPL 1353 and the terms of sale (which shall be deemed a binding contract); and it is further

ORDERED that in the event a party other than Plaintiff becomes the purchaser at the sale, the closing of title shall be held no later than 30 days after the date of such sale; and it is further

ORDERED that, pursuant to RPAPL 1353(1), if Plaintiff (or its affiliate as defined in paragraph [a] of subdivision one of section six-1 of the banking law) is the purchaser, the property shall be placed back on the market for sale or other occupancy within 180 days of the execution of the deed of sale or within 90 days of construction, renovation, or rehabilitation of

the property, provided that such construction, renovation or rehabilitation proceeded diligently to completion, whichever comes first, provided that this court grants an extension upon a showing of good cause; and it is further

ORDERED that the Referee, after receiving the proceeds of the sale, shall pay (from the proceeds) the taxes, assessments, sewer rents, or water rates, which are, or may, become liens on the property, in accordance with their priority according to law with such interest or penalties which may have lawfully accrued thereon to the date of payment; and it is further

ORDERED that the Referee shall deposit the balance of the proceeds from the sale in his or her own name as Referee in an FDIC-insured bank where the Referee has an account for that purpose and shall make the following payments in accordance with RPAPL 1354:

1. The Referee's statutory fees for conducting the sale, which are \$1,100. Plaintiff shall compensate the Referee in the sum of \$350 for each adjournment or cancellation made on less than two business days' notice, unless the Referee caused the delay.
2. All taxes, assessments and water rates that are liens upon the property and monies necessary to redeem the property from any sales for unpaid taxes, assessments or water rates and any other amounts due in accordance with RPAPL 1354(2). The purchaser shall be responsible for interest and penalties accrued *after* the sale. The Referee shall not be responsible for the payment of penalties or fees pursuant to this appointment. The purchaser shall hold the Referee harmless from any such penalties or fees assessed;
3. The expenses of the sale and the advertising expenses as shown on the bills presented and certified by the Referee to be correct, copies of which shall be annexed to the report of sale.

4. The Referee shall also pay to the Plaintiff or its attorneys the following:
 - a. Amount Due from the Referee's Report: \$77,895.63 together with interest at the statutory rate from November 30, 2019 until the date of entry of this judgment, plus current common charges, special assessments and late charges thereon and then with interest from the date of entry of this judgment at the statutory rate until the date the deed is transferred; and plaintiff may add to the amount due any and all inspection fees, maintenance charges, common charges, taxes, insurance premiums or other advances necessary to preserve the property provided that receipts are provided to the Referee;
 - b. Costs and Disbursements: _____ (To be inserted by the County Clerk) to Plaintiff for costs and disbursements in this action with interest at the statutory judgment rate from the date of entry of this judgment;
 - c. The Court declines to award additional allowance.
 - d. Attorneys' Fees: Included in amount calculated by the referee.
5. Surplus monies from the sale shall be paid into Court by the Referee within five days after receipt in accordance with RPAPL 1354(4); and it is further

ORDERED that if Plaintiff is the purchaser of the property, or in the event that the rights of the purchasers at the sale and the terms of sale under this judgment shall be assigned to or be acquired by Plaintiff, and a valid assigned is filed with the Referee, the Referee shall not require Plaintiff to pay in cash the entire amount bid at sale, but shall execute and deliver to Plaintiff or its assignee, a deed or deeds of the property sold upon the payment to said Referee of the amounts specified as 1, 2, and 3 above, and the Referee shall allow Plaintiff to pay the amounts specified in 2 and 3 above when it is recording the deed; that the balance of the bid, after

deducting the amounts paid by Plaintiff shall be applied to the amount due to Plaintiff as specified in 4 above; that Plaintiff shall pay any surplus after applying the balance of the bid to the Referee, who shall deposit it in accordance with 5 above; and it is further

ORDERED that all expenses of recording the Referee's deed, including real property transfer taxes, which is not a lien upon the property at the time of sale, shall be paid by the plaintiff from the sale proceeds and are recoverable as a cost of litigation; and it is further

ORDERED that Plaintiff may seek to recover a deficiency in accordance with RPAPL 1371 if applicable;

ORDERED that the property shall be sold in one parcel in "as is" physical order and condition, subject to any condition that an inspection of the property would disclose; any facts that an accurate survey of the property would show; any covenants, restrictions, declarations, reservations, easements, right of way, and public utility agreements of record, if any; any building and zoning ordinances of the municipality in which the liened property is located and possible violations of same; any rights of tenants or persons in possession of the subject property; prior liens of record, if any, except those liens addressed in RPAPL 1354, any equity of redemption of the United States of America to redeem the property within 120 days from the date of sale, any rights pursuant to CPLR 317, 2003 and 5015 or any appeal of the underlying action or additional litigation brought by any defendant or its successor or assignee contesting the validity of this foreclosure; and it is further

ORDERED that the purchaser be let into possession of the property upon production in hand of the Referee's Deed or upon personal service of the Referee's deed in accordance with CPLR 308; and it is further

ORDERED that the liens of Plaintiff other than the common charge liens that are at issue in this matter are also foreclosed as though Plaintiff was named as a defendant in this action; and it is further

ORDERED that defendants in this action and persons claiming through them and any person obtaining an interest in the property after the Notice of Pendency are barred and foreclosed of all right, claim, lien, title, and interest in the property after the sale of the property; and it is further

ORDERED that within **14 days** after completing the sale and executing the proper conveyance to the purchaser, the Referee shall file with the clerk a report under oath of the disposition of the proceeds of the sale and upload the report to NYSCEF if it is an e-filed case and the plaintiff is also directed to e-file this form; and it is further

ORDERED that if the purchaser or purchasers at said sale default upon the bid or terms of sale, the Referee may place the property for resale without prior application to this Court unless Plaintiff's attorney elects to make such an application; and it is further

ORDERED that Plaintiff shall serve a copy of this judgment with notice of entry upon all the parties entitled to service, including the Referee appointed herein; and it is further

ORDERED that when the Referee files a report of sale, she or he shall also file a Foreclosure Action Surplus Monies Form and also upload this document to NYSCEF and plaintiff shall also upload a copy of this form; and it is further

ORDERED that Plaintiff shall file a written report with the Court (via NYSCEF) within 5 months from the date of this judgment stating whether the sale has occurred and, if applicable, the outcome of the sale; and it is further

ORDERED that plaintiff shall upload the notice of sale to NYSCEF at least 21 days before the sale and the Referee and plaintiff shall e-mail SFC-Foreclosures@nycourts.gov at least 21 days before the auction date so the auction may be placed on the auction calendar; IF THE AUCTION IS NOT ON THE CALENDAR, then the auction will not go forward; and it is further

ORDERED that the caption be amended to remove defendant Edward Brady and the John Doe defendants, and the caption shall read as follows:

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

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BOARD OF MANAGERS OF THE NOLITA PLACE
CONDOMINIUM,
Plaintiff,

v.

TEXAS ENTERTAINMENT LLC,

Defendant(s).
-----X

and it is further

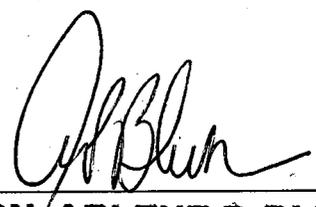
ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being removed pursuant hereto;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

ORDERED that, without further order of the Court, the referee shall be entitled to an additional fee of \$950 for conducting and attending a closing with a purchaser other than plaintiff, plus, if such a closing is scheduled for the referee's conference room, then the referee shall be entitled to a reasonable fee for use thereof, without further order of the Court.

The property is commonly known as 199 Bowery, Unit 12A, New York, NY 10002. A legal description is attached as Schedule A.

2/4/2020
DATE



HON. ARLENE P. BLUTH

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

Old Republic National Title Insurance Company**SCHEDULE A
DESCRIPTION OF PREMISES**

Title No. MIT184278NY

The Condominium Unit (the "Unit") in the Building known as The Nolita Place Condominium located at and known as and Street Number 199 Bowery, New York, designated and described as Unit No. 12A (the "Unit") in the Declaration establishing a plan for condominium ownership of said Building and the land upon which it is situate under Article 9-B of the Real Property Law of the State of New York (the "Condominium Act"), dated 3/24/2006 and recorded 4/26/2006 in the Office of the Register of The City of New York, County of New York under CRFN 2006000233290, said Unit also being designated as Tax Lot 1160 in Block 425 of Section 2 of the Borough of Manhattan on the Tax Map of the Real Property Assessment Department of the City of New York and on the Floor Plans of the said Building, certified by H. Thomas O'Hara and filed with the Real Property Assessment Department of The City of New York as Condominium Plan No. 1553, and also filed in the City Register's Office on April 26, 2006 as Condominium Map No. CRFN 2006000233291.

TOGETHER with a 2.02% undivided interest in the Common Elements of the Condominium.

The land upon which the Building containing the Unit is situate is described as follows:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, known and designated as and by Lot 9 in Block 425 in the Tax Map of the City of New York for the Borough of Manhattan, which said lot is more particularly bounded and described as follows:

BEGINNING at a point on the Easterly side of Bowery distant 100 feet ½ inch Southerly from the corner formed by the intersection of the Southerly side of Rivington Street with the Easterly side of Bowery;

RUNNING THENCE Easterly along a line forming an interior angle of 85 degrees 19 minutes 50 seconds with the Easterly side of Bowery, 150 feet;

THENCE Southerly along a line forming an interior angle of 94 degrees 39 minutes 50 seconds with the preceding course, 99 feet 10-1/2 inches;

THENCE Westerly along a line forming an interior angle of 94 degrees 42 minutes 50 seconds with the Easterly side of Bowery, 150 feet to the Easterly side of Bowery;

THENCE Northerly along the Easterly side of Bowery, 99 feet 9 inches to the point or place of BEGINNING.

Being and intended to be the same premises conveyed to the party of the first part by deed in CRFN 2006000566713.