

**The Bd. of Mgrs. of the Residences at Worldwide
Plaza Condominium v Villegas**

2021 NY Slip Op 32411(U)

November 19, 2021

Supreme Court, New York County

Docket Number: 161187/2017

Judge: Francis A. Kahn III

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. FRANCIS KAHN, III PART **32**

Justice

-----X

INDEX NO. 161187/2017

THE BOARD OF MANAGERS OF THE RESIDENCES AT
WORLDWIDE PLAZA CONDOMINIUM, ON ITS OWN
BEHALF AND ON BEHALF OF ALL UNIT OWNERS OF
THE RESIDENCES AT WORLDWIDE PLAZA
CONDOMINIUM,

MOTION DATE _____

MOTION SEQ. NO. 001

Plaintiff,

- v -

LOURDES VILLEGAS, 1ST 2ND MORTGAGE CO. OF N.J.,
INC., NY CITY ENVIRONMENTAL CONTROL BOARD,
NEW YORK CITY TRANSIT ADJUDICATION BUREAU,
NEW YORK STATE DEPARTMENT OF TAXATION AND
FINANCE, JOHN DOE, JANE DOE

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 23, 24, 25, 26, 27, 32, 33

were read on this motion to/for APPOINT - FIDUCIARY

Upon the foregoing documents, the motion is determined as follows:

This is an action to foreclose on a lien for unpaid common charges on a residential condominium unit located at 393 West 49th Street, Unit 2Y, New York, New York. Defendant Lourdes L. Villegas (“Villegas”), the unit owner, filed an answer.

Pursuant to Section 6.7 of the condominium’s by-laws, in any action to foreclose on a lien for unpaid common charges, “the Unit Owner shall be required to pay a reasonable rental for the use and occupancy of his Unit and the plaintiff in such foreclosure action shall be entitled to the appointment, without notice, of a receiver to collect the same”.

Now, Plaintiff moves pursuant to RPL §339-aa for the appointment of a temporary receiver of the premises and to set a reasonable rent for the receiver to collect. Defendant Villegas opposed the motion.

Under Real Property Law RPL §339-aa, the appointment of a receiver and the collection of rent in the event of a default on common charges is proper where authorized under the by-laws (*see Heywood Condominium v Wozencraft*, 148 AD3d 38 [1st Dept 2017]; *see also Board of Mgrs. of the 1835 E. 14th St. Condominium v Singer*, 186 AD3d 1477 [2d Dept 2020]). Nevertheless, the Court retains, as an exercise of its equitable power, the discretion to deny the appointment of a receiver (*see ADHY Advisors LLC v 530 W. 152nd St. LLC*, 82 AD3d 619 [1st Dept 2011]).

In the present case, it is undisputed that the condominium's by-laws provided Plaintiff may apply for the appointment of a receiver regardless of the adequacy of the property as security. Defendant Villegas has not paid common charges in four years and has defaulted in repayment of a mortgage on the premises. Plaintiff has also alleged that Villegas' default in payment of common charges has caused the condominium to incur a shortfall in income that has been unfairly borne by the residential unit owners (*see Capital One, N.A. v Banfill*, 177 AD3d 415 [1st Dept 2019]).

Defendant Villegas has not demonstrated that denial of the appointment of a receiver is an appropriate exercise of the Court's discretion (*see Heywood Condominium v Wozencraft*, supra).

As such, Plaintiff established its entitlement to the appointment of a receiver of the mortgaged premises. Plaintiff also demonstrated that a reasonable rent for the premises at issue is \$2,500.00 per month.

Accordingly, it is

ORDERED that the branch of the motion for the appointment of a Temporary Receiver for the rents and profits is granted; and it is further

ORDERED that **Roberta Ashkin, Esq., 300 E 42ND Street Floor 14 New York, NY 10017-5984 (646) 779-8520** is hereby appointed with the usual powers and directions of a Temporary Receiver for the benefit of Plaintiff of all the rents and profits now due and unpaid or become due during the pendency of this action property known by the address as 393 West 49th Street, Unit 2Y, New York, New York; and it is further

ORDERED that the Temporary Receiver is authorized to take charge and, if necessary, enter into possession of the property; and it is further

ORDERED that Defendant Lourdes L. Villegas or any other occupant of the premises shall pay to the Temporary Receiver the sum of \$2,500.00 per month commencing December 1, 2021 and on the first of every month thereafter, and it is further

ORDERED that before entering her/his duties, the Temporary Receiver shall be sworn to fairly and faithfully discharge the duties committed to him and shall execute to the People of the State of New York and file with the Clerk of the Court an undertaking in the sum of **\$5,000.00** conditioned for the faithful discharge of the duties of Temporary Receiver; and it is further

ORDERED that the Temporary Receiver is hereby directed to demand, collect and receive from the occupants, tenants and licensees in possession of said premises, or other persons liable therefor, inclusive of the mortgagor, all the rents and license fees thereof now due or unpaid or hereafter that become fixed or due and the Temporary Receiver is authorized to institute and carry on all legal proceedings necessary for the protection of said premises or to recover possession of the whole, or any part thereof, and apply to this Court to fix reasonable rental value and license fee value and to compel the tenants and occupants to attorn to the Temporary Receiver; and it is further

ORDERED that the Temporary Receiver may institute and prosecute suits for the collection of rent, license fees and other charges now due or hereafter to become due and fixed, and summary proceedings for the removal of any tenants or licensees or other persons therefrom; and it is further

ORDERED that pursuant to the General Obligation Law section 7-105, anybody holding any deposits or advances of rental as security under any lease or license agreement affecting space in the premises affected by this action shall turn same over to said Temporary Receiver within five (5) days after said Temporary Receiver shall be qualified; and thereupon the said Temporary Receiver shall hold such security subject to such disposition thereof as shall be provided in an Order of the Court to be made and entered in this action; and it is further

ORDERED that anybody in possession of same shall turn over to said Temporary Receiver all rent lists, orders, unexpired and expired leases, agreements, correspondence, notices and registration statements relating to rental spaces or facilities in the premises; and it is further

ORDERED that notwithstanding anything to the contrary contained in this order, the Temporary Receiver shall not, without the further, prior order of this Court, upon prior notice to the plaintiff, make improvements or substantial repairs to the property at a cost in excess of \$1,000.00, *except* that in an emergency, if funds need to be expended in excess of \$1,000.00 or would otherwise require Court intervention, no Court approval will be necessary if counsel for plaintiff agrees in writing that the receiver may make such disbursement; and it is further

ORDERED that the Temporary Receiver shall deposit all monies received by her/him into any FDIC-insured bank where she has an account for this purpose and such account shall show the name of this action and the Temporary Receiver shall furnish plaintiff's attorneys with monthly statements of the receipts and expenditures of the Receivership together with a photocopy of the monthly statements received from said depository and no withdrawals shall be made therefrom except as directed by the Court or on a draft or check signed by the Temporary Receiver; and it is further

ORDERED that the Temporary Receiver is authorized from time to time to rent and lease any part of the premises for terms not exceeding one (1) year or such longer terms as may be required by applicable laws or regulations; to keep the premises insured against loss by damage or fire; to pay the taxes, assessments, water rates, sewer rates, vault rents, salaries of employees, supplies and other charges; to comply with all lawful requirements of any municipal department or other authority of the municipality in which the mortgaged premises are situated and to procure such fire, liability and other insurance as may be reasonably necessary; and it is further

ORDERED, that the tenants, licensees or other persons in possession of said premises attorn to the Temporary Receiver and pay over to the Temporary Receiver all rents, license fees, and other charges of such premises now due and unpaid or that may hereafter become due; and that the defendants be enjoined and restrained from collecting the rents, license fees and other charges of said premises from interfering in any manner with the property or its possession; and from transferring, removing or in any way disturbing and of the occupants or employees; and that all tenants, occupants, employees and licensees of the premises and other persons liable for the rents be and hereby are enjoined and restrained from paying any rent or license fees or other charges for such premises to the defendants, their agents, servants or attorneys; and it is further

ORDERED that the Temporary Receiver is prohibited from incurring obligations in excess of the monies in her hands without further Order of this Court or written consent of Plaintiff's attorney and Plaintiff may advance money, which can be recouped in this litigation; and it is further

ORDERED that the Owner turn over to the Temporary Receiver all rents collected from and after the date of this Order; and it is further

ORDERED that all persons now and hereafter in possession of said premises, or any part thereof, and not holding such possession under valid and existing leases or tendencies, do forthwith surrender such possession to the Temporary Receiver, subject to emergency laws, if any, and it is further

ORDERED that the Temporary Receiver after paying the expenses of the management and care of the said premises as above provided retain the balance of the monies which may come into his hands until the sale of the said premises under the judgment to be entered in this action and/or until further Order of this Court, and it is further

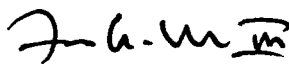
ORDERED that the Temporary Receiver, or any party hereto, may at any time, on proper notice to all parties who have appeared in this action, apply to the Court for further and other instructions or powers necessary to enable the Temporary Receiver to properly fulfill her duties or for interim fee payments; and it is further

ORDERED that the appointed named herein shall comply with Section 35a of the Judiciary Law, Sections 6401-6404 of the CPLR, Section 1325 of RPAPL and Rule 36 of the Chief Judge; and it is further

ORDERED that notwithstanding any other provision of this order, the Temporary Receiver shall not appoint an attorney, managing agent, appraiser, auctioneer or accountant without prior order of this Court, and that the receiver shall apply to the court and file a separate application for appointment of a managing agent, attorney or other managing services pursuant to 36.1 of the Uniform Court Rules.

ORDERED that this matter is set down for a conference on **January 13, 2022 @ 11:40 am via Microsoft Teams**. Part Clerk Tamika Wright (tswright@nycourts.gov) will forward the appearing parties an invitation to the conference via email.

11/19/2021
DATE


FRANCIS A. KAHN, III, A.J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	OTHER
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input checked="" type="checkbox"/>	FIDUCIARY APPOINTMENT