

<b>Citibank, N.A. v East 65th St. Owners LLC</b>
2022 NY Slip Op 30036(U)
January 3, 2022
Supreme Court, New York County
Docket Number: Index No. 651089/2019
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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CITIBANK, N.A.,

Plaintiff,

- v -

EAST 65TH STREET OWNERS LLC, 66TH STREET UNIT OWNERS LLC, HALSEY LANE OWNERS, LLC, AMETHYST REALTY LLC, HELIUM REALTY LLC, GRAPHITE REALTY LLC, PRINCE HARRY REALTY LLC, SULFUR REALTY LLC, TURQUOISE REALTY LLC, TIGER EYE REALTY LLC, ZINC REALTY, LLC, ALEXANDRITE REALTY CORP., ALMAZ REALTY CORP., BLOODSTONE REALTY CORP., BULL CONSULTING INC., CORAL REALTY CORP., DENG REALTY CORP., DYLAN REALTY CORP., GRANAT REALTY CORP., IZUMRUD REALTY CORP., QUARTZ REALTY CORP., ZHEMCHUG REALTY CORP., ZOLOTO REALTY CORP., 43-05 VERNON BOULEVARD, LLC, ELLEN M. WALKER AND ETHAN GERBER AS TRUSTEES UNDER 136 EAST 65TH STREET IRREVOCABLE RESIDENCE TRUST U/A DATED OCTOBER 28, 2010, ELLEN M. WALKER AND MAMED DZHANIYEV AS TRUSTEES UNDER 200 EAST 66TH ST. RESIDENCE TRUST U/A 6/15/08, and ELLEN M. WALKER AND ETHAN GERBER AS TRUSTEES UNDER 108 HALSEY STREET IRREVOCABLE RESIDENCE TRUST U/A FEBRUARY , 2013,

Defendants.

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 141, 144, 145, 157, 160, 161

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, it is

In motion sequence number 004, plaintiff Citibank, N.A. moves, pursuant to CPLR 3215, for a default judgment against defendants East 65th Street Owners LLC, 66th Street Unit Owners LLC, Halsey Lane Owners, LLC (Residential LLCs), Amethyst

Realty LLC, Helium Realty LLC, Graphite Realty LLC, Prince Harry Realty LLC, Sulfur Realty LLC, Turquoise Realty LLC; Tiger Eye Realty LLC, Zinc Realty, LLC, Alexandrite Realty Corp., Almaz Realty CORP., Bloodstone Realty Corp., Bull Consulting Inc., Coral Realty Corp., Denga Realty Corp., Dylan Realty Corp., Granat Realty Corp., Izumrud Realty Corp., Quartz Realty Corp., Zhemchug Realty Corp., Zoloto Realty Corp., 43-05 Vernon Boulevard, LLC (Multi-Family Entities), Ellen M. Walker and Ethan Gerber As Trustees Under 136 East 65th Street Irrevocable Residence Trust U/A Dated October 28, 2010, Ellen M. Walker and Mamed Dzhaniyev as Trustees Under 200 East 66th St. Residence Trust U/A 6/15/08, and Ellen M. Walker and Ethan Gerber as Trustees Under 108 Halsey Street Irrevocable Residence Trust U/A Dated February \_\_, 2013 (Domestic Residential Trusts). Intervenor Sterling National Bank opposes the motion.

In December 2017, Sterling filed a Special Proceeding seeking an order declaring its superior interest over Citibank's purported competing interest in assets, including real property, owned by 23 single-asset real estate companies, the Real Estate Entities. (*Sterling National Bank v Freidman*, Index No. 160715/2017.) The Real Estate Entities are 100% owned and/or controlled by Freidman. On June 15, 2020, the court entered an order granting in part, and denying in part, the relief Sterling requested and ruled that "Sterling has a superior priority interest in the Real Estate Entities." (*Sterling National Bank v Freidman*, Index No. 160715/2017, NYSCEF 156.)<sup>1</sup>

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<sup>1</sup> Sterling's cross motion to dismiss based on res judicata was denied. (Index No. 160715/2017, NYSCEF 153, Decision on motions 003 and 005.)

On February 21, 2019, Citibank initiated this action for declaratory judgments with a complaint verified by a Citibank Vice President. (NYSCEF 1, Complaint.)

Citibank seeks four declarations:

1. against the Residential LLCs that the real properties those entities own were each the product of a fraudulent transfer, that the fraudulent transfers were a valid basis for attachments having been filed against the real property, and therefore, that the levies are valid;
2. against the Residential LLCs declaring that each are Freidman's alter egos, that their alter ego status was a valid basis for attachments being filed against the real property, and therefore, that the levies of attachment are valid;
3. against the Multi-Family Entities declaring that each were alter egos of Freidman, that their alter ego status was a valid basis for attachments being filed against the underlying real property, and therefore, that the levies are valid; and
4. against certain of the defendants that own commercial properties declaring that each were alter egos of Freidman, that their alter ego status was a valid basis for attachments being filed against the underlying real property, and therefore, that the levies are valid.

(See *id.* at 34-35.)

All of Citibank's claims arise from the same theory: that defendants were alter egos of Evgeny Freidman. Citibank has an October 12, 2018 judgment in the amount of \$47 million against Freidman issued by the United States Bankruptcy Court for the Eastern District of New York. (*Id.* ¶ 41.) Prior to obtaining that judgment, the Bankruptcy Court authorized attachment of "any property in which Freidman has an interest." (*Id.* ¶ 30.) The US Marshal levied attachment on Freidman's various interests. (*Id.* ¶ 33.) Although Citibank's claim is against Freidman, the levies against the real property, separately owned by defendants in this action, were based upon alleged fraudulent transfers of the real properties and upon an allegation that Freidman

and each of defendants are alter egos. With this action, Citibank seeks a declaration that its levies of attachment are valid.

“On a motion for a default judgment under CPLR 3215 based upon a failure to answer the complaint, a Plaintiff demonstrates entitlement to a default judgment against a defendant by submitting: (1) proof of service of the summons and complaint; (2) proof of the facts constituting its claim; and (3) proof of the defendant's default in answering or appearing.” (*Medina v Sheng Hui Realty LLC*, 2018 WL 2136441, \*6-7 [Sup Ct, NY County 2018] [citations omitted].) Here, there is no dispute as to service and defendants' failure to answer.

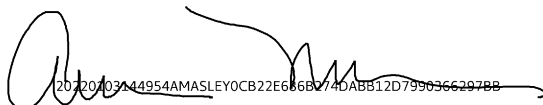
“CPLR 3215 (f) requires that an applicant for a default judgment file proof by affidavit made by the [moving] party of the facts constituting the claim.” (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70 [2003].) To establish "reverse veil piercing," where a subsidiary can be held liable for the acts of its parent, “the plaintiff must allege (1) that the owner exercised complete domination over the corporation with respect to the transaction at issue; and (2) that such domination was used to commit a fraud or wrong that injured the party seeking to pierce the veil.” (*Hood v Ascent Med. Corp.*, 2016 WL 1366920, \*17 [SDNY Mar. 3, 2016], *report and recommendation adopted*, 13 CIV. 628 (RWS), 2016 WL 3453656 [SD NY June 20, 2016, 13-CV-0628 (RWS/DF) ], *affd* 691 Fed Appx 8 [2d Cir 2017] [internal quotation marks and citation omitted].) Counsel for Citibank Nathan Schwed's affidavit is insufficient to satisfy this heavy burden as to whether Freidman was the alter ego of defendants in this action. (NYSCEF 89, Schwed aff.)

Moreover, New York courts rarely grant declaratory judgments on default “with no inquiry as to the merits.” (*Tanenbaum v Allstate Ins. Co.*, 66 AD2d 683, 684 [1st Dept 1978].) Declaratory judgments require that a “plaintiff establish a right to a declaration against a defendant and will not be granted on the default and pleadings alone.” (*Levy v Blue Cross and Blue Shield of Greater New York*, 124 AD2d 900, 902 [3d Dept 1986].) A hearing is required before this court can grant the relief.

Accordingly, it is

ORDERED that plaintiff’s motion is denied and this matter shall be set down for a hearing on plaintiff’s claims for a declaratory judgment. Plaintiff is directed to contact the court for a hearing date; and it is further

ORDERED that plaintiff is directed to serve a copy of this order with notice of entry on the Non-Appearing Defendants pursuant to the CPLR, as well as e-file on NYSCEF with an affirmation of service.



1/3/2022  
DATE

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ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED  
 GRANTED  DENIED

NON-FINAL DISPOSITION  
 GRANTED IN PART  OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT  REFERENCE