

Gratitude Capital LLC v West 136 St. Harlem LLC

2022 NY Slip Op 32575(U)

July 25, 2022

Supreme Court, New York County

Docket Number: Index No. 650780/2021

Judge: Lyle Frank

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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. LYLE FRANK PART 11M

Justice

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INDEX NO. 650780/2021

GRATITUDE CAPITAL LLC,

MOTION DATE 10/28/2021

Plaintiff,

MOTION SEQ. NO. 001

- v -

WEST 136 STREET HARLEM LLC, THEODORE FELDHEIM, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, CORE SCAFFOLD SYSTEMS INC, JOHN AND JANE DOE NO. 1 THROUGH JOHN AND JANE DOE NO. 100

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 53, 54, 55, 56, 57, 58, 59, 60

were read on this motion to/for

JUDGMENT - SUMMARY

Plaintiff, Gratitude Capital LLC, commenced this action to foreclose upon a mortgage executed by Defendant West 136 Street Harlem LLC ("West 136") with respect to the real property known as 321 West 136th Street, New York, New York 10030, whose mortgage is guaranteed by the defendant Theodore Feldheim¹. Defendant New York City Environmental Control Board ("ECB") is named because it has three (3) judgment liens against the property that are subordinate to Plaintiff's mortgage lien. Defendant Core Scaffold Systems Inc. is named to bar and foreclose said defendant from any right, title or interest that it may claim in the property by reason of the mechanic's lien filed on March 4, 2019, which is subordinate to the lien of plaintiff's mortgage lien herein foreclosed. Plaintiff now moves for summary judgment. Defendants West 136 and Feldheim oppose the motion.

¹ The Court would like to thank Olivia McCann for her assistance in this matter.

Summary judgment is appropriate where there is no issue of material fact, and the movant is entitled to judgment as a matter of law. *See* CPLR § 3212; *Zuckerman v New York*, 49 NY2d 557 [1980]; *Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]. In a mortgage foreclosure action, a plaintiff's right to judgment of foreclosure is established as a matter of law through the production of the unpaid notes, mortgages and evidence of the mortgagor's default, thereby shifting the burden to the defendant to demonstrate, through both competent and admissible evidence, any defense which could raise a question of fact. *Emigrant Mortgage Company, Inc. v Beckerman*, 105 AD3d 895 [2d Dept 2013]; *Solomon v Burden*, 104 AD3d 839 [2d Dept 2013]; *Bank of Smithtown v 264 W. 124 LLC*, 105 AD3d 468 [1st Dept 2013].

Here, plaintiff has established a *prima facie* case for foreclosure of the mortgages by demonstrating: (i) the existence of the note and mortgage, and (ii) the uncontested proof of default in failing to pay the mortgage upon maturity on January 1, 2021. As plaintiff has established its entitlement to summary judgment, the burden shifted to Defendants to come forward with evidence showing the existence of a triable fact. *Franchini v Palmieri*, 1 NY3d 536, 537 [2003]; *Red Tulip, LLC v Neiva*, 44 AD3d 204 [1st Dept 2007].

Defendants answered the verified complaint which contained general denials and twenty-seven (27) purported affirmative defenses. It is well established that general denials are insufficient to raise a triable issue of fact and defeat a motion for summary judgment. *William Iselin & Co., Inc. v Landau*, 71 NY2d 420 [1988]; *Stern v Stern*, 449 NY2d 534 [2d Dept 1982]. A party may move for judgment dismissing one or more defenses, on the ground that a defense has no merit. *See* CPLR § 3211(b). It is clear to the Court that the twenty-seven affirmative defenses raised in defendants' answer are devoid of any merit and are therefore dismissed.

Furthermore, the Court recognizes and considers the Forbearance Agreement dated December 26, 2019. *See also* NYSCEF No. 25. In this agreement, Plaintiff agreed to temporarily and conditionally forbear in its exercise of its remedies under the Land Note and Land Mortgage, through March 31, 2020, time being of the essence. The Forbearance Agreement (i) bars defendants alleged defenses to foreclosure, and (ii) acknowledges plaintiff's right to foreclose based upon defendants breach of the Land Mortgage and their waiver and release of any defenses. Similarly, the express terms of The Land Note and Land Mortgage bar defendants' claims.

In sum, the Court does not find any triable issue of fact in this action and finds that plaintiff is entitled to summary judgment as against defendants.

The branch of Plaintiff's motion seeking to discontinue this action as to defendants "John Doe No. 1" through "John Doe No. 100", and striking said defendants from the caption herein and amending the caption accordingly, is granted without opposition. *See* CPLR § 3025.

Accordingly, it is hereby

ORDERED that Plaintiff's motion for summary judgment and other relief is granted; and it is further

ORDERED all affirmative defenses pled by defendants West 136 Street Harlem LLC and Theodore Feldheim are dismissed; and it is further

ORDERED that a Referee is appointed in accordance with RPAPL § 1321, order annexed hereto, to compute the amount due to Plaintiff and to examine whether the property identified in the notice of pendency can be sold in parcels; and it is further

ORDERED that in the discretion of the Referee, a holding may be held, and testimony taken; and it is further

ORDERED that the action is discontinued as to defendants "John Doe No. 1" through "John Doe No. 100", and said defendants are stricken from the caption herein and amended accordingly;

ORDERED that the Clerk be directed to enter judgment accordingly.

7/25/2022
DATE


LYLE FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE