

**Chondrite Asset Trust v 231 E 123 LLC**

2023 NY Slip Op 31747(U)

May 19, 2023

Supreme Court, New York County

Docket Number: Index No. 850052/2022

Judge: Francis A. Kahn III

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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. FRANCIS A. KAHN, III PART 32**

*Justice*

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INDEX NO. 850052/2022

CHONDRITE ASSET TRUST,

MOTION DATE \_\_\_\_\_

Plaintiff,

MOTION SEQ. NO. 001

- v -

231 E 123 LLC, ALEX HALIMI, SAUL MAZOR, GOTHAM DEEDS, LLC, URBAN LEGEND LLC, NYC ENVIRONMENTAL CONTROL BOARD, TRI BOROUGH SCAFFOLDING & HOISTING INC., NYC HOUSING AUTHORITY, QUALITY CONTROL LABORATORIES LLC, JOSEPH AZRAK, ROBERT MILSTEIN, JOHN DOE 1-10 TENANTS

**DECISION + ORDER ON MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69

were read on this motion to/for APPOINT - REFEREE

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

This is an action to foreclose on a consolidated, extended and modified mortgage encumbering commercial real property located at 231 East 123<sup>rd</sup> Street, New York, New York. The mortgage secures two loans of \$4,878,000.00 and \$1,200,000.00 memorialized by promissory notes dated December 20, 2016, and July 30, 2019, respectively. The notes and mortgages were given by Defendant 231 E 123 LLC ("Mortgagor"). The loan documents were executed by Defendants Gotham Deeds LLC ("Gotham"), via Defendant Alex Halimi ("Halimi") as Sole Member, and by Urban Legend LLC ("Urban"), via Defendant Saul Mazor ("Mazor") as Sole Member. Concomitantly with both loan transactions, Halimi and Mazor executed guarantees of the indebtedness. During their financial relationship, Plaintiff and Mortgagor also executed five additional agreements relating to forbearance, extension and modification of the loans, dated June 11, 2018, October 11, 2019, April 21, 2020, November 3, 2020, and November 5, 2020. Plaintiff commenced this action to foreclose on the mortgage pleading, *inter alia*, that Defendants defaulted in repayment under the notes. Defendants Mortgagor, Gotham, Urban, Halimi and Mazor answered and pled six affirmative defenses.

Now, Plaintiff moves for summary judgment against the appearing parties, for an order of reference, for a default judgment against the non-appearing Defendants and to amend the caption. Defendants Mortgagor, Gotham, Urban, Halimi and Mazor oppose the motion.

In moving for summary judgment, Plaintiff was required to establish *prima facie* entitlement to judgment as a matter of law though proof of the mortgage, the unpaid notes, and evidence of

Mortgagor's default in payment under the notes (*see U.S. Bank, N.A., v James*, 180 AD3d 594 [1<sup>st</sup> Dept 2020]; *Bank of NY v Knowles*, 151 AD3d 596 [1<sup>st</sup> Dept 2017]; *Fortress Credit Corp. v Hudson Yards, LLC*, 78 AD3d 577 [1<sup>st</sup> Dept 2010]). Proof supporting a *prima facie* case on a motion for summary judgment must be in admissible form (*see CPLR §3212[b]*; *Tri-State Loan Acquisitions III, LLC v Litkowski*, 172 AD3d 780 [1<sup>st</sup> Dept 2019]).

Plaintiff's motion was supported with an affirmation from Allen Shayanfekr ("Shayanfekr"), the Chief Executive Officer of Sharestates Investments LLC, the loan servicing agent of Plaintiff, as well as annexed documentation. The affirmation established the mortgage, note, and evidence of mortgagor's default and was sufficiently supported by appropriate documentary evidence (*see eg Bank of NY v Knowles*, supra; *Fortress Credit Corp. v Hudson Yards, LLC*, supra). The indebtedness and default were also established based the terms of the forbearance agreement (*see Redrock Kings, LLC v Kings Hotel, Inc.*, 109 AD3d 602 [2d Dept 2013]; *EMC Mortg. Corp. v Stewart*, 2 AD3d 772 [2d Dept 2003]). Sharestates' authority to act on behalf of Plaintiff was demonstrated by proffering the servicing agreement authorizing it to act on behalf of Plaintiff (*see Deutsche Bank Natl. Trust Co. v Silverman*, 178 AD3d 898, 901 [2d Dept 2019]).

In opposition, Defendants claim that Plaintiff lacks standing was waived as that affirmative defense was not pled in their answer nor was a motion made pursuant to CPLR §3211[a][3] (*see Weiss v Phillips*, 157 AD3d 1, 9 [1<sup>st</sup> Dept 2017]). The other defenses raised in the memorandum of law are unavailing as Defendants explicitly waived same in the forbearance agreements (*id.* at 10). Further, to the extent Defendants failed to raise specific legal arguments in rebuttal of the branch of the motion to dismiss the affirmative defenses, they were abandoned (*see U.S. Bank N.A. v Gonzalez*, 172 AD3d 1273, 1275 [2d Dept 2019]; *Flagstar Bank v Bellafiore*, 94 AD3d 1044 [2d Dept 2012]; *Wells Fargo Bank Minnesota, N.A v Perez*, 41 AD3d 590 [2d Dept 2007]).

The branch of Plaintiff's motion for a default judgment against the non-appearing parties is granted (*see CPLR §3215*; *SRMOF II 2012-I Trust v Tella*, 139 AD3d 599, 600 [1<sup>st</sup> Dept 2016]).

The branch of Plaintiff's motion to amend the caption is granted (*see generally CPLR §3025*; *JP Morgan Chase Bank, N.A. v Laszio*, 169 AD3d 885, 887 [2d Dept 2019]).

Accordingly, it is

ORDERED that Plaintiff is awarded summary judgment against the appearing parties and a default judgment against the non-appearing defendants; and it is further

ORDERED that that **Paul Sklar, Esq., 551 5<sup>th</sup> Avenue, Ste 2200, New York, New York 10176-0001- (212) 972-8845** is hereby appointed Referee in accordance with RPAPL § 1321 to compute the amount due to Plaintiff and examine whether the tax parcel can be sold in parcels; and it is further

ORDERED that in the discretion of the Referee, a hearing may be held, and testimony taken; 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 if the Referee holds a hearing or is required to perform other significant services in issuing the report, the Referee may seek additional compensation at the Referee’s usual and customary hourly rate; 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 the caption be amended by substituting certain named defendants for certain "JOHN DOE" defendants, such that TANAKA CHAVANDUKA is substituted for "JOHN DOE 1", that SHRAVYA KADIM is substituted for "JOHN DOE 2", that PATRICK TAYLOR is substituted for "JOHN DOE 3", that TUCKER MCCLAIN is substituted for "JOHN DOE 4", that HEBA AZIM is substituted for "JOHN DOE 5", that JOERDIS ZIRIACKS is substituted for "JOHN DOE 6", that CARTERIS BROWN is substituted for "JOHN DOE 7", that MRS. BROWN, First Name Refused, is substituted for "JOHN DOE 8"; and it is further

ORDERED that the branch of the motion to add JOHN DOE (NAME REFUSED) or JANE DOE (NAME REFUSED) is denied, and the remaining “DOE” defendants are stricken as the New York County Clerk will not accept any judgment with a “Doe” Defendant in the caption; and it is further

ORDERED that the caption shall read as follows:

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

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CHONDRITE ASSET TRUST

Index No. 850052/2022

Plaintiff,

-against-

231 E 123 LLC, ALEX HALIMI, SAUL MAZOR,  
GOTHAM DEEDS, LLC, URBAN LEGEND LLC,  
NYC ENVIRONMENTAL CONTROL BOARD, TRI  
BOROUGH SCAFFOLDING AND HOISTING, INC.,  
NYC HOUSING AUTHORITY, QUALITY CONTROL  
LABORATORIES, L.L.C., JOSEPH AZRAK,  
ROBERT MILSTEIN, TANAKA CHAVANDUKA,  
SHRAVYA KADIM, PATRICK TAYLOR, TUCKER  
MCCLAIN, HEBA AZIM, JOERDIS ZIRIACKS,  
CARTERIS BROWN and MRS. BROWN (First Name  
Refused),

Defendants.  
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and it is further

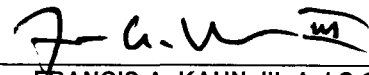
ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being removed pursuant hereto;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

All parties are to appear for a virtual conference via Microsoft Teams on **September 21, 2023, at 11:20 a.m.** If a motion for judgment of foreclosure and sale has been filed Plaintiff may contact the Part Clerk Tamika Wright ([tswright@nycourt.gov](mailto:tswright@nycourt.gov)) in writing to request that the conference be cancelled. If a motion has not been made, then a conference is required to explore the reasons for the delay.

5/19/2023

DATE



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

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

**HON. FRANCIS A. KAHN III**  
J.S.C.