

NEW YORK SUPREME COURT - COUNTY OF BRONX
PART 32

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

GOLDEN BRIDGE R2 LLC,

Plaintiff,

- against -

Index No. 811940/2023E

Hon. FIDEL E. GOMEZ
Justice

BH 3938 DE LLC, NYC ENVIRONMENTAL CONTROL BOARD, JOHN DOE # 1 - # 10, JANE DOE # 1 - # 10, THE LAST TWO NAMES BEING FICTITIOUS, IT BEING INTENDED TO NAME ALL OTHER PARTIES WHO MAY HAVE SOME INTEREST IN OR LIEN UPON THE PREMISES DESCRIBED IN THE COMPLAINT,

Defendants.

The following papers numbered 1 to 1, Read on this Motion noticed of 11/27/23, and duly submitted as no. 1 on the Motion Calendar of 11/27/23.

Table with 2 columns: Description of papers and PAPERS NUMBERED. Rows include Notice of Motion, Answering Affidavit, Replying Affidavit, Notice of Cross-Motion, Pleadings, Stipulation(s), Filed Papers, and Memorandum of Law.

Plaintiff's motion is decided in accordance with the Decision and Order annexed hereto.

Dated: 3/7/24

Hon. FIDEL E. GOMEZ, JSC (with signature)

- 1. CHECK ONE
2. MOTION/CROSS-MOTION IS
3. CHECK IF APPROPRIATE.

- CASE DISPOSED
GRANTED (MOTION)
GRANTED IN PART
SETTLE ORDER
SUBMIT ORDER
DO NOT POST
NON-FINAL DISPOSITION
DENIED (MOTION)
OTHER
FIDUCIARY APPOINTMENT
REFEREE APPOINTMENT
NEXT APPEARANCE DATE:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
GOLDEN BRIDGE R2 LLC,

Plaintiff,

- against -

DECISION AND ORDER
Index No. **811940/2023E**

BH 3938 DE LLC, NYC ENVIRONMENTAL CONTROL BOARD, JOHN DOE # 1 - # 10, JANE DOE # 1 - # 10, THE LAST TWO NAMES BEING FICTITIOUS, IT BEING INTENDED TO NAME ALL OTHER PARTIES WHO MAY HAVE SOME INTEREST IN OR LIEN UPON THE PREMISES DESCRIBED IN THE COMPLAINT,

Defendants.

-----X
In the instant foreclosure matter, plaintiff moves for an order declaring all non-appearing defendants in default and appointing a referee to compute the amounts due.

For the reasons that follow, plaintiff’s motion is granted on default and without opposition.

DEFAULT JUDGMENT

Plaintiff’s motion seeking the entry of default judgment against the non-appearing defendants is granted.

CPLR § 3215(a) provides in relevant part that: “When a defendant has failed to appear, plead or proceed to trial of an action reached and called for trial . . . the plaintiff may seek a default judgment against him.”

CPLR § 3215(f) provides in relevant part that:

On any application for judgment by default, the applicant shall file proof of service of the summons and the complaint . . . and proof of the facts constituting the claim, the default and the amount due by affidavit made by the party. . . Proof of mailing the notice required by subdivision (g) of this section, where applicable, shall also be filed.

Thus, “[o]n a motion for leave to enter a default judgment against a defendant based on the failure to answer or appear, a plaintiff must submit proof of service of the summons and complaint, proof of the facts constituting the cause of action, and proof of the defendant’s default” (*Deutsche Bank National Trust Company v Hall*, 185 AD3d 1006, 1008 [2d Dept 2020]; *Fried v Jacob Holding, Inc.*, 110 AD3d 56, 59 [2d Dept 2013]; *Pampalone v Giant Bldg. Maintenance, Inc.*, 17 AD3d 556, 557 [2d Dept 2005]). With regard to establishing the merits of the claim, plaintiff may use an affidavit or a complaint verified by the plaintiff (*Mullins v DiLorenzo*, 199 AD2d 218, 220 [1st Dept 1993]; *Gerhardt v J & R Salacqua Contr. Co., Inc.*, 181 AD2d 719, 720 [2d Dept 1992]).

As required by CPLR § 3215(f), plaintiff established that all defendants were served with the summons and complaint, as evinced by the copies of each defendant’s corresponding affidavit of service annexed to the instant motion. Despite the foregoing, none of the defendants have interposed answers.

Plaintiff submits an affidavit executed by Erez Britt, authorized agent of plaintiff, wherein Britt avers that plaintiff is the owner and holder of the subject note and mortgage and further provides as follows. On January 29, 2021, defendant BH 3938 DE LLC (BH), executed a Note and Building Loan Note in the sum of \$360,000 in favor of non-party Golden Bridge LLC, d/b/a Golden Bridge Funding LLC. To secure payment of the indebtedness, BH executed a Mortgage and Building Loan Mortgage, wherein it pledged the premises known as 3938 De Reimer Avenue Bronx, New York, 10466, Block 4956, Lot 16 (premises) as collateral. Thereafter, the mortgages were assigned to plaintiff. BH defaulted by failing to pay monthly interest only payments pursuant to the loan documents which were due on June 2, 2023, and each month thereafter. Said default remains uncured, with the sum of \$360,000 plus interest currently due and owing.

Based on the foregoing, plaintiff establishes a meritorious cause of action for foreclosure of the subject mortgages and sale of the property encumbered. To be sure, in a foreclosure action, a plaintiff establishes prima facie entitlement to summary judgment by submitting proof of a note, a mortgage, and defendant's default or failure to pay the same (*Barcy Investors, Inc. v Sun*, 239 AD2d 161, 161 [1st Dept 1997]; *Chemical Bank v Broadway 55-56th St. Assoc.*, 220 AD2d 308, 309 [1st Dept 2005]; *Federal Home Loan Mortgage Corp. v Karastathis*, 237 AD2d 558, 558 [2d Dept 1997]; *DiNardo v Patcam Service Station Inc.*, 228 AD2d 543, 543 [2d Dept 1996]). Thus, plaintiff's motion seeking entry of a default judgment against the non-appearing defendants is granted.

ORDER OF REFERENCE

RPAPL § 1321(1) states that:

[i]f the defendant fails to answer within the time allowed or the right of the plaintiff is admitted by the answer, upon motion of the plaintiff, the court shall ascertain and determine the amount due, or direct a referee to compute the amount due to the plaintiff and to such of the defendants as are prior incumbrancers of the mortgaged premises, and to examine and report whether the mortgaged premises can be sold in parcels and, if the whole amount secured by the mortgage has not become due, to report the amount thereafter to become due.

(*Neighborhood Hous. Servs. of New York City, Inc. v Meltzer*, 67 AD3d 872, 873 [2d Dept 2009] [Court granted appointment of a referee to compute the amount owed where plaintiff established prima facie entitlement to judgment as a matter of law by presenting mortgage, unpaid note, and evidence of default.]).

Here, inasmuch as plaintiff is entitled to default judgment against defendants, the application for an order of reference must also be granted. It is hereby

ORDERED that plaintiff submit and file an Order of Reference in accordance with this Decision and Order within 45 days hereof. It is further

ORDERED that plaintiff serve a copy of this Decision and Order, with Notice of Entry, upon defendants within 30 days hereof.

This constitutes the Decision and Order of this Court.

Dated:

3/7/24

Hon.


FIDEL E. GOMEZ, JSC