

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
BANK OF AMERICA, N.A., as Trustee for the Registered
:
Holders of Wachovia Bank Commercial Mortgage Trust 2007-
:
C30, acting by and through its Special Servicer, CWCapital
:
Asset Management LLC, BANK OF AMERICA, N.A., as
:
Trustee for the Registered Holders of COBALT CMBS
:
Commercial Mortgage Trust 2007-C2 and Wachovia Bank
:
Commercial Mortgage Trust 2007-C31, acting by and through
:
CWCapital Asset Management LLC pursuant to the authority
:
granted under that certain Amended and Restated Co-Lender
:
Agreement dated March 12, 2007 and U.S. BANK NATIONAL
:
ASSOCIATION, as Trustee for the Registered Holders of ML-
:
CFC Commercial Mortgage Trust 2007-5 and ML-CFC
:
Commercial Mortgage Trust 2007-6, acting by and through CW
:
Capital Asset Management LLC pursuant to the authority
:
granted under that certain Amended and Restated Co-Lender
:
Agreement dated March 12, 2007,

Plaintiffs,

-against-

PCV ST OWNER LP, ST OWNER LP, TRI-LINE
CONTRACTING CORP., ATLAS FIRE PROTECTION, INC.,
POMALEE ELECTRIC CO, INC., REFUSE SYSTEMS CORP.,
PRO TITLE DISTRIBUTORS, INC., TRITON STONE AND
MARBLE LLC, S.T.S. TRADING INC. d/b/a S.T. LUMBER &
HOME CENTER, ELECTRICAL, PLUMBING, S.D. INT’L
d/b/a S.D. STONE DEPOT, ELBEX AMERICA OF NEW
YORK, INC., NEW YORK CITY DEPARTMENT OF
TRANSPORTATION PARKING VIOLATIONS BUREAU,
NEW YORK CITY ENVIRONMENTAL CONTROL BOARD
and FIRE DEPARTMENT OF THE CITY OF NEW YORK,

Defendants.

**ORDER GRANTING
PLAINTIFFS’
MOTION FOR
SUMMARY
JUDGMENT**

10 Civ. 1178 (AKH)

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ALVIN K. HELLERSTEIN, U.S.D.J.:

Plaintiffs, by and through a special servicer, move for summary judgment to foreclose on a mortgage secured by the properties commonly known as Peter Cooper Village and Stuyvesant Town (together, the “Property”). Plaintiffs also move for default judgment against certain Defendants; computation of the amount due under the loan documents; an order

appointing a referee for the sale of the property at a public auction; and judgment of foreclosure and sale. Plaintiffs' motion, which is unopposed, is granted in its entirety.

I. BACKGROUND

PCV ST Owner LLP and ST Owner LLP (together, the "Borrower Defendants") borrowed \$3 billion from Wachovia and Merrill Lynch Lending to purchase the Property. Defendants duly executed and delivered to the lenders a mortgage that granted a security interest in the Property. Defendants also assigned to the lenders the leases, rents, and security deposits relating to the Property. Wachovia and Merrill Lynch subsequently assigned their rights, titles, and interests in the mortgage to five trusts.

The Borrower Defendants defaulted on the loan in January 2010. As a result of the default, the full outstanding principal balance of the loan (\$3,000,000,000), plus all accrued and unpaid interest thereon, and all other sums owing under the loan, is currently due and payable.

II. DISCUSSION

a. Foreclosure

Plaintiffs commenced this action with a single count complaint that seeks to foreclose the mortgage lien on the Property and any and all subordinate interests defendants have or may have in the Property. The Borrower Defendants answered the amended complaint, admitted the amount owed, and did not object to foreclosure. Tri-Line Contracting Corp., Pomalee Electric Co. Inc., Pro Tile Distributors, Inc., and Elbex America of New York Inc., all of which hold or may hold mechanics liens against the Property, answered the amended complaint. The New York City Department of Transportation Parking Violations Bureau, the New York City Environmental Control Board, and the Fire Department of the City of New York answered and asserted defenses to the foreclosure action. Atlas Fire Protection Inc., Refuse Systems Corp., Triton Stone and Marble LLC, S.T.S. Trading Inc. d/b/a S.T. Lumber & Home

Center, Electrical, Plumbing, S.D. International, Inc. d/b/a S.D. Stone Depot (collectively, the “Defaulting Defendants”) did not answer or otherwise respond to the amended complaint and have defaulted.

In their unopposed motion for summary judgment, Plaintiffs have established the existence of an obligation secured by a mortgage and the Borrower Defendants’ default on that obligation. Accordingly, Plaintiffs are entitled to summary judgment on their motion to foreclose on the Property. See United States v. Freidus, 769 F. Supp. 1266, 1277 (S.D.N.Y. 1991); Witelson v. Jamaica Estates Holding Corp. I., 40 A.D.3d 284, 284 (1st Dep’t 2007).

b. Default Judgment

Plaintiffs move for default judgment to be entered against the Defaulting Defendants because the Defaulting Defendants have “failed to plead or otherwise defend . . . and that fact is made clear by affidavit or otherwise.” Fed. R. Civ. P. 55. The Defaulting Defendants were served with a summons and the amended complaint in February 2010 and have not answered or otherwise appeared in this action. The Clerk has issued Certificates of Default as to each of the Defaulting Defendants. Accordingly, I grant Plaintiffs’ motion for default judgment against the Defaulting Defendants, thereby foreclosing any subordinate interests these defendants may have in the Property.

c. Amount Due

Section 1321 of the New York Real Property Actions and Proceedings Law permits a court considering a foreclosure action to determine, on its own or with the assistance of a referee, the amount owed on a mortgage. A referee is unnecessary here since the Defendants do not dispute the amount owed and Plaintiffs set forth the computation clearly in their moving papers. See People ex. rel. Rosenquest v. Donnelly, 168 A.D. 500, 501 (1st Dep’t 1915); DeGroot v. Morwick Const. Co., 98 Misc. 374, 376 (Sup. Ct. N.Y. County 1917). The amount due to Plaintiffs is calculated in the Judgment and is issued separately.

d. Referee for the Sale of Property

I am authorized to appoint a referee to supervise the sale of the Property. N.Y. Real Prop. Acts. § 1351. Plaintiffs request that Melanie Cyganowski, former Chief Judge of the United States Bankruptcy Court for the Eastern District of New York and who is currently in private practice, serve as the referee. There being no objection, Plaintiffs' request is granted.

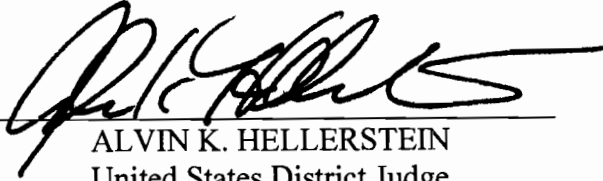
III. CONCLUSION

For the reasons stated, Plaintiffs' motion for summary judgment is granted.

The Clerk shall mark the motion (Doc. No. 83) granted and the case closed.

SO ORDERED.

Dated: June 21, 2010
New York, New York


ALVIN K. HELLERSTEIN
United States District Judge