

<b>Bridgecity Capital QOB LLC v 1717 E. 8 St LLC</b>
2021 NY Slip Op 30406(U)
February 9, 2021
Supreme Court, Kings County
Docket Number: 511417/20
Judge: Lawrence S. Knipel
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At an IAS Term, Part Comm 6 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 9<sup>th</sup> day of February, 2021.



P R E S E N T:

HON. LAWRENCE KNIPEL,

Justice.

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BRIDGECITY CAPITAL QOB LLC,

Plaintiff,

- against -

Index No. 511417/20

1717 EAST 8 ST LLC, BARAK JACOBOW, NETANEL JACOBOW, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, NEW YORK CITY DEPARTMENT OF FINANCE, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, GARDEN STATE ENGINEERING, D.R. ARCHITECTURE DESIGN PLLC, BONAFIDE BUILDERS INC., STATEWIDE SUPPLY LLC, AZ WATER MAN CORP., ANCORA ENGINEERING PLLC and "JOHN DOE #1 through JOHN DOE #12", the last twelve names being fictitious and unknown to Plaintiff, the persons or parties intended being the tenants, occupants, persons or corporations, if any, having or claiming an interest upon the premises described in the Complaint,

Defendants.

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The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/  
Petition/Cross Motion and  
Affidavits (Affirmations) Annexed \_\_\_\_\_

36-58 64-67

Opposition Affidavits (Affirmations) Annexed \_\_\_\_\_

65-67 73-74

Reply Affidavits (Affirmations) Annexed \_\_\_\_\_

70-71

Upon the foregoing papers in this action to foreclose a commercial mortgage on

the properties at 1713-1723 East 8<sup>th</sup> Street in Brooklyn (8<sup>th</sup> Street Property) and at 813-815 Kings Highway in Brooklyn (Kings Highway Property), plaintiff Bridgecity Capital QOB LLC (Bridgecity) moves (in motion sequence [mot. seq.] one) for an order appointing a temporary receiver to preserve and protect the Properties and to collect any rents and profits.

Defendants 1717 East 8 St LLC, Barak Jacobov and Netanel Jacobov (collectively, defendants) cross-move (in mot. seq. two) for an order dismissing the complaint, pursuant to CPLR 3211 (a) (2) and (a) (7), or, alternatively, staying this action.

### ***Background***

On July 1, 2020, Bridgecity commenced this action to foreclose a Consolidated, Amended and Restated Mortgage and Security Agreement in the amount of \$14,125,000.00 encumbering the 8<sup>th</sup> St. Property and the Kings Highway Property. The complaint alleges that defendant 1717 East 8 St LLC was the debtor under the loan from Bridgecity and that individual defendants Barak Jacobov and Netanel Jacobov guaranteed repayment of all sums due under the loan. The complaint alleges that the loan matured on April 2, 2020, and that defendants defaulted by failing to pay off the loan by the maturity date, amongst other things.

Bridgecity now moves for the appointment of a temporary receiver to preserve and protect the 8<sup>th</sup> St. Property and the Kings Highway Property and to collect any rents and profits. Bridgecity submits an affidavit from Allan Lebovits (Lebovits), its authorized

signatory, annexing copies of the estimated rent rolls for the 8<sup>th</sup> St. Property and the Kings Highway Property. Lebovits attests, upon information and belief, that the 8<sup>th</sup> St. Property “is classified as a C1 – walk-up apartment, consisting of twenty-four (24) units, with a monthly rent roll of \$641,028.00.” Lebovits attests that “the Kings Highway Property is classified as a K-4 store building, with an estimated annual rent roll of \$2,580,000.00.”

Lebovits also submits an affidavit attesting that Bridgecity is the owner and holder of the loan documents and that defendants have defaulted thereunder by failing to pay the loan balance on the maturity date, failing to pay real estate taxes and failing to discharge mechanic’s liens. In addition, Lebovits asserts that defendants failed to maintain both the 8<sup>th</sup> St. Property and the Kings Highway Property resulting in unpaid property taxes and charges, unpaid water/sewer charges and open violations. Bridgecity submits a copy of the mortgage, which sets forth in Section 22 that Bridgecity is entitled to a receiver in the event of a default. Bridgecity asserts that both the terms of the mortgage and RPL 254 (10) give it the right to the appointment of a temporary receiver.

Defendants, in opposition, argue that Bridgecity’s motion for the appointment of a temporary receiver should be denied because:

“Plaintiff commenced this commercial foreclosure action on July 1, 2020, despite the issuance of executive orders by the Governor of New York and Administrative Orders by the Chief Administrative Judge of the Courts, which at the time of the filing of the Complaint barred the initiation or proceeding of commercial foreclosure actions until at least August 20, 2020 (now October 20), where the defendants have experienced financial hardship caused by the ongoing

Covid-19 pandemic. Where, as here, a defendant has experienced financial hardship because of Covid-19, the commencement and enforcement of commercial foreclosure actions against them – including motion practice – is prohibited.”

Based on the same argument, defendants cross-move to dismiss the complaint, or, alternatively, to stay the foreclosure action. Defendants submit an affidavit from Netanel Jacobov (Jacobov), the managing member of 1717 East 8 St LLC, who attests that “I am personally, and 1717 East LLC as an entity, are experiencing financial distress caused directly by the Covid-19 pandemic.” Specifically, Jacobov attests that “[a]s a landlord, Covid-19 has severely impacted *my* income as tenants have been affected to varying degrees, and many have ceased making rent payments since April 2020” (emphasis added). Jacobov also attests that 1717 East 8 St LLC was negatively affected by the Covid-19 pandemic because it was unable to sell the Kings Highway Property.

Bridgecity, in opposition to defendants’ cross motion and in reply, asserts that defendants’ “entire argument is based on a misreading of Executive Order 202.28[,]” which “applies to individuals, not business entities such as the Borrower.” Bridgecity argues that even assuming Executive Order 202.28 applies to business entities, “Defendants’ conclusory and unsubstantiated Affidavit fails woefully short of showing that the Borrower entity faced, or is facing, financial hardship due to the COVID-19 pandemic.” Bridgecity notes that defendants’ opposition “does not dispute or even address the merits of the Motion [for the appointment of a receiver].”

*Discussion*

Executive Order 202.28 provides that:

“There shall be no initiation of a proceeding or enforcement of either an eviction of any residential or commercial tenant, for nonpayment of rent or a foreclosure of any residential or commercial mortgage, for nonpayment of such mortgage, owned or rented by *someone that is eligible for unemployment insurance or benefits under state or federal law* or otherwise facing financial hardship due to the COVID-19 pandemic for a period of sixty days beginning on June 20, 2020” (emphasis added).

Executive Order 202.28, by its plain terms, only applies to “someone that is eligible for unemployment insurance or benefits under state or federal law . . .” 1717 East 8 St LLC, the borrower under the mortgages and the owner of the 8<sup>th</sup> St. Property and the Kings Highway Property, is a limited liability company, and therefore, Executive Order 202.28 is inapplicable.

Even assuming Executive Order 202.28 is applicable, defendants have failed to demonstrate that 1717 East 8 St LLC faced financial hardship due to the COVID-19 pandemic. Jacobov merely attests that the COVID-19 pandemic has “severely impacted *my* income as tenants . . . have ceased making rental payments” (emphasis added). However, Jacobov’s personal financial hardship is irrelevant, and defendants have failed to demonstrate that 1717 East 8 St LLC’s rental income has decreased due to the COVID-19 pandemic.

Finally, defendants have failed to address or present any basis to deny Bridgecity’s

motion for the appointment of a temporary receiver. Bridgecity has demonstrated that the appointment of a temporary receiver is necessary to preserve and protect the mortgaged Properties and to collect rents and profits during the pendency of this commercial foreclosure action. Accordingly, it is hereby

**ORDERED** that Bridgecity's motion (in mot. seq. one) for the appointment of a temporary receiver is granted. See long form order signed herewith; and it is further

**ORDERED** that defendants' cross motion (in mot. seq. two) to dismiss or stay this action is denied.

This constitutes the decision and order of the court.

E N T E R,



J. S. C.

HON. LAWRENCE KNIPEL  
ADMINISTRATIVE JUDGE