

**Bates Holdings II LLC v ZB Prospect Realty, LLC**

2024 NY Slip Op 33871(U)

October 29, 2024

Supreme Court, Kings County

Docket Number: Index No. 509047/2024

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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BATES HOLDINGS II LLC, acting by and through  
its servicer Field Point Servicing, LLC,  
Plaintiff,

Decision and order

Index No. 509047/2024

- against -

ZB PROSPECT REALTY, LLC, ZALMEN  
BIEDERMAN, CITY OF NEW YORK  
ENVIRONMENTAL CONTROL BOARD, NEW  
YORK CITY DEPARTMENT OF FINANCE, NEW  
YORK STATE DEPARTMENT OF TAXATION  
AND FINANCE, U.S. SMALL BUSINESS  
ADMINISTRATION, and "JOHN DOE #1" through  
"JOHN DOE #12," the last twelve names being  
fictitious and unknown to the Plaintiff, the  
persons or parties, if any, having or claiming  
an interest in or lien upon the premises,  
described in the Complaint,

Defendants,

October 29, 2024

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #1 & #2

The plaintiff seeks the appointment of a receiver pursuant to RPL §254(10). The defendants have cross-moved seeking to dismiss the complaint on the grounds there has been no compliance with RPALPL §1303(1)(b). The motions have been opposed respectively. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

On November 21, 2019 the defendants executed a mortgage and accompanying agreements in the amount of \$8,250,000. The mortgage and note were assigned to the plaintiff on October 4, 2021. The mortgage and note concerned property located at 846

Prospect Place in Kings County. The plaintiff alleges a default occurred when the defendants failed to make any payments in October 2020. Although some payments were made after that date following an attempt to globally resolve the outstanding debts, as of the filing of the summons and complaint the defendants owed \$7,481,592.58 plus interest, late charges and other fees.

The plaintiff has moved seeking the appointment of a receiver both pursuant to statute and pursuant to the agreements between the parties. The plaintiff asserts the defendants are collecting rents and have failed to pay the mortgage as noted. The request for a receiver is opposed on the grounds the lawsuit must be dismissed because the plaintiff failed to properly serve the defendants pursuant to RPAPL §1303(1)(b). As noted, the motions are opposed.

#### Conclusions of Law

Pursuant to RPAPL §1303 any party foreclosing upon a mortgage on residential property must serve a notice entitled "Notice to Tenants of Buildings in Foreclosure" to all tenants of the property. Pursuant to RPAPL §1303(4) concerning buildings with more than five dwelling units the notice must be conspicuously posted at every entrance and exit of the building.

In this case the process server submitted an affirmation which stated that he posted the requisite notice on the "east

entrance and exit of building at 846 Prospect Place" (see, Affidavit of Tyiem Ramello Pinder, dated April 10, 2024 [NYSCEF Doc. No. 48]). The defendants assert and it is undisputed that 846 Prospect Place has another entrance. Thus, the defendants contend there was a failure to strictly comply with RPAPL §1303. Following the submission of the cross-motion to dismiss the plaintiff submitted a supplemental affidavit from the process server that asserts in addition to the service of the notice as indicated the notice was also served on the side entrance (see, Affidavit of Tyiem Ramello Pinder, dated August 2, 2024 [NYSCEF Doc. No. 93]).

It is true that generally a process server's affidavit provides prima facie evidence of proper service (Household Finance Realty Corp., of New York v. Brown, 13 AD3d 340, 785 NYS2d 742 [2d Dept., 2004]). Although the first affidavit of the process server did not mention all locations where the notice was posted the supplemental affidavit explained that the notice was posted at all entrances in full compliance with the statute. There has been no evidence presented questioning the veracity of the process server or why a hearing regarding service is required. Therefore, the cross motion seeking to dismiss the complaint is denied.

Concerning the plaintiff's motion seeking the appointment of a receiver, such motion is granted for the same reasoning


outlined in prior decisions concerning the same parties.

Lastly, the defendants request to compel the plaintiff to accept the defendant's answer is granted. Considering the facts of this case no default is appropriate.

So ordered.

ENTER:

DATED: October 29, 2024  
Brooklyn N.Y.

  
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Hon. Leon Ruchelsman  
JSC