

Appellate Division, First Judicial Department

Kern, J.P., Singh, Gesmer, Pitt-Burke, O'Neill Levy, JJ.

3306

25TH STREET MULTIFAMILY LLC,
Plaintiff-Respondent,

Index No. 850189/21

Case No. 2024-03907

-against-

208-214 E. 25TH ST, LLC, et al.,
Defendants-Appellants,

CRIMINAL COURT OF THE CITY OF
NEW YORK, et al.,
Defendants.

Oved & Oved, New York (Jonathan Gordon of counsel), for appellants.

Katsky Korins LLP, New York (Robert A. Abrams of counsel), for respondent.

Amended order and judgment (one paper), Supreme Court, New York County (Francis A. Kahn, III, J.), entered June 13, 2024, which granted plaintiff's motion to confirm the referee report and for a judgment of foreclosure and sale and denied defendant's cross-motion to reject the referee report and for a hearing, unanimously affirmed, without costs.

Defendants' contention that issues of fact exist as to whether plaintiff's foreclosure on the mortgaged premises was unconscionable is unavailing. This case does not present a situation where there was "a good faith mistake, promptly cured by the party in default with no prejudice to the creditor" (*Fifty States Mgt. Corp. v Pioneer Auto Parks*, 46 NY2d 573, 576-577 [1977]; see *Di Matteo v North Tonawanda Auto Wash*, 101 AD2d 692, 693 [4th Dept 1984], *appeal dismissed* 63 NY2d 675 [1984];

Domus Realty Corp. v 3440 Realty Co., Inc., 179 Misc 749, 754 [Sup Ct, NY County 1943], *affd* 266 AD 725 [1st Dept 1943]). Defendants first addressed their defaults in September--73 days after the July installment was due on July 10, 2021, 42 days after the August installment was due on August 10, 2021, and 41 days after the loan had been accelerated. Requiring “[p]ayment in accordance with contractual terms, in and of itself, does not constitute an injustice” (*Chiampou Travis Besaw & Kershner, LLP v Pullano*, 194 AD3d 1480, 1482 [4th Dept 2021] [internal quotation marks omitted]).

Based on these undisputed facts, Supreme Court correctly dismissed defendants’ affirmative defenses based on bad faith conduct as “belied by the facts.” Nor did Supreme Court err in denying defendants’ request to replead their affirmative defenses, as their request, contained within a single sentence, in a footnote within their memorandum of law, failed to properly seek leave to amend pursuant to CPLR 3025(b) (*see e.g. Ran v Weiner*, 170 AD3d 425, 426 [1st Dept 2019]).

The Referee’s report was correctly confirmed based on plaintiff’s business records, which attached plaintiff’s loan documents, payment ledgers, and interest calculations (*see U.S. Bank, N.A. v Kim*, 219 AD3d 1207, 1207 [1st Dept 2023]). Supreme Court was not required to direct a hearing, as defendants had the opportunity to submit information to the court for consideration at the time the court considered the motion to confirm (*see Board of Mgrs. of Nolita Place Condominium v Texas Entertainment LLC*, 222 AD3d 577, 578 [1st Dept 2023]). Plaintiff submitted a spreadsheet detailing the protective advances made and proof of payment via Federal Reference wire transfer confirmations for “forced-place” insurance to NFP, Inc. also known as Lenders Risk Services and Great American Insurance Group also known as Overby-Seawell; insurance invoices and proof of payment for insurance periods 2021-

2023; and invoices for other protective advances, including for Donald B. Blaikie (Receiver's bond), Door Master (repairs), Titlevest Agency (title issues), and Federal Express (notices to defendants and tenants at the mortgaged premises).

Supreme Court's award of attorneys' fees, which reduced the fees from \$597,049.79 to \$515,000, was reasonable and supported by the affirmation of counsel, which described the services rendered, detailed contemporaneous time records, and provided proof of payment of the invoices via bank statements and Federal Reference wire transfer confirmations (*see Jordan v Freeman*, 40 AD2d 656, 656 [1st Dept 1972]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: December 24, 2024

A handwritten signature in black ink, appearing to read 'Susanna M. Rojas', written in a cursive style.

Susanna Molina Rojas
Clerk of the Court