

SUPREME COURT: STATE OF NEW YORK  
COUNTY OF NASSAU

PRESENT:

HON. JEROME C. MURPHY,  
Justice.

CARVER FEDERAL SAVINGS BANK,

Plaintiff,

- against -

TRIAL/IAS PART 5

Index No. 605303-2024

Motion Date: 9-12-2024

Sequence No.: 002 & 003

NEW YORK BEACH CLUB, LTD., OCEAN BLVD.,  
LLC, ALEXANDER V. JACOBSON, NEW YORK  
STATE DEPARTMENT OF LABOR, NEW YORK  
STATE DEPARTMENT OF TAXATION  
AND FINANCE, AND "JOHN DOE" #1 THROUGH  
"JOHN DOE" #10, THE LAST TEN (10) DEFENDANTS  
BEING FICTITIOUS, REAL NAMES BEING  
UNKNOWN, THE PARTIES INTENDED BEING  
PERSONS OR ENTITIES HAVING ANY RIGHT,  
TITLE OR INTEREST IN, OR LIEN UPON, OR  
TENANTS OR PERSONS IN POSSESSION OF  
PORTIONS OF THE MORTGAGED PROPERTY  
DESCRIBED IN THE COMPLAINT,

Defendants.

SHORT FORM ORDER

The following papers have been read on this motion:

<u>Motion Sequence 002</u>	NYSCEF Doc. No.
Notice of Motion, Proposed Order, Affirmations & Exhibits.....	86-105
Affirmation In Support with Exhibits.....	106-111
Statement of Material Facts.....	112
Memorandum of Law in Support.....	113
Memorandum of Law in Opposition.....	127
Response to Material Facts.....	128
Memorandum of Law in Further Support.....	129
Affirmation in Further Support(Catlett).....	130-131
Affirmation in Further Support (Patel).....	132-134
<u>Motion Sequence 003</u>	
Notice of Cross-Motion, Affirmation in Opposition.....	118-126

Memorandum of Law in Support.....	127
Memorandum of Law in Opposition.....	129
Affirmation in Opposition (Catlett).....	130-131
Affirmation in Opposition (Patel).....	132-134

PRELIMINARY STATEMENT

In Motion Sequence 002, plaintiff moves for an order; (1) Pursuant to CPLR 3212, granting summary judgment in its favor on its Verified Complaint filed October 3, 2023 (the “Complaint”), NYSCEF No. 1, against defendants NEW YORK BEACH CLUB, LTD. (“NYBC”), OCEAN BLVD., LLC (“Ocean”), and ALEXANDER V. JACOBSON (“Jacobson” or “Guarantor”), and striking Answering Defendants’ First Amended Verified Answer dated and filed July 2, 2024, NYSCEF Doc. No. 84, (the “Amended Answer”), and dismissing the affirmative defenses set forth therein; (2) Pursuant to CPLR § 3215(a), entering default judgment in favor of Plaintiff as against non-answering defendants New York State Department of Labor, New York State Department of Taxation and Finance, and “John Doe No. 1” through “John Doe No. 10” (collectively, the “Non-Answering Defendants”), (3) Pursuant to RPAPL § 1321, appointing a referee to ascertain and compute the amount due to Plaintiff and to examine and report whether the subject mortgage property can be sold as a single parcel; (4) Amending the caption to strike defendants “JOHN DOE” #1 THROUGH “JOHN DOE” #10; and (5) Awarding Plaintiff such other and further relief as the Court may deem just and proper. Opposition and reply have been submitted.

In Motion Sequence # 003, Defendants, New York Beach Club, Ltd., Ocean Blvd, LLC and Alexander v. Jacobson, move for an order pursuant to CPLR 3025(b) granting the Answering Defendants leave to file a “second Amended Verified Answer”, together with such other and further relief as the court may appear just and proper. Opposition and reply have been submitted.

ORDER

The Court having reviewed the motion papers in this action hereby decides the motion as follows:

The plaintiff’s motion for summary judgment and request for other relief in this matter is hereby denied. There are questions of fact that preclude the granting of summary judgment.

Among those questions of fact, include that there are issues as to whether or not the defendants actually were behind in its payments when the debt was accelerated. It was argued that the insurance proceeds, which were paid to plaintiff to repair the premises, should have been credited against amounts due by the debtor, since the debtor made the repairs using its own fund.

Additionally, from defense counsel's statements made on August 21, 2024 in a conference call and in these cross-claim papers, it appears that there are members of this Beach Club that start prepaying for their cabanas and lockers months before the club opens in May of each year. However, none of these individuals are named as parties and none have been served. The motion papers indicate that there may be 1200 member/renters. Clearly, they have rental agreements and an interest in this proceeding, including what will happen to their rents. Thus, they are necessary parties to this proceeding, who should have been given a say in this motion; but they have not been named or served. (See RPAPL §1311). The Court further notes that this information is available in discovery, and was available in pre-action discovery.

As it relates to these John Does, the only affidavit of attempted service of process, submitted to the court in this case indicates that a process server went to the property on April 15, 2024 to serve these tenant/renters. He did not serve anyone on that date. However, that should come as no surprise since everyone on Long Island knows that the beaches are not open on that date and that they generally do not open until around Memorial Day. The Court finds that this attempt at service was inappropriate, ineffective and was not calculated to provide fair notice.

As it relates to the cross-motion, the answering defendants are granted leave to serve their Second Amended Verified Answer.

In conclusion, the plaintiff's motion is in all respects denied and the answering defendants motion is in all respects granted.

This shall constitute the Decision and Order of the Court.

Dated: Mineola, New York  
December 23, 2024

ENTER:

  
HON. JEROME C. MURPHY, J.S.C.