



## Integrated Amplifier: No-Appointment of a Receiver Sounds Better

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In a recent decision in New York County Supreme Court,<sup>[1]</sup> the Court granted the plaintiff lender's pre-summary judgment motion to appoint a receiver in a mortgage foreclosure action, even though the defendants (borrower) vehemently disputed the foreclosing lender's standing to commence the action in the first place.

The lender commenced an action in February, 2025 to foreclose a 2017 mortgage, alleging a payment default on the underlying promissory note. Shortly after commencing the action, the lender moved *ex parte* for the appointment of a receiver. The mortgagor and guarantor on the loan opposed the motion.

Although New York's Real Property Law recognizes the right of the parties to a mortgage loan to agree that, in the event of a default, a receiver may be appointed without notice to the borrower and without regard to the sufficiency of the collateral<sup>[2]</sup>—a provision regularly found in New York mortgages—the Court held that the appointment of a receiver under such circumstances is “not perfunctory” and that the Court, in its equitable power, “retains the discretion to deny the appointment of a receiver”.

Here, the Court held that the plaintiff established its entitlement to the appointment of a receiver based upon the text of the loan documents, which provided that, “[i]n any action to foreclose the Consolidated Mortgages the Mortgagee shall be entitled to the appointment of a receiver without notice, and without regard to the adequacy of the security”, and upon the fact that the defendants failed to demonstrate that denial of the appointment of a receiver in this case would be “an appropriate exercise of the Court's discretion”.

The Court held that the defendants' objections to the plaintiff's standing to commence the action and the sufficiency of the affidavit submitted in support of the motion were not valid grounds for denying the appointment of a receiver. The Court stated further that a plaintiff need not demonstrate “more than what is required by Real Property Law § 254(10)” and that, ultimately, “a receiver may be appointed so long as an action has been commenced”.

Had the subject mortgage not included the language of RPL § 254(10), the plaintiff would have been relegated to rely on other statutory grounds for the appointment of a receiver which carry much more stringent prerequisites.<sup>[3]</sup>

It is notable that common defenses to foreclosure, such as standing and evidentiary sufficiency of affidavits, did not defeat the lender's motion to appoint a receiver. Instead, this decision suggests that borrowers might fare better by requesting that the Court invoke its equitable powers in an appropriate exercise of the Court's discretion to deny the appointment of a receiver due to the unique factual circumstances of a particular case.

<sup>[1]</sup> SIG CRE 2023 Venture LLC v. West 24-27 Realty LLC, No. 850066/2025 (N.Y. Sup. Ct., N.Y. Cnty. June 9, 2025) (Kahn, J.).

<sup>[2]</sup> See N.Y. Real Prop. § 254(10).

[3] See N.Y. C.P.L.R. § 6401 (requiring the movant to demonstrate that “there is danger that the property will be removed from the state, or lost, materially injured or destroyed”).