

Insights

U.S. COVID-19: NEW YORK STATE'S TEMPORARY COMMERCIAL FORECLOSURE BAN IS INAPPLICABLE TO PROPOSED SALES OF COLLATERALIZED ASSETS GOVERNED BY THE UCC.

May 21, 2020

Through a series of executive orders (202.8 and 202.28) issued by Governor Cuomo, the State of New York has banned the enforcement of commercial foreclosures through and including June 6, 2020. Neither executive order, however, addresses non-judicial mezzanine loan foreclosures, which are governed by the UCC.

On May 18, 2020, New York Supreme Court Justice Frank Nervo issued a decision confirming that the temporary prohibition on judicial foreclosures does not apply to the sale of pledged interests governed by the UCC and without determining whether the sale was “commercially reasonable,” he allowed the notice sale to proceed.

In *1248 ASSOC. MEZZ II LLC v. 12E48 MEZZ II LLC*, Index No. 651812/2020, the plaintiff, the sole owner of 1248 Mezz LLC, which is the parent entity that owns the mixed-use hotel currently being developed at 12 East 48th Street in Manhattan, moved to enjoin the defendant creditor from conducting a sale of plaintiff's membership interest in 1248 Mezz LLC, which served as collateral for certain amounts advanced to plaintiff by the defendant.

In his decision and order, Justice Nervo denied the plaintiff's motion, explaining that the disposition of collateral pursuant to Article 9 of the UCC is not a judicially ordered foreclosure and therefore not subject to New York State's temporary prohibition of commercial foreclosures.

The decision is silent on whether a UCC sale conducted during the COVID-19 pandemic is commercially unreasonable. Instead, Justice Nervo concluded that, even if the sale is commercially unreasonable, the plaintiff had not shown likelihood of success on the merits because the loss is merely a commercial investment that is quantifiable, and plaintiff's economic damages claim was speculative. Justice Nervo cautioned, however, that to the extent that there are any such damages, they may be properly remedied after the UCC sale.

RELATED CAPABILITIES

- Real Estate Disputes

MEET THE TEAM



Matias Gallego-Manzano

New York

matias.gallegomanzano@bclplaw.com

+1 212 541 2048



Noah M. Weissman

New York

noah.weissman@bclplaw.com

+1 212 541 2028



Suzanne M. Berger

New York

suzanne.berger@bclplaw.com

+1 212 541 2034

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.