

## Receiver Appointed In NY Office Building Foreclosure Suit

By **Natalie Rodriguez**

*Law360, New York (February 21, 2012, 5:10 PM ET)* -- A New York state judge on Friday appointed a receiver for a 12-story downtown Manhattan office building, declining to dismiss East West Bank's foreclosure suit against its owners, who are allegedly in default on a \$35 million mortgage.

Judge Barbara Kapnick said the suit against a holding company affiliated with real estate investment company Triangle Assets must proceed, and granted mortgage lender East West Bank's request to appoint a receiver of rents.

East West Bank claims the holding company, on top of failing to make its mortgage payments since July 2011, owes more than \$1 million in back real estate taxes and has failed to pay two mechanics liens and several environmental control board liens filed against the property for various state and local law violations

Judge Kapnick has ordered the company and Triangle's executives, also named in the suit, to file answers to the complaint within 20 days.

"The judge got it right," Helen Gavaris, counsel for the bank, told Law360 on Tuesday. Gavaris added that she expects her client to be able to proceed with foreclosure on the property.

The "decision speaks for itself ... there is a need to have someone come in and protect the interests of the lender," she said.

East West Bank says the borrowers' six months of missing payments exceeds \$500,000. The bank also said it had to step in twice, first in April 2010 and again in October 2011, to pay more than \$1 million in delinquent real estate taxes to prevent the city from foreclosing on the building.

Triangle had moved to dismiss the complaint, arguing that East West Bank had failed to give the company proper notice that it was accelerating the mortgage and note, signed in 2008.

The real estate company also argued that the bank had "waived any right it had to insist upon full payment and to proceed with foreclosure," by accepting partial payments and by sending regular monthly invoices for payment, the cross motion said.

Mitchell D. Haddad, counsel for Triangle and its holding company, said he was still reviewing the judge's decision and declined Tuesday to comment further on the case.

East West Bank also claims the holding company is doing irreparable harm to the building, located at 130 William St., and is mismanaging the property, which was appraised to be worth between \$67 million and \$92 million three years ago, according to the order.

“The bank argues that this application is necessary because the mortgager and its principals are running the commercial building into the ground by siphoning \$2 million a year in rental income generated by the building,” Judge Kapnick said.

The building — 3 1/2 of whose floors stand vacant — has eight tenants, including a Duane Reade retail store on the ground floor. Haddad had told Law360 in December that Triangle was renovating the building and feared that the appointment of a receiver could cause existing tenants to flee the property.

Representatives for East West Bank and Triangle could not immediately be reached for comment Tuesday.

East West Bank is represented by Helen Gavaris of Loeb & Loeb LLP.

The borrowers are represented by Mitchell D. Haddad of Sills Cummis & Gross PC and Burt Dorman.

The case is East West Bank v. 130 Williams St. Holding Co. LLC, case number 810273/2011, in the Supreme Court of the State of New York, County of New York.

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