

**Mortgage Elec. Registration Sys., Inc. v
Young Suk Oh**

2007 NY Slip Op 31133(U)

April 16, 2007

Supreme Court, Queens County

Docket Number: 0022442/2006

Judge: Patricia P. Satterfield

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY
Present: HONORABLE PATRICIA P. SATTERFIELD IA Part 19
Justice

-----X	
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., ACTING SOLELY AS A NOMINEE FOR AMERICAN BROKERS CONDUIT C/O AMERICAN HOME MORTGAGE SERVICING, 4600 REGENT BLVD., IRVING, TX 75063	Index No: 22442/06 Motion Date: 2/21/07 Motion Cal. No: 22

Plaintiff,
-against-

YOUNG SUK OH, NEW YORK CITY PARKING VIOLATIONS BUREAU, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD AND JOHN DOE "1" through "12," said persons or parties having or claimed to have a right, title or interest in the Mortgaged premises, herein their respective names are presently unknown to the Plaintiff,

Defendants.

-----X

The following papers numbered 1 to 10 read on this motion by plaintiff for an order: (1) striking the answer and affirmative defenses of defendant Young Suk Oh; (2) granting summary judgment in favor of plaintiff as against defendant Young Suk Oh; (3) amending the action to substitute Lee Chen in place of "John Doe #1"; and (4) discontinuing against "John Doe 2 through 12."

	<u>Papers Numbered</u>
Notice of Motion - Affidavits - Exhibits.....	1 - 6
Answering Affidavits - Exhibits.....	6 - 8
Reply Affidavits.....	9 - 10

Upon the foregoing papers, it hereby is ordered that the motion is determined as follows:

This is an action to foreclose on two mortgages on property located at 41-35 73rd Street, Woodside, New York, Block 1313, Lot 14, and secured by promissory notes, the first in the amount of \$656,000.00 bearing the date of January 4, 2006, at an interest rate of 8.125%, and the second in the amount of \$164,000.00 also bearing the date of January 4, 2006, at an interest rate of 13.625%,

and recorded on May 4, 2006, in the Office of the Register of the City of New York for the County of Queens under the numbers CRFN#: 2006000250239 and 2006000250240, respectively. By letter dated August 22, 2006, plaintiff Mortgage Electronic Registration Systems, Inc., notified defendant Young Suk Oh that she was in default in her monthly installment payments pursuant to the terms of the mortgage. This action was commenced in October 2006; defendant interposed her answer in November 2006, consisting of denials and four affirmative defenses. Plaintiff moves for an order striking the answer and affirmative defenses of defendant Young Suk Oh, granting it summary judgment, amending the action to substitute Lee Chen in place of “John Doe #1,” and discontinuing against “John Doe 2 through 12.”

“To establish a prima facie case in an action to foreclose a mortgage, the plaintiff must establish the existence of the mortgage and mortgage note, ownership of the mortgage, and the defendant's default in payment (citations omitted).” Campaign v. Barba, 23 A.D.3d 327 (2d Dept. 2005). And, “in moving for summary judgment in an action to foreclose a mortgage, a plaintiff establishes its case as a matter of law through the production of the mortgage, the unpaid note, and evidence of default (citations omitted). When a plaintiff does so, it is incumbent upon the defendant to assert any defenses which could properly raise a viable question of fact as to his default (citations omitted)” EMC Mortgage Corp. v. Riverdale Associates, 91 A.D.2d 370 (2d Dept. 2002); see, Wolf v. Citibank, N.A., 34 A.D.3d 574 (2d Dept. 2006); Village Bank v. Wild Oaks Holding, Inc., 196 A.D.2d 812 (2d Dept. 1993); Village Bank v. Wild Oaks Holding, Inc., 196 A.D.2d 812, 601 (2d Dept. 1993).

Here, plaintiff established its prima facie entitlement to judgment as a matter of law against defendant by submitting proof in the form of the mortgage, the note, and an affidavit of Robert Hardman, plaintiff's Vice President, attesting to her default. Fleet Nat. Bank v. Olasov, 16 A.D.3d 374 (2d Dept. 2005); Bank of Tokyo-Mitsubishi Trust Co. v. Meredith Ave. Associates, 256 A.D.2d 532 (2d Dept. 1998); see, also, NC Venture I, L.P. v. Complete Analysis, Inc. 22 A.D.3d 540 (2d Dept. 2005). The burden then shifted to defendants to raise a triable issue of fact regarding their defenses in opposition to plaintiff's prima facie case. Cochran Inv. Co., Inc. v. Jackson, __ A.D.3d __, 2007 WL 853183 (2d Dept. 2007); Household Finance Realty Corp. of New York v. Winn, 19 A.D.3d 545 (2d Dept. 2005); Fleet Nat. Bank v. Olasov, supra; Charter One Bank, FSB v. Houston, 300 A.D.2d 429 (2d Dept. 2002); EMC Mortgage Corp. v. Riverdale Associates, 91 A.D.2d 370 (2d Dept. 2002); Zuckerman v. City of New York, 49 N.Y.2d 557 (1980).

The answer asserts four affirmative defenses in the complaint: (1) failure to state a cause of action based upon plaintiff's alleged failure to annex the contract sued upon; (2) plaintiff lacks legal or equitable right, title or interest in the mortgages and or notes and therefore is not a real party in interest and lacks standing as plaintiff in this action; (3) plaintiff has no legal or beneficial interest in the promissory notes, is not a holder of the notes, and has no standing; and (4) plaintiff failed to join a necessary party. In opposition to the summary judgment motion, defendant failed to submit any evidence tending to establish the merit of any of their affirmative defenses. Mere conclusory and unsubstantiated assertions not supported by competent evidence are insufficient to defeat a motion for Summary Judgment. Slanetz v. North Shore University Hosp., 228 A.D.2d 490 (2d

Dept. 1996); Zuckerman v. City of New York, 49 N.Y.2d 557, 562 (1980).

Accordingly, the motion for an order striking the answer and affirmative defenses of defendant Young Suk Oh, granting it summary judgment, amending the action to substitute Lee Chen in place of “John Doe #1,” and discontinuing against “John Doe 2 through 12,” is granted. The answer hereby is stricken and the caption is deemed amended.

Dated: April 16, 2007

.....
J.S.C.