

US Bank N.A. v Lockridge

2007 NY Slip Op 33886(U)

November 27, 2007

Supreme Court, Kings County

Docket Number: 0016277/2007

Judge: Jack M. Battaglia

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS:

-----X
US BANK NATIONAL ASSOCIATION AS TRUSTEE
FOR CSAB 2006-4
C/O America's Servicing Company
3476 Stateview Boulevard
Ft. Mill, SC 29715

Index No. 16277/07

Foreclosure of:
2156A Fulton Street
Brooklyn, NY 11233
Block 1552, Lot 9

Plaintiff,

-against-

DECISION AND ORDER

Jack M. Battaglia
Justice, Supreme Court

GREGORY LOCKRIDGE, MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC. AS NOMINEE
FOR CREDIT SUISSE FINANCIAL CORPORATION,
NEW YORK CITY ENVIRONMENTAL CONTROL
BOARD, NEW YORK CITY TRANSIT
ADJUDICATION BUREAU, PEOPLE OF THE
STATE OF NEW YORK, SELECT PORTFOLIO
SERVICING, INC.

JOHN DOE (Said name being fictitious,
it being the intention of Plaintiff to
designate any and all occupants of
premises being foreclosed herein, and
any parties, corporations or entities,
if any, having or claiming an interest
or lien upon the mortgaged premises.)

Defendants.

-----X
Recitation in accordance with CPLR 2219(a) of the papers considered on Plaintiff's
application for, among other things, a default judgment and an order of reference:

- Order of Reference
- Exhibits A-L

In this mortgage foreclosure action filed on May 9, 2007, Plaintiff makes *ex parte*
application for, among other things, a default judgment and an order of reference. The property
is located at 2156A Fulton Street, Brooklyn; the mortgagor is Gregory Lockridge. Because the

Court finds that Plaintiff is not entitled to judgment on the papers submitted, but that the defects appear to be curable, the application is denied, with leave to renew upon proper papers.

The Affidavit of Merit and Amount Due was executed and notarized in South Carolina. It is not accompanied by a certificate of conformity, and, therefore, cannot provide evidence on this application. (See *Daimler Chrysler Services North America LLC v Tammaro*, 14 Misc 3d 128 [A], 2006 NY Slip Op 52506 [U], * 1 [App Term, 2d Dept]; *Bath Medical Supply, Inc. v Allstate Indemnity Co.*, 13 Misc 3d 142 [A], 2006 NY Slip Op 52273 [U], * 1- * 2 [App Term, 2d Dept].) Moreover, it is executed by a person who is not an officer or employee of either Plaintiff or the original mortgagee, and who is, therefore, not qualified to testify as to the material facts upon which the action must proceed, particularly since the assignment purportedly giving Plaintiff ownership of the note and mortgage was not executed until May 21, 2007, after commencement of the action. (See *Lodato v Greyhawk North America, LLC*, 39 AD3d 494, 495 [2d Dept 2007].) The Limited Power of Attorney does not confer testimonial competence.

The New York Balloon Note is not acknowledged or otherwise rendered admissible as evidence.

There is no proof of service of the February 26, 2007 notice of default required by paragraph 6 (C) of the New York Balloon Note. (See *New York & Presby. Hosp. v Allstate Ins. Co.*, 29 AD3d 547, 547-48 [2d Dept 2006]; *Residential Holding Corp. v Scottsdale Ins. Co.*, 286 AD2d 679, 680 [2d Dept 2006].) Moreover, the notice is from America's Servicing Co., who is neither the lender or mortgagee; and the notice fails to identify the lender, the date of the note and mortgage, or even the property.

The assignor under the Assignment of Mortgage dated May 21, 2007 is Mortgage Electronic Registration Systems, Inc., but there is no evidence of the assignor's ownership of the note and mortgage, or its right or power to make the assignment.

The non-military affidavit, executed on May 15, 2007, as part of the affidavit of service of the summons and complaint, is premature (see *Cassano v Gutkowski*, 15 Misc 3d 1118 [A], 2007 NY Slip Op 50755 [U], * 3 [Dist Ct, Nassau County]; *U.S. Bank NA v Coaxum*, 2003 NY Slip Op 51384 [U], * 2 - * 3 [Sup Ct, Westchester County 2003]; *Citibank, N.A. v McGarvey*, 196 Misc 2d 292, 299 [Civ Ct, Richmond County 2003]; *National Bank of Far Rockaway v Van Tassell*, 178 Misc 776, 776-79 [Sup Ct, Queens County 1942].)

There is no evidence of compliance with the additional-mailing requirement of CPLR 3215 (g) (3) (i). (See *Bunch v Dollar Budget, Inc.*, 12 AD3d 391, 391-92 [2d Dept 2004]; *Schilling v Maren Enterprises, Inc.*, 302 AD2d 375, 376 [2d Dept 2003]; *Fleet Finance, Inc. v Nielson*, 234 AD2d 728, 729 [3d Dept 1996]; *Media Neurology, PC v State National Ins. Co.*, 2003 NY Slip Op 50856 [U], * 2 [App Term, 2d Dept].)

The Court notes that the first payment under the note and mortgage was due on December

[* 3]
1, 2006, and the default upon which acceleration and foreclosure are based occurred on January 1, 2007.

November 27, 2007


Jack M. Battaglia
Justice, Supreme Court