

**Solomon Holding Corp. v Golia**

2007 NY Slip Op 32472(U)

July 27, 2007

Supreme Court, New York County

Docket Number: 0111071/2005

Judge: Rolando T. Acosta

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

**HON. ROLANDO T. ACOSTA**

PRESENT: \_\_\_\_\_

PART 61

Index Number : 111071/2005

SOLOMON HOLDING CORP.

vs

GOLIA, PETER

Sequence Number : 001

SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

*See Attached*

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE WITH THE ATTACHED MEMORANDUM DECISION.**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE \_\_\_\_\_ FOR THE FOLLOWING REASON(S):

**UNFILED JUDGMENT**

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 41B)

**SO ORDERED**



Dated: 7/27/07

**ROLANDO T. ACOSTA** /s.c.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION /s.c.

Check if appropriate:  DO NOT POST

REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK PART 61**

Solomon Holding Corp.,

Plaintiff,

– against –

Peter Golia, Stacey Rosenblatt, a/k/a Stacy Rosenblatt, Sylvia Ann Rosenblatt, William Koshefsky, Ron White Realty Corp., Alvin Broser, M.H.S. Realty Development Corp., The New York City Department of Housing Preservation and Development, The New York City Parking Violations Bureau, The New York City Environmental Board, The State of New York; and "John Doe No. 1" through "John Doe No. 100",

Defendants.

**DECISION/JUDGMENT**

Index No. 111071/05

Motion Seq. 1

**Present:**

**Hon. Rolando T. Acosta**  
Supreme Court Justice

**UNFILED JUDGMENT**

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The following documents were considered in reviewing plaintiff's motion for summary judgment pursuant to C.P.L.R. § 3212:

<b>Papers</b>	<b>Numbered</b>
<b>Notice of Motion, Affirmation in Support, Affidavit in Support</b>	<b>1, 2 (Ex. A-I), 3</b>
<b>Notice of Cross-Motion, Affirmation in Support of Cross-Motion, and in Opposition to Plaintiff's Motion</b>	<b>4, 5 (Ex. A-E)</b>

Plaintiff brings the instant motion for summary judgment seeking foreclosure of a mortgage encumbering real property located in New York County. Specifically, plaintiff alleges that on or about December 14, 1993, defendant Ron Whit Realty Corp. executed and delivered to Moishe Chanowitz and defendant William Koshefsky a promissory note and mortgage covering the property located

at 2649 8<sup>th</sup> Avenue, New York, New York. On June 22, 2004, Moishe Chanowitz assigned all of his rights under the mortgage to plaintiff Solomon Holding Corp. According to plaintiff, pursuant to said assignment, Chanowitz represented that as of July 26, 2004 the principal sum of \$26,000.00 was due and owing. By deed dated October 11, 2002, defendant Ron Whit Realty Corp. sold the property to defendants Peter Golia, Stacey Rosenblatt and Sylvia Rosenblatt, who subsequently sold the property by deed dated March 17, 2003 to defendant Frederick Douglas Blvd. Corp. Plaintiff now seeks summary judgment against defendants based upon the purported unpaid balance of the note and mortgage.

It is well settled that the proponent of a motion for summary judgment must establish that "there is no defense to the cause of action or that the cause of action or defense has no merit," (C.P.L.R. §3212[b]), sufficiently to warrant the court as a matter of law to direct judgment in his or her favor. Bush v. St. Claire's Hospital, 82 N.Y.2d 738, 739 (1993); Winegrad v. New York University Medical Center, 64 N.Y.2d 851, 853 (1985). This standard requires that the proponent of the motion "tender[] sufficient evidence to eliminate any material issues of fact from the case," *id.*, "by evidentiary proof in admissible form." Zuckerman v. City of New York, 49 N.Y.2d 557, 562 (1980). Thus, the motion must be supported "by affidavit [from a person having knowledge of the facts], by a copy of the pleadings and by other available proof, such as depositions." C.P.L.R. §3212(b).

In deciding a summary judgment motion, the Court may "search the record" and grant summary judgment to the non-moving party where judgment in their favor as a matter of law is warranted. See Scott v. Beth Israel Medical Center, Inc., 2007 WL 1746382 (N.Y.A.D. 1 Dept.), 2007 N.Y. Slip Op. 05334. In opposition to plaintiff's motion, defendants Peter Golia and Stacey Golia argue, *inter alia*, that plaintiff's action upon the note and mortgage is barred by the applicable six year statute of limitations. C.P.L.R. § 213(4). Defendants, however, failed to assert the affirmative defense of the statute of limitations in their answer and seek leave from this Court to amend the Verified Answer, or in the alternative search the record and grant summary judgment in their favor.

"As a general rule, pleadings are to be liberally construed (CPLR 3026) and, in the case of examining pleadings upon a motion for summary judgment, a court may take into account an unpleaded defense." Adirondack Park Agency v. Ton-Da-Lay Associates, 61 A.D.2d 107, 110 (3<sup>rd</sup> Dept. 1978); see also First Trust National Association v. DeLuca, 248 A.D.2d 494 (2<sup>nd</sup> Dept. 2001). Thus, in searching the record, the Court can take into account defendants' statute of limitations defense, and determine whether they rather than plaintiff, are entitled to summary judgment motion.

In searching the record, summary judgment is granted in favor of defendants

and against plaintiff. The note and mortgage upon which plaintiff is suing is dated December 14, 1993, and unequivocally states that it is to be paid in monthly installments beginning January 14, 1994 until "the 14<sup>th</sup> day of December, 1994 **when the entire principal balance shall be due.**" (Exhibit B to plaintiff's motion) (Emphasis added). It is uncontroverted that plaintiff commenced this action by filing the Summons and Verified Complaint in August 8, 2005, more than 10 years after the outstanding principal on the mortgage became due and owing. See Loiacono v. Goldberg, 240 A.D.2d 476 (2<sup>nd</sup> Dept. 1997) ("Once the mortgage debt is accelerated, the entire amount is due and the Statute of Limitations begin to run on the entire mortgage debt"). Here, plaintiff commenced this action over 10 years after the entire principal of the mortgage became due, well beyond the six year statute of limitations. Accordingly, based upon the foregoing, it is hereby

ORDERED that plaintiff's motion for summary judgment is DENIED; and it is further

ADJUDGED that summary judgment is GRANTED in favor of defendants Peter Golia and Stacey Golia a/k/a Stacey Rosenblatt a/k/a Stacy Rosenblatt and against plaintiff Solomon Holding Corp.

This constitutes the Decision, Order and Judgment of the Court.

Dated: July 27, 2007

ENTER  
**SO ORDERED**



Rolando T. Acosta, J.S.C.  
**ROLANDO T. ACOSTA**  
J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

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