

**U.S. Bank v Won Ho Yang**

2011 NY Slip Op 33097(U)

November 28, 2011

Sup Ct, NY County

Docket Number: 110957/10

Judge: Judith J. Gische

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

PRESENT: HON. JUDITH J. GISCHE  
J.S.C. Justice

PART 10

Index Number : 110957/2010  
U.S. BANK  
vs.  
YANG, WON HO  
SEQUENCE NUMBER : 002  
SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s) \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_ | No(s) \_\_\_\_\_

Replying Affidavits \_\_\_\_\_ | No(s) \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is

**motion (s) and cross-motion(s)  
decided in accordance with  
the annexed decision/order  
of even date.**

**FILED**

**NOV 30 2011**

NEW YORK  
COUNTY CLERK'S OFFICE

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

Dated: 11/28/11

[Signature], J.S.C.  
**HON. JUDITH J. GISCHE**  
J.S.C.

- 1. CHECK ONE: .....  CASE DISPOSED
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK**  
**COUNTY OF NEW YORK: IAS PART 10**

-----x  
U.S. Bank, National Association as trustee for WAMU Mortgage  
Pass Through Certificate for WMALT Series 2007-OA3,

Plaintiff (s),

**-against-**

Won Ho Yang a/k/a Wonho Yang; Kwon Doo Yang; JPMorgan Chase Bank, N.A. successor in interest to Washington Mutual Bank, FA; Board of Managers of The 200 Chambers Street Condominium Homeowners Association, and "JOHN DOE # 1" through "JOHN DOE # 10", the last ten names being fictitious and unknown to the Plaintiff, the person or parties, if any, having or claiming an interest in or lien upon the mortgaged premises described in the complaint,

Defendant (s).  
-----x

**DECISION/ ORDER**  
Index No.: 110957/10  
Seq. No.: 002

**PRESENT:**  
Hon. Judith J. Gische  
J.S.C.

**FILED**

**NOV 30 2011**

NEW YORK  
COUNTY CLERK'S OFFICE

Recitation, as required by CPLR § 2219 [a] of the papers considered in the review of this (these) motion(s):

<b>Papers</b>	<b>Numbered</b>
Pltf's n/m w/ EMO affirms, HF affid, GA affid, exhs .....	1
Pltf's EMO affirm [sep back] .....	2
Pltf's EMO affirm w/ proposed order .....	3

-----x  
*Upon the foregoing papers, the decision and order of the court is as follows:*

**GISCHE J.:**

This is an action to foreclose a mortgage due to the failure of Defendants, Won Ho Yang ("WHY") and Kwon Doo Yang ("KDY") to make payments to Plaintiff, U.S. Bank, National Association, as trustee for WAMU Mortgage Pass Through Certificate for WMALT Series 2007-OA3 ("plaintiff" or "the bank"). The mortgage is secured by residential real

property owned by KDY. WHY and KDY, who are self represented, have answered the complaint. JPMorgan Chase Bank, N.A. successor in interest to Washington Mutual Bank, FA ("JPM") and Board of Managers of The 200 Chambers Street Condominium Homeowners Association ("200 HOA") have not appeared in this action and are, therefore, in default. Presently before the court is the bank's motion for: (1) summary judgment against WHY and KDY, (2) a default judgment against JPM and 200 HOA, and (3) the appointment of a referee to compute. The bank also seeks to have the caption amended to reflect the names of those individuals presently occupying the residence. Since issue has been joined by WHY and KDY, summary judgment relief is available as to them (CPLR 3212[a]; Myung Chun v. North American Mortgage Co., 285 A.D.2d 42 [1<sup>st</sup> Dept 2001]).

Although due proof of service of this motion has been filed and the motion has been submitted to the court without opposition, the bank must still make a *prima facie* showing of entitlement to judgment as a matter of law. (Winegrad v. New York Univ. Med. Ctr., 64 N.Y.2d 851, 853 [1985]). However, since the defendants have not come forward with any affidavits in opposition, the court accepts as true the facts alleged by the plaintiff in its complaint and supporting sworn affidavit. The following facts are established on this motion:

The bank is the owner and holder of the note and mortgage which are the subject of this foreclosure action. WHY is the obligor on the note and the prior owner of the real property, at the time the underlying mortgage loan originated. The real property securing the mortgage is located at 200 Chambers Street, # 2M, New York, New York ("property"). Currently, the record owner of the property is Kwon Doo Yang ("KDY"), the transfer of the deed to KDY occurred subsequent to the recording of WHY's mortgage.

The Note and Mortgage, originating from the WAMU Mortgage Pass Through Certificate for WMALT Series 2007-OA3, were transferred to plaintiff and memorialized by the indorsement and delivery of the Note and a written Assignment of Mortgage executed on July 8, 2009 and recorded August 24, 2009 in CRFN: 2010000285737.

The bank has provided copies of the note and mortgage which were executed by WHY. The bank has also provided proof that WHY defaulted in making payments due under the note. The bank declared the unpaid principal and interest immediately due and payable.

WHY and KDY's Answer consists largely of general denials of the material facts of the Complaint with seven affirmative defenses and one counterclaim, consisting of claims concerning violations of various provisions of NYS Banking Law § 6-m.

### Discussion

In support of its motion for summary judgment, plaintiff has provided the underlying notes and mortgages. It has also provided the sworn statement of Holly Freedman, vice president of J.P.Morgan Chase Bank, NA, successor in interest of Washington Mutual, plaintiffs loan servicing agent. Ms. Freedman asserts that a mortgage on the property ("mortgage"), made with Washington Mutual Bank, FA, in the principal amount of \$644,800.00, was accelerated and became fully due and owing upon WHY and KDY's default. Ms. Freedman further asserts that the borrower was sent a ninety day pre-foreclosure notice on May 18, 2010, but the mortgage remains unpaid. This is sufficient to establish a *prima facie* case of entitlement to a judgment of foreclosure. New York State Mortgage Loan Enforcement and Administration Corporation v. North Town Phase II Houses, Inc., 191 A.D.2d 151 (1st Dept. 1993). The motion for summary judgment is,

therefore, granted.

Contrary to WHY and KDY's position, Banking Law § 6-m is not applicable to the facts of this case, because the underlying mortgage was not a subprime mortgage. The original principle balance for the mortgage was \$644,800.00, over the conforming loan limit at that time for a one unit property.

The next item of relief requested is that the court enter a grant default judgment against JPM and 200 HOA, because they have not answered or appeared in this action. Although there is due proof of service of the complaint and this motion on these defendants, at no time prior to this decision have JPM and 200 HOA interposed an answer to the complaint, nor have the defendants requested that their time to answer be extended by the court. JPM is the successor in interest to Washington Mutual Bank, FA and 200 HOA is the condominium association in which the property is located, Since they have defaulted and there is no evidence that they hold an interest in the property that would otherwise impede foreclosure, the motion is granted as to them.

Plaintiff seeks the appointment of a referee. That motion is granted and the court appoints Eli Babaev, Esq. located at 10015 Queens Blvd., Forest Hills, NY 11375, (917) 496-2517. A separate order appointing said referee has been signed by the court. To the extent, however, that plaintiff seeks an order "striking" the answer, it is denied. The answer is the procedural predicate for the granting of summary judgment against WHY and KDY. A reference to a referee to compute is still made, however, that reference is made under CPLR Article 40 and not RPAPL §1321. See Mortgage Elec. Registration Sys., Inc. v. Maki, 9 Misc.3d 983 (NY Sup. 2005, Sen Co.).

The bank's motion, including the portion to amend the caption to substitute the real

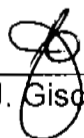
\* 6]

names of the persons presently occupying the property for the "John and Jane Does" in the caption, has been served upon Shanna Eddy and Almando Herrera ("occupants"). There is also due proof of service of the complaint on these defendants as well. The court therefore grants the motion to amend the caption.

Therefore, the motion for summary judgment, amendment of the caption and the appointment of a referee to compute is granted. Any relief that has not been expressly addressed is hereby denied. This constitutes the decision of the court. A separate order has been signed by the court.

Dated: New York, New York  
November 28, 2011

So Ordered:

  
\_\_\_\_\_  
Hon. Judith J. Gische, J.S.C.

**FILED**

**NOV 30 2011**

**NEW YORK  
COUNTY CLERK'S OFFICE**