

JPMorgan Chase Bank, N.A. v Zaga
2013 NY Slip Op 31997(U)
August 26, 2013
Supreme Court, New York County
Docket Number: 115549-09
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. EILEEN A. RAKOWER
Justice

PART 15

Index Number : 115549/2009
JPMORGAN CHASE BANK
vs.
ZAGA, YOSSI
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). <u>1, 2</u>
Answering Affidavits — Exhibits _____	No(s). <u>3</u>
Replying Affidavits _____	No(s). <u>4</u>

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

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

FILED

AUG 28 2013

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 8/26/13


_____, J.S.C.

HON. EILEEN A. RAKOWER

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 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

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

JPMorgan Chase Bank, National Association,

Index No. 115549-09

Plaintiff,

DECISION AND ORDER

- v -

Mot. Seq. 002

Yossi Zaga; Mosdot Shuva Israel; City
of New York Transit Adjudication Bureau;
city of New York Parking Violations Bureau;
"John Doe #1" through "John Doe #10," the
last ten names being fictitious and unknown
to plaintiff, the persons or parties intended being
the tenants, occupants, persons or corporations, if
any, having or claiming an interest in or lien upon
the premises, described in the complaint,

FILED

Defendants.

AUG 28 2013

HON. EILEEN A. RAKOWER

NEW YORK
COUNTY CLERK'S OFFICE

This action was brought to foreclose a mortgage on real property located at 409 East 58th Street, New York, NY 10022, in the County of New York, State of New York.

Presently before the Court is Plaintiff JPMorgan Chase Bank, National Association's ("Plaintiff") motion for an Order pursuant to CPLR §3212, for summary judgment in Plaintiff's favor and against Defendant Yossi Zaga, default judgment against all other parties, appointing a Referee to compute the amount due to Plaintiff, and amending the title of this action by substituting Edri Zaga in place of "John Doe #1" and Paul Tully in place of "John Doe #2" as necessary parties who were served with a copy of the Summons and Complaint and dropping Defendants designated as "John Doe #3" to "John Doe #10." Defendant Yossi Yaga submits partial opposition.

Plaintiff submits, among other documents, the attorney affirmation of Ellie Oster and the Affidavit of Merit of Caitlin Q. DeWeese, Vice President of JP Morgan. DeWeese's affidavit sets forth the sums due to Plaintiff and the date of default under the mortgage obligation. As set forth in the DeWeese's Affidavit, Yossi Zaga defaulted upon the terms of the subject note and mortgage by failing to tender payment for the monthly installment due for June 1, 2009. The default has not been cured, and the loan balance has been accelerated making the entire balance due and owing pursuant to the terms of the loan documents. A copy of the governing Note and Mortgage, and Notices of Default are annexed to Oster's affirmation.

Where a moving party makes a *prima facie* showing of entitlement to summary judgment, "[t]he party opposing the [summary judgment] motion must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which the opposing claim rests." (*Frank Corp. v. Federal Ins. Co.*, 70 N.Y.2d 966, 967 [1988].) Bald, conclusory allegations, even if believable, are not enough. (*Id.*; *Ehrlich v. American Moninger Greenhouse Mfg. Corp.*, 26 N.Y.2d 255[1970]; *Edison Stone Corp. v. 42nd Street Development Corp.*, 145 A.D.2d 249, 251-52 [1st Dept. 1989]).

In mortgage foreclosure actions, it is well settled that a mortgagee makes a *prima facie* showing of entitlement to judgment as a matter of law when it "produce[s] the mortgage documents underlying the transaction and undisputed evidence of nonpayment (*Red Tulip, LLC v. Neiva*, 2007 NY Slip Op 6340, *5 [1st Dept. 2007]) (citation omitted). Once a mortgagee fulfills its initial burden, it becomes incumbent on the party opposing summary judgment to come forward with competent evidence of any defenses to raise an issue of fact (*see Barcov Holding Corp. v. Bexin Realty Corp.*, 16 A.D.3d 282, 283 [1st Dept. 2005]).

Here, Plaintiff has made a *prima facie* showing of entitlement to summary judgment. Plaintiff annexes copies of the governing Note and Mortgage, and has submitted proof of nonpayment in the form of the affidavit of Caitlin DeWeese. In opposition, defendant Yossi Zaga fails to raise any triable issue of fact.

Wherefore, it is hereby;

ORDERED that plaintiff JPMorgan Chase Bank, National Association's

motion for summary judgment as against defendant Yossi Zagda is granted; and it is further

ORDERED that the caption be amended by substituting Edri Zaga in place of "John Doe #1" and Paul Tully in place of "John Doe #2" and by deleting the names of "John Doe #3" through "John Doe #10" defendants; and all other papers and proceedings heretofore filed herein shall be deemed amended accordingly; and it is further

ORDERED that the caption as amended shall read as follows:

JPMorgan Chase Bank, National Association, Index No. 115549-09

Plaintiff,

- v -

Yossi Zaga; Mosdot Shuva Israel; City
of New York Transit Adjudication Bureau;
City of New York Parking Violations Bureau;
Edri Zaga; Paul Tully,

Defendants

ORDERED that this action be and the same is hereby referred to Harold B. Beeler, 60 E 42nd Street, Floor 40, New York, NY 10165, Tel: (212) 687-3822, Fax: (212) 687-3833, as Referee to Compute the amount due to the plaintiff, to ascertain and compute the amount due to the plaintiff for principal, interest, and other disbursements advances as provided for in the note and mortgage upon which this action was brought, to examine and report whether or not the mortgaged premises can be sold in one parcel, and that the referee make his/her report to the Court with all convenient speed; and it is further

ORDERED that by accepting this appointment the referee certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to, section 36.20 (Disqualifications From Appointment), and

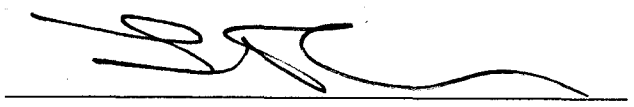
section 36.2(d) (Limitations on Appointments Based on Compensation); and it is further

ORDERED that the Referee's hearing be had in the County of New York; and it is further

ORDERED that Plaintiff's attorney serve a conformed copy of this order upon the County Clerk and the Trial Support Office for amendment of their records.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

DATED: 8/26/13



EILEEN A. RAKOWER, J.S.C.

FILED
AUG 28 2013
NEW YORK
COUNTY CLERK'S OFFICE