

JPMorgan Chase Bank Natl. Assoc. v Naqvi
2014 NY Slip Op 32445(U)
September 18, 2014
Sup Ct, Suffolk County
Docket Number: 11577/12
Judge: Marlene L. Budd
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SUPREME COURT - STATE OF NEW YORK
IAS PART 26 - SUFFOLK COUNTYPRESENT: Hon. MARLENE BUDD
Justice of the Supreme CourtMOTION DATE 001 7-8-13; 002 -10-11-13

ADJ. DATE _____

Mot. Seq. #001 MG
#002 MD_____
JPMORGAN CHASE BANK NATIONAL
ASSOCIATION,

Plaintiff,

-against-

ZILLE A. NAQVI A/K/A ZILLE NAQVI

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 of entities, if any, having
or claiming an interest or lien upon the Mortgage
Premises.),Defendants.
_____ xSTIENE & ASSOCIATES, P.C.
Attorneys for Plaintiff
187 East Main Street
Huntington, N. Y. 11743SOMA S. SYED, ESQ.
Attorney for Defendant
Zille A. Naqvi
198-58 Foothill Avenue
Holliswood, N. Y. 11423LAW OFFICE OF
ELLIOT S. SCHLISSEL
Attorneys for Defendants
479 Merrick Road
Lynbrook, N. Y. 11563

Upon the following papers numbered 1 to 32 read on this motion for summary judgment and an order of reference; Notice of Motion/Order to Show Cause and supporting papers 1 - 15; Defendant's Order to Show Cause and supporting papers 16 - 23; Affirmation in Opposition to Defendant's Order to Show Cause 24 - 31; Replying Affirmation and supporting papers 32 - 34; Other _____; (and after hearing counsel in support and opposed to the motion) it is,

UPON DUE DELIBERATION AND CONSIDERATION BY THE COURT of the foregoing papers, the motion is decided as follows: it is hereby

ORDERED that the motion (#001) by plaintiff JPMorgan Chase Bank, National Association (JPMorgan) and the order to show cause (#002) brought on by defendant Zillie A. Naqvi a/k/a Zillie Naqvi (Naqvi), are consolidated for purposes of this determination; and it is further

ORDERED that this motion (#001) by plaintiff JPMorgan, pursuant to CPLR 3212 for summary judgment on its verified complaint, to strike the answer of defendant Naqvi, fix the defaults as to the remaining non-appearing defendants, and for an order of reference appointing a referee to compute pursuant to Real Property Actions and Proceedings Law § 1321, is granted; and it is further

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ORDERED that plaintiff's application for leave to amend the caption of this action pursuant to CPLR 3025 (b), is granted; and it is further

ORDERED that the caption is hereby amended by substituting the name of Shaba Naqvi in place of "John Doe #1" and by striking therefrom defendants "John and Jane Doe #1 through #7"; and it is further

ORDERED that plaintiff is directed to serve a copy of this order amending the caption of this action upon the Calendar Clerk of this Court; and it is further

ORDERED that the caption of this action hereinafter appear as follows:

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF SUFFOLK

 JPMORGAN CHASE BANK NATIONAL
 ASSOCIATION,

Plaintiff,

-against-

ZILLE A. NAQVI A/K/A ZILLE NAQVI
 AND SHABA NAQVI

Defendants.

ORDERED that defendant Naqvi's motion (#002) seeking an order vacating his default in answering the plaintiff's motion for summary judgment, denying plaintiff's summary judgment motion, granting an order compelling plaintiff to accept service of defendant Naqvi's amended verified answer and counterclaims and restoral of the instant matter to the foreclosure conference settlement part is denied in its entirety.

ORDERED that any previous stays imposed by this Court pending final determination of defendant's order to show cause are hereby vacated.

This is an action to foreclose a residential mortgage on premises known as 52 First Street, Ronkonkoma, New York. On July 2, 2008, defendant Naqvi executed a note in favor of Professional Mortgage Bankers Corp. agreeing to pay the sum of \$423,250.00 at the yearly rate of 7.250 percent. On the same date, defendant Naqvi also executed a first mortgage in the principal sum of \$423,250.00 on the subject property. The mortgage indicated Professional Mortgage Bankers Corp. to be the lender and Mortgage Electronic Registration Systems, Inc. (MERS) to be the nominee of Professional Mortgage Bankers Corp. The mortgage was recorded on July 17, 2008 in the Suffolk County Clerk's Office.

Thereafter, on February 28, 2012, the mortgage was transferred by assignment of mortgage from MERS, as nominee for Professional Mortgage Bankers Corp. to plaintiff JPMorgan.

Chase sent a notice of default dated September 9, 2011 to defendant Naqvi stating that he had defaulted on his mortgage loan and that the amount past due was \$74,413.02. As a result of defendant's continuing default, plaintiff commenced this foreclosure action on April 11, 2012. In its complaint, plaintiff alleges in pertinent part that the defendant breached his obligations under the terms of the note and mortgage by failing to make his monthly payments commencing with the payment due on April 1, 2010. Defendant interposed an answer with nine affirmative defenses.

The Court's computerized records indicate that a foreclosure settlement conference was held on January 29, 2013 at which time this matter was referred as an IAS case since a resolution or settlement had not been achieved. Thus, there has been compliance with CPLR 3408 and no further settlement conference is required.

Plaintiff now moves for summary judgment on its complaint contending that defendant Naqvi breached his obligations under the terms of the loan agreement and mortgage by failing to tender monthly payments. In support of its motion, plaintiff submits among other things: the sworn affidavit of Anthony Stoffer, vice president of JPMorgan Chase Bank, National Association; the affirmation of Charles W. Marino, Esq. in support of the motion; the affirmation of Stephen J. Vargas, Esq. pursuant to the Administrative Order of the Chief Administrative Judge of the Courts (AO/431/11); the pleadings; the note, mortgage, and assignment of mortgage; a notice of default; notices pursuant to RPAPL §§ 1320, 1304 and 1303; affidavits of service for the summons and complaint; an affidavit of service for the instant summary judgment motion upon defendant and defendant's former counsel; and a proposed order appointing a referee to compute. Defendant Naqvi, who failed to timely oppose plaintiff's summary judgment motion, now seeks through his own motion, *inter alia*, to assert new defenses not raised in his previous answer¹.

It is well settled that "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" (*see* CPLR 3212; RPAPL § 1321; *Argent Mtge. Co., LLC v Mentosana*, 79 AD3d 1079, 915 NYS2d 591 [2d Dept 2010]; *North Bright Capital, LLC v 705 Flatbush Realty, LLC*, 66 AD3d 977, 889 NYS2d 596 [2d Dept 2009]; *Wells Fargo Bank Minnesota v Perez*, 41 AD3d 590, 837 NYS2d 877 [2d Dept 2007]; *Republic Natl. Bank of N.Y. v O'Kane*, 308 AD2d 482, 764 NYS2d 635 [2d Dept 2003]; *see also Village Bank v Wild Oaks Holding*, 196 AD2d 812, 601 NYS2d 940 [2d Dept 1993]). Once a plaintiff has made this showing, the burden then shifts to defendant to establish by admissible evidence the existence of a triable issue of fact as to a defense (*see Washington Mut. Bank v Valencia*, 92 AD3d 774, 939 NYS2d 73 [2d Dept 2012]).

¹ Plaintiff's summary judgment motion was filed with the Court on June 20, 2013 with a return date of July 8, 2013. Defendant did not seek an adjournment on plaintiff's application. Defendant's order to show cause was brought before this Court on September 27, 2013 and made returnable October 11, 2013.

Here, plaintiff produced the note and mortgage executed by defendant Naqvi, as well as evidence of defendant's nonpayment, thereby establishing a prima facie case as a matter of law (*see Wells Fargo Bank Minnesota, Natl. Assn. v Mastropaolo*, 42 AD3d 239, 837 NYS2d 247 [2d Dept 2007]). Anthony Stoffer, vice president of JPMorgan, avers that defendant failed to comply with the terms of the note and mortgage by failing to make monthly payments commencing with the payment due on April 1, 2010; that a notice of default was mailed to defendant on September 9, 2011 to his last known address; that a 90 day pre-foreclosure notice was sent to defendant on July 11, 2011 to his last known address; and, that defendant's default has not been cured.

Defendant Naqvi did not timely submit opposition to plaintiff's motion for summary judgment. While defendant now seeks to oppose plaintiff's summary judgment motion, defendant has not articulated a viable defense to plaintiff's application. Since no discernable opposition to the instant motion was filed by defendant, no triable issue of fact was raised in response to plaintiff's prima facie showing (*see Flagstar Bank v Bellafiore*, 94 AD3d 1044, 943 NYS2d 551 [2d Dept 2012]; *Wells Fargo Bank Minnesota v Perez*, 41 AD3d 590, 837 NYS2d 877 [2d Dept 2007]; *see also Zanfini v Chandler*, 79 AD3d 1031, 912 NYS2d 911 [2d Dept 2010]). Likewise, defendant's answer is insufficient, as a matter of law, to defeat plaintiff's unopposed motion (*see Argent Mgt. Co., LLC v Mentasana*, 79 AD3d 1079, 915 NYS2d 591; *Citibank, N.A. v Souto Geffen Co.*, 231 AD2d 466, 647 NYS2d 467 [1st Dept 1996]; *Greater N.Y. Sav. Bank v 2120 Realty Inc.*, 202 AD2d 248, 608 NYS2d 463 [1st Dept 1994]). Moreover, defendant's participation in the transactions by which the mortgage loan documents were executed, his lack of denial that he defaulted under the note and mortgage, and his failure to advance any material and relevant defenses to the claims on which summary judgment have been demanded, warrant the granting of summary judgment in favor of plaintiff.

As to defendant's application seeking leave to amend its answer, such is denied. Leave to amend a pleading should be "freely given absent prejudice or surprise" (*Rosicki, Rosicki & Assoc., P.C. v Cochems*, 59 AD3d 512, 873 NYS2d 184 [2d Dept 2009]) and "[a] court should not examine the merits or legal sufficiency of the proposed amendment unless it is palpably insufficient or patently devoid of merit on its face" (*Rosicki*, 59 AD3d 512; *see Greco v Christoffersen*, 70 AD3d 769, 896 NYS2d 363 [2d Dept 2010]). "A determination whether to grant such leave is within the Supreme Court's broad discretion, and the exercise of that discretion will not be lightly disturbed" (*Greco v Christoffersen*, 70 AD3d at 770, 896 NYS2d 363 [internal quotation marks omitted]). However, under the circumstances of this case and in view of the court having already found that the plaintiff is entitled to summary judgment on its complaint, defendant's belated application to amend his answer is rendered moot. As a result thereof, defendant's application seeking to amend his answer is denied.

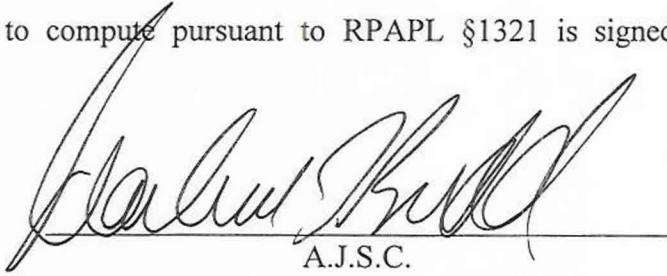
Also rejected is the defendant's demand for restoration of this case to the specialized mortgage conference part. Only one conference is required by statute and the defendant was afforded the opportunity to a conference on three occasions in an effort to reach, "if possible", a mutually agreeable settlement but was not successful in such endeavor. Since no further conferences are required by statute, law or rule, the court declines the defendant's request for a further conference of the type contemplated by CPLR 3408 or otherwise. The defendant's motion for such relief and the other relief addressed above is thus denied.

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The plaintiff's moving papers further established the default in answering on the part of the remaining defendants, none whom served answers to the plaintiff's complaint. Accordingly, the defaults of all such defendants are hereby fixed and determined. Since the plaintiff has been awarded summary judgment against the answering defendant and has established a default in answering by the remaining defendants, the plaintiff is entitled to an order appointing a referee to compute amounts due under the subject note and mortgage (*see* RPAPL § 1321; *Green Tree Serv. v Cary*, 106 AD3d 691, 965 NYS2d 511 [2d Dept 2013]; *Vermont Fed. Bank v Chase*, 226 AD2d 1034, 641 NYS2d 440 [3d Dept 1996]; *Bank of East Asia, Ltd. v Smith*, 201 AD2d 522, 607 NYS2d 431 [2d Dept 1994]).

The proposed order appointing a referee to compute pursuant to RPAPL §1321 is signed simultaneously herewith as modified by the court.

Dated: 9/18/14


A.J.S.C.

 FINAL DISPOSITION X NON-FINAL DISPOSITION