

GMAC Mtge., LLC v Steimle

2014 NY Slip Op 32608(U)

October 1, 2014

Sup Ct, Suffolk County

Docket Number: 12-11579

Judge: Jerry Garguilo

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STICK FORM ORDER

INDEX No. 12-11579
CAL No. _____

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 47 - SUFFOLK COUNTY

PRESENT:

Hon. JERRY GARGUILO
Justice of the Supreme Court

MOTION DATE 1-9-14
ADJ. DATE 10/1/14
Mot. Seq. #001 - MG

-----X

GMAC MORTGAGE, LLC,

Plaintiff,

- against -

ANDREW STEIMLE; "JOHN DOES" and
"JANE DOES", said names being fictitious,
parties intended being possible tenants or
occupants of premises, and corporations, other
entities or persons who claim, or may claim a
lien against the premises
Defendant.

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ROSICKI, ROSICKI & ASSOCIATES, P.C.
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JENINE STEIMLE, Pro se
155 Overton Street
Deer Park, New York 11729

Upon the following papers numbered 1 to 11 read on this motion for summary judgment and an order of reference; Notice of Motion/ Order to Show Cause and supporting papers 1 - 11; ~~Notice of Cross Motion and supporting papers _____~~; Answering Affidavits and supporting papers _____; Replying Affidavits and supporting papers _____; 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

ORDERED that this unopposed motion by plaintiff GMAC Mortgage, LLC (GMAC) pursuant to CPLR 3212 for summary judgment on its complaint against defendant Andrew Steimle (Steimle), for a default judgment against the non-answering and non-appearing defendants, to amend the caption of this action pursuant to CPLR 3025 (b), 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 the caption is hereby amended by substituting Ocwen Loan Servicing, LLC in place of plaintiff GMAC; and it is further

ORDERED that the caption is further amended by substituting Jenine Steimle in place of defendants "John Does" and "Jane Does" and by striking therefrom the names of the remaining defendants "John Does" and "Jane Does"; 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.

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

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF SUFFOLK

 OCWEN LOAN SERVICING, LLC

Plaintiff

-against-

ANDREW STEIMLE; JENINE STEIMLE,

Defendants.

This is an action to foreclose a mortgage on premises known as 155 Overton Street, Deer Park, New York. On April 17, 2009, defendant Steimle executed a fixed rate note in favor of Continental Home Loans, Inc. (Continental) agreeing to pay the sum of \$256,400.00 at the yearly rate of 5.500 percent. On the same date, defendant Steimle also executed a mortgage in the principal sum of \$256,400.00 on the subject property. The mortgage indicated Continental to be the lender and Mortgage Electronic Registration Systems, Inc. (MERS) to be the nominee of Continental as well as the mortgagee of record. The mortgage was recorded on May 6, 2009 in the Suffolk County Clerk's Office. Thereafter, the note and mortgage were transferred by assignment of mortgage dated February 14, 2012 from MERS, as nominee for Continental to plaintiff GMAC. The assignment of mortgage was recorded on March 20, 2012 with the Suffolk County Clerk's Office.

GMAC sent a notice of default dated November 2, 2011 to defendant Steimle stating that he had defaulted on his mortgage loan and that the amount past due was \$6,874.06. As a result of defendant's continuing default, plaintiff commenced this foreclosure action on April 1, 2012. In its complaint, plaintiff alleges in pertinent part that defendant breached his obligations under the terms of the note and mortgage by failing to make his monthly payments commencing with the installment due on October 1, 2011 and subsequent payments thereafter. Defendant interposed an answer.

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The Court's computerized records indicate that a foreclosure settlement conference was held on April 10, 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 conferences are required.

Plaintiff now moves for summary judgment on its complaint contending that defendant Steimle 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 affidavits of Thomas E. Kennedy, default specialist of Ocwen Loan Servicing, LLC (Ocwen) and, Vadim Preysman, default specialist of Ocwen, the affirmation of Richard Fay, Esq. in support of the instant motion; the pleadings; the note, mortgage and assignments of mortgage; 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 his counsel; and a proposed order appointing a referee to compute.

"[I]n 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" (*Republic Natl. Bank of N.Y. v O'Kane*, 308 AD2d 482, 482, 764 NYS2d 635 [2d Dept 2003]; see *Argent Mtge. Co., LLC v Mentasana*, 79 AD3d 1079, 915 NYS2d 591 [2d Dept 2010]). 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]).

Here, plaintiff produced the note and mortgage executed by defendant Steimle, assignments of mortgage, 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]). Thomas E. Kennedy avers that defendant Steimle defaulted on his mortgage loan by failing to make payments; that a notice of default was sent to borrower on November 2, 2011; and, that a 90 day pre-foreclosure notice was mailed to defendant on June 13, 2011.

Defendant Steimle has not submitted opposition to the motion. Defendant's answer is insufficient, as a matter of law, to defeat plaintiff's unopposed motion (see *Argent Mtge. 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]). Since no 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 *Zanfina v Chandler*, 79 AD3d 1031, 912 NYS2d 911 [2d Dept 2010]).

Based upon the foregoing, the motion for summary judgment is granted against defendant Steimle. That branch of the motion seeking to fix the defaults as against the remaining defendants who have not answered or appeared herein is granted. Plaintiff's request for an order of reference appointing a referee to compute the amount due plaintiff under the note and mortgage is also granted (see *Green*

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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: 10/1/14


J.S.C.
HON. JERRY GARGUILO

FINAL DISPOSITION NON-FINAL DISPOSITION