

U.S. Bank N.A. v Guillot

2014 NY Slip Op 32866(U)

October 31, 2014

Supreme Court, Suffolk County

Docket Number: 12-22417

Judge: Jeffrey Arlen Spinner

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SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 21 - SUFFOLK COUNTY

COPY

PRESENT:

Hon. JEFFREY ARLEN SPINNER
Justice of the Supreme Court

MOTION DATE 1-23-14
ADJ. DATE _____
Mot. Seq. # 001 - MG

-----X
U.S. BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR THE REGISTERED HOLDERS
OF AEGIS ASSET BACKED SECURITIES
TRUST, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2004-2,

Plaintiff,

SHERYL A. GUILLOT, H and R BLOCK
MORTGAGE CORPORATION, "JOHN DOE
#1" through "JOHN DOE #12," the last twelve
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,

- against -

Defendant.
-----X

LEOPOLD & ASSOCIATES, PLLC
Attorney for Plaintiff
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Armonk, New York 10504

SHERYL A. GUILLOT,
PRO SE
24 Whitman Avenue
Port Jefferson Station, New York 11776

Upon the following papers numbered 1 to 13 read on this motion for summary judgment and an order of reference;
Notice of Motion/ Order to Show Cause and supporting papers 1 - 13; ~~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 U.S. Bank National Association, as
Trustee for the Registered Holders of Aegis Asset Backed Securities Trust, Mortgage Pass-Through
Certificates, Series 2004-2 (U.S. Bank) pursuant to CPLR 3212 for summary judgment on its complaint
against defendant Sheryl A. Guillot (Guillot), for *nunc pro tunc* relief, to amend the caption of this

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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

ORDERED that the caption is hereby amended by substituting Bill "Smith" in place of "John Doe #1" and by striking therefrom the names of defendants "John Doe #2" through "John Doe #12"; 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

U.S. BANK NATIONAL ASSOCIATION, AS
 TRUSTEE FOR THE REGISTERED HOLDERS OF
 AEGIS ASSET BACKED SECURITIES TRUST,
 MORTGAGE PASS-THROUGH CERTIFICATES,
 SERIES 2004-2,

Plaintiff,

SHERYL A. GUILLOT, H and R BLOCK MORTGAGE
 CORPORATION, BILL "SMITH",

Defendants.

This is an action to foreclose a mortgage on premises known as 24 Whitman Ave., Port Jefferson Station, New York. On March 9, 2004, defendant Guillot executed a fixed rate note in favor of Aegis Lending Corporation (Aegis) agreeing to pay the sum of \$177,800.00 at the yearly rate of 6.096 percent. On the same date, defendant Guillot executed a mortgage in the principal sum of \$177,800.00 on the subject property. The mortgage indicated Aegis to be the lender and Mortgage Electronic Registration Systems, Inc. (MERS) to be the nominee of Aegis as well as the mortgagee of record for the purposes of recording the mortgage. The mortgage was recorded on March 22, 2005 in the Suffolk County Clerk's Office. Thereafter, on March 29, 2012, the mortgage was transferred by assignment of mortgage from MERS, as nominee for Aegis to plaintiff U.S. Bank.

Ocwen Loan Servicing, LLC, plaintiff's servicing agent, sent a notice of default dated April 12, 2012 to defendant Guillot stating that she had defaulted on her mortgage loan and that the amount past due was \$17,021.03. As a result of defendant's continuing default, plaintiff commenced this foreclosure action on July 25, 2012. In its complaint, plaintiff alleges in pertinent part that Guillot breached her

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obligations under the terms of the note and mortgage by failing to make her monthly payments commencing with the June 1, 2011 installment and subsequent payments thereafter. Defendant Guillot interposed an answer with six affirmative defenses and two counterclaims.

The Court's computerized records indicate that a foreclosure settlement conference was held on December 3, 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 Guillot breached her obligations under the terms of the note and mortgage by failing to tender payment for the monthly installment due on June 1, 2011. In support of its motion, plaintiff submits among other things: the sworn affidavit of Richard Work, contract management coordinator for Ocwen Loan Servicing, LLC, attorney-in-fact and servicer of the loan; the affirmation of Darya Olshanetskaya, Esq. in support of the instant motion; the affirmation of Danielle Tabankin, Esq. pursuant to the Administrative Order of the Chief Administrative Judge of the Courts (AO/431/11); the pleadings; the note, mortgage and an assignment 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 Guillot; 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 Montesana*, 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 Guillot, 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]). Richard Work avers that defendant Guillot defaulted on her note and mortgage by failing to make her monthly payments commencing with the installment due on June 1, 2011; that a notice of default was sent to Guillot; and, that a 90 day pre-foreclosure notice dated April 12, 2012 was mailed to defendant Guillot.

Defendant Guillot 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 Montesana*, 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

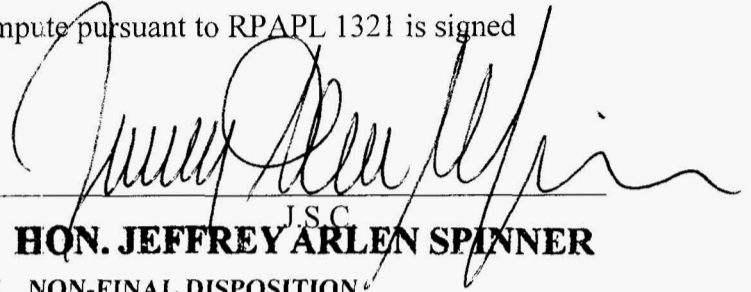
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NYS2d 877 [2d Dept 2007]; *see also Zanfini v Chandler*, 79 AD3d 1031, 912 NYS2d 911 [2d Dept 2010]).

Based upon the foregoing, the motion for summary judgment is granted against defendant Guillot. 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 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: OCT 31 2014



J.S.C.
HON. JEFFREY ARLEN SPINNER

____ FINAL DISPOSITION X NON-FINAL DISPOSITION