

**JPMorgan Chase Bank, N.A. v Amendola**

2015 NY Slip Op 30886(U)

February 5, 2015

Supreme Court, Suffolk County

Docket Number: 12-34055

Judge: Ralph T. Gazzillo

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 6 - SUFFOLK COUNTY

**COPY**

**PRESENT:**

Hon. RALPH T. GAZZILLO  
Acting Justice of the Supreme Court

MOTION DATE 12-12-13  
ADJ. DATE       
Mot. Seq. # 001 - MG

-----X

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,

Plaintiff,

- against -

SALVATORE L. AMENDOLA A/K/A SALVATOR L. AMENDOLA; DIANE AMENDOLA; CAPITAL ONE BANK USA, NA; FORD MOTOR CREDIT COMPANY, LLC; L.I. ANESTHESIOLOGIST PLLC; BOARD OF MEMBERS OF PARK AVENUE OWNERS ASSOCIATION, INC.; "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,

Defendants.

-----X

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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,

**ORDERED** that this unopposed motion by plaintiff JPMorgan Chase Bank, National Association (JPMorgan) pursuant to CPLR 3212 for summary judgment on its complaint against defendants Salvatore L. Amendola a/k/a Salvator L. Amendola (defendant Amendola) and Diane Amendola (collectively referred to as defendants), fixing the defaults as against the non-appearing, non-answering defendants, to amend the caption of this action pursuant to CPLR 3025 (b), 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 Tommy White in place of defendants “John Does” and “Jane Does” and by striking therefrom the remaining “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; 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

\_\_\_\_\_<sup>x</sup>  
 JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,

Plaintiff,

- against -

SALVATORE L. AMENDOLA A/K/A SALVATOR L.  
 AMENDOLA; DIANE AMENDOLA; CAPITAL ONE  
 BANK USA, NA; FORD MOTOR CREDIT COMPANY,  
 LLC; L.I. ANESTHESIOLOGIST PLLC; BOARD OF  
 MEMBERS OF PARK AVENUE OWNERS ASSOCIATION,  
 INC.; TOMMY WHITE,

Defendants.

\_\_\_\_\_<sup>x</sup>

This is an action to foreclose a mortgage on premises known as 2 Windsor Court, Amityville, New York. On August 15, 2008, defendant Amendola executed a fixed rate note in favor of Continental Home Loans Inc. (Continental) agreeing to pay the sum of \$320,870.00 at the yearly rate of 6.875 percent. On the same date, defendant Amendola executed a mortgage in the principal sum of \$320,870.00 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 for the purposes of recording the mortgage. The mortgage was recorded on September 12, 2008 in the Suffolk County Clerk’s Office. Thereafter, on May 11, 2012, the mortgage was transferred by assignment of mortgage from MERS, as nominee for Continental to plaintiff JPMorgan.

Plaintiff sent a notice of default dated May 30, 2012 to defendant Amendola stating that he had defaulted on his note and mortgage and that the amount past due was \$49,618.51. As a result of defendant’s continuing default, plaintiff commenced this foreclosure action on November 7, 2012. In its complaint, plaintiff alleges in pertinent part that defendant Amendola breached his obligations under the terms of the note and mortgage by failing to make his monthly payments commencing with the January

1, 2011 installment and subsequent payments thereafter. Defendants interposed an answer with affirmative defenses.

The Court's computerized records indicate that a foreclosure settlement conference was held on April 17, 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. In support of its motion, plaintiff submits among other things: the sworn affidavit of Christopher Griffith, vice president of JPMorgan; the affirmation of Richard Fay, Esq. in support of the instant motion; 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 defendants and 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 Mentosana*, 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 Amendola, 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]). Christopher Griffith avers that defendant Amendola defaulted under the terms and conditions of the note and mortgage by failing to tender payment for the monthly installment due for January 1, 2011; that a notice of default was sent to defendant on May 30, 2012; that a 90 day pre-foreclosure notice was sent to defendant on June 13, 2012; and, that the default has not been cured.

Defendants have not submitted opposition to the motion. Defendants' answer is insufficient, as a matter of law, to defeat plaintiff's unopposed motion (see *Argent Mtge. Co., LLC v Mentosana*, 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 *Zanfini v Chandler*, 79 AD3d 1031, 912 NYS2d 911 [2d Dept 2010]).

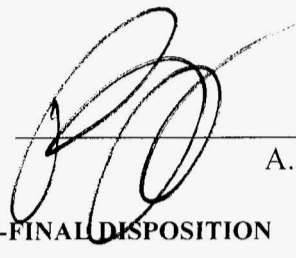
Based upon the foregoing, the motion for summary judgment is granted against defendants Amendola. That branch of the motion seeking to fix the defaults as against the remaining defendants who have not answered or appeared herein is granted. Plaintiff's request for an order of reference appointing a referee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

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(see *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: 2/5/15

  
\_\_\_\_\_  
A.J.S.C.

FINAL DISPOSITION  NON-FINAL DISPOSITION

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TO:

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