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| <b>Nationstar Mtge. LLC v Polchinski</b>   |
| 2017 NY Slip Op 30208(U)   |
| February 3, 2017   |
| Supreme Court, Westchester County  |
| Docket Number: 68879/14  |
| Judge: Mary H. Smith   |
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| This opinion is uncorrected and not selected for official publication.   |

# DECISION AND ORDER

To commence the statutory period of appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this Order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK  
IAS PART, WESTCHESTER COUNTY**

**Present: HON. MARY H. SMITH  
Supreme Court Justice**

-----X  
**NATIONSTAR MORTGAGE LLC,**  
Plaintiff,

**MOTION DATE: 2/3/17  
INDEX NO.: 68879/14**

-against-

**THOMAS POLCHINSKI, JPMORGAN CHASE BANK,  
N.A., DISCOVER BANK, MIDLAND FUNDING LLC A/P/O  
CITIBANK (SOUTH DAKOTA), N.A., RAZOR CAPITAL  
LLC, "JOHN DOE #1-5" and "JANE DOE #1-5" said  
names being fictitious, it being the intention of Plaintiff  
to designate any and all occupants, tenants, persons or  
corporations, if any, having or claiming an interest in or  
lien upon the premises being foreclosed,**  
Defendants.

-----X  
The following papers numbered 1 to 11 were read on this motion by plaintiff for summary judgment, etc.

**Papers Numbered**

|   |     |
|---|-----|
| Notice of Motion - Affirmation (Heaney) - Exhs. (A-P) - Memorandum of Law ..... | 1-4 |
| Answering Affirmation (Black) - Exhs. (A-E) .....                               | 5-6 |
| Replying Affirmation (Vargas) - Exhs. (A-B) - Memorandum of Law .....           | 7-9 |
| Plaintiff's supplemental submissions.....                                       | 10  |
| Defendant's Responding Affirmation (Black) .....                                | 11  |

Upon the foregoing papers, it is Ordered and adjudged that this motion by plaintiff for summary judgment and an Order of reference is disposed of as follows:

By 7-page Decision and Order, dated January 4, 2017, this Court inter alia had adjourned plaintiff's sub judice motion for summary judgment and Order of reference for further submissions directed to plaintiff's establishing that it had mailed both the required 90-day foreclosure Notice, in accordance with RPAPL §1304, and the contractual Demand/Notice.<sup>1</sup> Specifically, this Court had directed:

plaintiff, on or before January 27, 2017, to submit proof of its proper mailings of the required contractual and statutory Notices by way of screen shots of computerized business records evidencing same and, with respect to the certified mailing of the 90-day Notice, a copy of the computerized tracking record pertaining to said Notice, or by way of an affidavit(s) from the individual(s) who in fact had mailed each of the required Notices.

Plaintiff has responded to the Court's adjourning Order with additional submissions, to which defendant objects as not only continuing to be inadequate to demonstrate plaintiff's mailings of the required letters to defendants, but on the further basis that this Court improperly had afforded plaintiff a second opportunity to remedy its initially deficient submission.

Addressing defendant's latter objection first, this Court find no impropriety in plaintiff's directed supplementation of its earlier proof intended to specifically address

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<sup>1</sup>Further, this Court had determined in said Decision that plaintiff prima facie had demonstrated its entitlement to summary judgment, that defendant had waived eleven of his interposed defenses and that defendant had failed to raise any genuine issue of fact as to two defenses upon which he had continued to rely and which this Court had found lacked merit, to wit, that challenging plaintiff's standing herein and that challenging that plaintiff improperly had incorporated the required Fair Debt Collection Practices Act Notice with the summons, thereby compromising plaintiff's compliance with requirements.

defendant's arguments challenging plaintiff's asserted mailings of required notices, especially since plaintiff has not introduced new arguments in support of or new grounds for its motion, defendant never affirmatively has denied his having received the requisite mailings that plaintiff maintains it had mailed, defendant has had yet further opportunity to reply thereto and indeed has replied thereto, and there exists clear preferences to resolve legal issues on the merits and to dispose early of those matters which properly can and should be disposed of. See Kennelly v. Mobius Realty Holdings LLC, 33 A.D.3d 380, 382 (1<sup>st</sup> Dept. 2006); Dannasch v. Bifulco, 184 A.D.2d 415, 417 (1<sup>st</sup> Dept. 1992); see, also Sanford v. 27-29 W. 181st Street Ass'n, Inc., 300 A.D.2d 250, 251 (1<sup>st</sup> Dept. 2002). While this Court of course appreciates that defendant would desire that this action, which bears a 2014 index number, continue to be litigated while defendant continues to reside at the subject premiss as he has for the past eight and one-half years, without his making the required loan payments, prejudice neither is identified nor suffered by defendant as a result of plaintiff's further submission at bar.

Moreover, this Court previously having reviewed the submitted affidavit from Daphne Proctor, who is employed as plaintiff's "Document Execution Specialist," and the pertinent contents thereof having been set forth in this Court's January 4, 2017, Decision and Order, and upon this Court's instant review of plaintiff's further submissions at bar consisting of computer screen shots of plaintiff's business records, which evidence this Court finds collectively establish that the contractual Demand had been mailed to defendant, on February 20, 2014, and that the 90-Day Demand letter had been mailed to defendant, on February 20, 2014, and that submitted evidence includes and identifies the tracking number which corresponds to the tracking number set forth on the actual 90-Day Demand

letter and its mailing envelope, the Court now grants plaintiff's motion for summary judgment and an Order of reference. Order signed.

Dated: February 3, 2017  
White Plains, New York



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MARY H. SMITH  
J.S.C.

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