

|  |
|--|
| <b>U.S. Bank N.A. v Bialecki</b>   |
| 2017 NY Slip Op 30784(U)   |
| April 13, 2017   |
| Supreme Court, Suffolk County  |
| Docket Number: 612829/2016   |
| Judge: Joseph A. Santorelli  |
| Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office. |
| This opinion is uncorrected and not selected for official publication.   |

SHORT FORM ORDER

**ORIGINAL**

INDEX No. 612829/2016  
CAL No. \_\_\_\_\_

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 10 - SUFFOLK COUNTY

**PRESENT:**

Hon. JOSEPH A. SANTORELLI  
Justice of the Supreme Court

MOTION DATE 9-9-16  
SUBMIT DATE 4-6-17  
Mot. Seq. # 01 - MD

U.S. BANK NATIONAL ASSOCIATION, AS  
INDENTURE TRUSTEE ON BEHALF OF  
AND WITH RESPECT TO AJAX  
MORTGAGE LOAN TRUST 2015-B,  
MORTGAGE-BACKED NOTES, SERIES  
2015-B,

Plaintiff,

- against -

KATHLEEN T. BIALECKI AKA KATHLEEN  
BIALECKI INDIVIDUALLY AND AS  
SURVIVING SPOUSE OF WILLIAM F.  
BIALECKI, JR., ET AL.,

Defendants.

**GROSS POLOWY, LLC**  
*Attorney for Plaintiff*  
1775 WEHRLE DR, STE 100  
WILLIAMSVILLE, NY 14221

**YOUNG LAW GROUP, PLLC**  
*Attorney for Defendant*  
80 ORVILLE DR, STE 100  
BOHEMIA, NY 11716

Upon the following papers numbered 1 to 18 read on this motion to dismiss; Notice of Motion/ Order to Show Cause and supporting papers 1 - 9 ; ~~Notice of Cross Motion and supporting papers \_\_\_\_\_~~; Answering Affidavits and supporting papers 10 - 14 ; Replying Affidavits and supporting papers 15 - 18 ; ~~Other \_\_\_\_\_~~; (and after hearing counsel in support and opposed to the motion) it is,

Defendant moves pursuant to CPLR 3211(a)(8) for an order dismissing the plaintiff's complaint for lack of personal jurisdiction. Plaintiff opposes the motion in all respects.

This is an action to foreclose a mortgage on property known as 437 Raft Avenue, Holbrook, New York, 11741. On December 5, 2003, the Bialeckis executed a note agreeing to pay the sum of \$297,500.00, together with interest and other charges, in monthly payments. On March 1, 2008, William F. Bialecki, Jr., died. The terms of the note were modified on October 11, 2008 and again on November 5, 2012. On December 5, 2003, the Bialeckis also executed a mortgage on the subject property. The mortgage was recorded on January 9, 2004 in the Suffolk County Clerk's Office. Thereafter, the mortgage was transferred by assignment of mortgage to MorEquity, Inc.. The mortgage was subsequently transferred by assignment to Private Capital

US Bank v Bialecki, et al.

Index # 612829/2016

Page 2

Group, LLC. The mortgage was modified by a Loan Modification Agreement executed by Kathleen Bialecki on October 11, 2008 and recorded on September 15, 2008 with the Suffolk County Clerk's Office. The mortgage was subsequently assigned to RoundPoint Mortgage Servicing Corporation. The mortgage was then assigned by a corrective assignment to RoundPoint Mortgage Servicing Corporation. The mortgage was again modified by a Loan Modification Agreement executed by Kathleen Bialecki on November 5, 2012 and recorded on July 18, 2014 with the Suffolk County Clerk's Office. The mortgage was subsequently assigned to AJX Mortgage Trust I, a Delaware Trust, Wilmington Savings und Society, FSB, Trustee. The mortgage was subsequently assigned to the plaintiff U.S. Bank National Association, as Indenture Trustee on behalf of and with respect to AJAX Mortgage Loan Trust 2015-B, Mortgage-Backed Notes, Series 2015-B.

The defendant contends, in sum, that this action should be dismissed because the plaintiff's attorney did not have authority to commence this action. The defendant also requests an order directing the plaintiff's attorney to provide proof that it was authorized to commence the action. The plaintiff's attorney in opposition provided proof that it received a document entitled "Foreclosure Referral & Authorization for First Legal" dated July 19, 2016, which authorized the attorney to commence this action in the plaintiff's name. The plaintiff also provided the Court with a copy of a Limited Power of Attorney.

In *Chase Manhattan Bank v Beckerman*, 271 AD2d 392, 393 [2nd Dept 2000], the court held that "the plaintiff's counsel sufficiently established that he was authorized to prosecute this action by sending a copy of a letter signed by the vice-president of the plaintiff's servicing agent indicating that he had that authority."

Here, plaintiff has established its entitlement to bring this foreclosure action in that its papers included a copy of the mortgage, the unpaid note together with due evidence of defendant's default in payment under the terms of the loan documents (*see Jessabell Realty Corp. v Gonzales*, 117 AD3d 908, 985 NYS2d 897 [2d Dept 2014]; *Bank of New York Mellon Trust Co. v McCall*, 116 AD3d 993, 985 NYS2d 255 [2d Dept 2014]; *North Bright Capital, LLC v 705 Flatbush Realty, LLC*, 66 AD3d 977, 889 NYS2d 596 [2d Dept 2009]; *Countrywide Home Loans, Inc. v Delphonse*, 64 AD3d 624, 883 NYS2d 135 [2d Dept 2009]). The defendant has failed to maintain her burden of establishing that the plaintiff's attorney lacked the authority to commence this action and therefore lacked personal jurisdiction. Accordingly, the motion to dismiss plaintiff's complaint pursuant to CPLR 3211(a) is denied. The defendant's remaining contentions are similarly denied.

The defendant shall serve her answer within twenty (20) days from service of a copy of this order.

The foregoing constitutes the decision and Order of this Court.

Dated: April 13, 2017

  
\_\_\_\_\_  
HON. JOSEPH A. SANTORELLI  
J.S.C.

\_\_\_ FINAL DISPOSITION \_\_\_  NON-FINAL DISPOSITION