

<b>U.S. Bank, N.A. v Thompson</b>
2017 NY Slip Op 33309(U)
July 28, 2017
Supreme Court, New York County
Docket Number: 116342/09
Judge: Joan A. Madden
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 11

-----X  
U.S. BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR  
THE J.P. MORGAN TRUST 2006-S-S1,

Plaintiff,

INDEX NO. 116342/09

-against-

AL THOMPSON, BOARD OF MANAGER OF ROSA PARKS  
CONDOMINIUM; CITIBANK (SOUTH DAKOTA);  
CRIMINAL COURT OF THE CITY OF NEW YORK;  
JP MORGAN CHASE BANK, N.A.; NEW YORK CITY  
DEPARTMENT OF SOCIAL SERVICES AS ASSIGNEE OF  
SARITA RICHARDSON; NEW YORK CITY DEPARTMENT  
OF SOCIAL SERVICE AS ASSIGNEE OF TYNISHA SMITH;  
NEW YORK CITY ENVIRONMENTAL CONTROL BOARD;  
NEW YORK CITY PARKING VIOLATIONS BUREAU; NEW  
YORK CITY TRANSIT ADJUDICATION BUREAU; NEW  
YORK STATE DEPARTMENT OF TAXATION AND  
FINANCE; PEOPLE OF THE STATE OF NEW YORK;  
UNITED STATES OF AMERICA ACTION THROUGH THE  
IRS; AND "JOHN DOE #1" THROUGH "JOHN DOE #10",  
the last ten names being fictitious and unknown to the  
Plaintiff, the person or parties intended being the person or  
parties, if any, having or claiming an interest in or lien upon  
the mortgage premises described in the complaint,

Defendants.

-----X  
JOAN A. MADDEN, J.:

In this mortgage foreclosure action, plaintiff moves for an order confirming the referee's report and for a judgment of foreclosure and sale. Defendant Al Thompson opposes the motion.

The motion is granted, as Thompson's opposition is without merit.

RPAPL 1321 permits the Court in a mortgage foreclosure action, upon defendant's default or defendant's admission, to appoint a referee "to compute the amount due to the

plaintiff.” A motion for an order of reference is the preliminary step towards obtaining a judgment of foreclosure and sale. See HSBC Bank USA, NA v. Alexander, 124 AD3d 838 (2<sup>nd</sup> Dept 2015); Bank of New York v. Cepeda, 120 AD3d 451 (2<sup>nd</sup> Dept 2014); Home Savings of America, FA v. Gkanios, 230 Ad2d 770 (2<sup>nd</sup> Dept 1996). When that initial motion is granted, defendant is held in default and plaintiff has “established its entitlement to judgment as a matter of law.” HSBC Bank USA, NA v. Simmons, 125 AD3d 930, 932 (2<sup>nd</sup> Dept 2015). The subsequent step is a motion for leave to enter a judgment of foreclosure and sale incorporating the findings set forth in the referee’s report, and in that motion plaintiff establishes the amount due under the note by submitting the referee’s report. Id.

Here, plaintiff has already taken the initial step by previously moving for summary judgment, a default judgment and an order of reference. See HSBC Bank USA, NA v. Alexander, supra; Bank of New York v. Cepeda, supra. Defendant Thompson opposed the prior motion and also cross-moved for leave to serve a late answer. On April 7, 2015, this Court issued a decision and order granting plaintiff’s motion and denying Thompson’s cross-motion. Thompson then moved for leave to renew and reargue, and that motion was denied in an order dated January 26, 2016. As a result of those prior orders, the Court has already determined that plaintiff is entitled to judgment as a matter of law against defendant Thompson, and the only outstanding issue is the amount due under the note. See HSBC Bank USA, NA v. Simmons, supra. The instant motion is the subsequent step whereby plaintiff is moving to confirm the referee’s report and for a judgment of foreclosure and sale.

In opposition to the instant motion, Thompson does not object to the referee’s findings or computations. Thompson merely argues that plaintiff fails to submit “proof of facts” in an

“affidavit made by a party.” Specifically, he objects that plaintiff’s affidavit of merit does not include a “valid power of attorney,” since it is from JP Morgan Chase Bank, National Association and not from plaintiff U.S. Bank, National Association, as Trustee for J.P. Morgan Mortgage Trust 2006-S1; the power of attorney is not certified in accordance with CPLR 2105; and plaintiff fails to provide a copy of the pooling and servicing agreement referenced in the limited power of attorney.

While Thompson asserts that plaintiff fails to submit “proof of facts” in an “affidavit made by a party,” that is the standard of proof required by CPLR 3215(f) for a default judgment. See HSBC Bank USA, NA v. Traore, 139 AD3d 1009 (2<sup>nd</sup> Dept 2016); HSBC Bank USA, NA v. Betts, 67 AD3d 735 (2009). As explained above, the instant motion is not a motion for a default judgment under CPLR 3215, since plaintiff’s motion for such relief was previously granted in April 2015. Any objections to the sufficiency of plaintiff’s proof should have been raised in opposition to plaintiff’s prior motion for a default judgment. Notably, the identical limited power of attorney to which Thompson is now objecting was submitted with plaintiff’s prior motion, but he did not object to it at that time. Rather his opposition to the prior motion focused solely on plaintiff’s standing and lack of good faith. Thus, Thompson’s arguments in opposition to the instant motion are not properly raised at this time. However, even if Thompson’s arguments were properly raised and could be considered, they are lacking in merit.

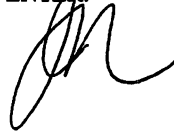
As noted above, Thompson does not object to the referee’s findings or computations. Therefore, plaintiff’s motion to confirm the referee’s report is granted and plaintiff is entitled to a judgment of foreclosure and sale.

Accordingly, it is

ORDERED that plaintiff's motion is granted and the referee's report is confirmed and the Court is signing the judgment of foreclosure and sale submitted with plaintiff's motion papers.

DATED: July 28, 2017

ENTER:

A handwritten signature in black ink, appearing to be the initials 'JM' or similar, written in a cursive style.

**FILED**  
AUG 11 2017  
COUNTY CLERK'S OFFICE  
NEW YORK