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| <b>Nationstar Mtge. LLC v Mosquera</b>   |
| 2018 NY Slip Op 32720(U)   |
| July 23, 2018  |
| Supreme Court, Suffolk County  |
| Docket Number: 68756-2014  |
| Judge: C. Randall Hinrichs   |
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DECISION AFTER TRIAL

Index Number: 68756-2014

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 49 SUFFOLK COUNTY

PRESENT: HON. C. RANDALL HINRICHS  
Justice of the Supreme Court

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NATIONSTAR MORTGAGE LLC,  
  
Plaintiff,

GROSS POLOWY, LLC  
By John Riccardi, Esq.  
Attorneys for Plaintiff  
900 Merchants Concourse  
Westbury, NY 11590

-against-

PLINIO F. MOSQUERA, AMERICAN EXPRESS  
CENTURION BANK, EQUABLE ASCENT  
FINANCIAL LLC, GREENPOINT MORTGAGE  
FUNDING, INC., MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC., AS NOMINEE  
FOR GREENPOINT MORTGAGE FUNDING, INC.,  
NASSAU FINANCIAL FEDERAL CREDIT UNION  
F/K/A NASSAU COUNTY FEDERAL CREDIT  
UNION, NEW CENTURY FINANCIAL SERVICES,  
INC., JOHN DOE (being fictitious, the names  
unknown to Plaintiff intended to be tenants, occupants,  
persons or corporations having or claiming an interest  
in or lien upon the property described in the complaint  
or their heirs at law, distributees, executors,  
administrators, trustees, guardians, assignees, creditors  
or successors),

MICHAEL G. MCAULIFFE, ESQ.  
Attorney for Defendant MOSQUERA  
68 South Service Road  
Suite 100  
Melville, NY 11747

Defendants.

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Upon limited issue trial conducted upon order of this court on January 19 and May 9, 2018, it is

**ORDERED** that following trial on the limited issue of RPAPL notice pursuant to 1304, the court finds all the requirements for judgment of foreclosure have been met by the plaintiff; and it is further

**ORDERED** that, upon completion of the referee's report, the plaintiff is directed to move for confirmation of the referee's report and a judgment of foreclosure and sale via notice of motion to allow the defendant an opportunity to be heard solely regarding the referee's computations; and it is further

**ORDERED** that plaintiff is directed to serve a copy of this order with notice of entry upon all parties who have appeared herein and not waived further notice pursuant to CPLR 2103(b)(1), (2) or (3) within thirty (30) days of the date herein, and to promptly file the affidavits of service with the Clerk of the Court.

This is an action to foreclose a mortgage on real property located at 2 Wingam Drive, Islip, NY 11751, in Suffolk County, New York ("subject property"), commenced on October 20, 2014. Plinio Mosquera ("defendant-mortgagor") executed a note in favor of Greenpoint Mortgage Funding, Inc. on April 22, 2003 in the principal amount of \$288,000.00 and, to secure the note, gave the lender a mortgage on the subject property on that same date. On September 6, 2013, the note and mortgage were transferred to the plaintiff. Thereafter, the defendant-mortgagor subsequently defaulted on his mortgage, failed to cure the default, and plaintiff commenced this action.

By order of this Court dated September 17, 2016, this Court granted partial summary judgment in favor of the plaintiff on all issues except the service of 90-day notice and ordered a limited issue trial, the sole issue being whether plaintiff complied with statutory notice pursuant to RPAPL1304 authorized pursuant to CPLR 3212(g).

"[P]roper service of RPAPL 1304 notice on the borrower or borrowers is a condition precedent to the commencement of a foreclosure action, and the plaintiff has the burden of establishing satisfaction of this condition" (*CitiMortgage, Inc. v. Pappas*, 147 A.D.3d 900, 47 N.Y.S.3d 415, 416 (N.Y. App. Div. 2017) [internal citations omitted]). At trial, plaintiff offered testimony of a sole witness, Edward Hyne, Senior Assistant Secretary of Litigation Support for Nationstar. Mr. Hyne had over five years experience as a Nationstar employee and the court finds the plaintiff's sole witness credible and personally familiar with the plaintiff's business practices and procedures for mailing of the 90-day pre-foreclosure notices pursuant to RPAPL 1304.

Contemporaneously with his testimony, Mr. Hyne laid the proper foundation for the admittance into evidence of plaintiff's exhibits 1 - 7. Plaintiff submitted into evidence a computer printout of the Mr. Cooper "COMMUNICATION HISTORY PROFILE" ("History Profile") with a complete record of loan servicing notes from October 21, 2011 to January 4, 2018 (Plaintiff's Exhibit 1). The History Profile contained two notations dated "4/23/14 16:00 " and "4/23/2014 16:02" each stating "NY90 Day Letter Sent" (Plaintiff's Exhibit 1 page 19). In addition plaintiff submitted the following: a copy of the 90-day notice dated April 22, 2014 and addressed to defendant-mortgagor at the property address with bar code number "2283753641" (Plaintiff's Exhibit 2); a screen shot of plaintiff's United States Postal Service ("USPS") transaction record for first class mail listing bar code number "2283753641" and two entries "4/22/2014 6:34:28 AM Walz Event-Printed" and "4/22/2014 12:52:07 PM Walz Event-Mailed" (Plaintiff's Exhibit 3); a copy of the 90-day notice dated April 22, 2014 addressed to defendant-mortgagor at the property address with bar code number "9307110011700736807557" (Plaintiff's Exhibit 4); a screen shot of plaintiff's USPS transaction record for certified mail with bar code "9307110011700736807557" with two entries "4/22/2014 6:35:29 AM Walz Event-Printed" and "4/22/2014 12:52:07 PM Walz Event-Mailed" (Plaintiff's Exhibit 5); a copy of plaintiff's certified mailing report dated April 22, 2014 listing article number "9307110011700736807557" the address of the subject property and associated postage fee (Plaintiff's Exhibit 6); and a copy of an envelope addressed to the defendant mortgagor at the subject property indicating "certified mail" and "9307110011700736807557" (Plaintiff's Exhibit 7). The Court grants plaintiff's application to admit plaintiff's Exhibit 7 for the limited purpose to show further proof of mailing by certified mail.

The defense produced the defendant-mortgagor as its sole witness. Defendant-mortgagor testified that he has lived exclusively at the subject property for sixteen years but did not receive the plaintiff's pre-foreclosure notices.

The court finds that the plaintiff has submitted sufficient testimony and documentary evidence to prove compliance with RPAPL1304 by clear and convincing evidence and in all other respects finds for the plaintiff. Furthermore, the plaintiff has established all elements required to obtain a judgment of foreclosure and sale upon confirmation of the referee's report.

The plaintiff is directed to move for confirmation of the referee's report and a judgment of foreclosure via notice of motion to allow the defendant an opportunity to be heard solely regarding the referee's computations (see CPLR 4313; CPLR 4403; *36 North Water, Inc. v Mark Caliper, Inc.*, 295 AD2d 499, 744 NYS2d 454 [2d Dept 2002] ["A defendant's appearance in an action entitles him to service of all papers and notice of all proceedings through and subsequent to judgment"]; see also, *Home Sav. Bank v Chiola*, 203 AD2d 525, 611 NYS2d 235 [2d Dept 1994] citing *Martine v Lowenstein*, 68 NY 456 [1877]).

An order of reference is signed contemporaneously with this decision of the Court.

DATED: July 23, 2018

  
C. RANDALL HINRICHS, JSC

Final Disposition       Non-Final Disposition