

Wells Fargo Bank, N.A. v Yapkowitz

2018 NY Slip Op 34042(U)

July 23, 2018

Supreme Court, Rockland County

Docket Number: 033182/13

Judge: Paul I. Marx

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This opinion is uncorrected and not selected for official publication.

^{an IAS}
At ~~a~~ Part of the Supreme Court
of the State of New York, held in
and for the County of Rockland
at the Courthouse located at 1
South Main Street, New City,
New York 10956 on the 23
day of July, 2018.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
WELLS FARGO BANK, N.A., AS TRUSTEE
FOR THE CERTIFICATE HOLDERS OF THE
MERRILL LYNCH MORTGAGE INVESTORS
CERTIFICATES, SERIES 2005-HE3,

Plaintiffs,

-against-

FRED J. YAPKOWITZ A/K/A FRED YAPKOWITZ;
ELAINE M. YAPKOWITZ A/K/A ELAINE
YAPKOWITZ; ARGENT MORTGAGE COMPANY,
LLC; METRO PORTFOLIOS, INC.; LVNV
FUNDING A/P/O CITIBANK; CITIBANK
(SOUTH DAKOTA), N.A.; AMERICAN EXPRESS
CENTURION BANK; AMERICAN EXPRESS
CENTURION BANK; MIDLAND FUNDING LLC;
TARGET NATIONAL BANK; DISCOVER BANK;
"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 herein,

Defendants.

-----X
WHEREAS, Plaintiff, Wells Fargo, N.A., as Trustee for Certificate Holders of the Merrill
Lynch Mortgage Investors Certificates, Series 2005-HE3, commenced this action against
Defendants, Fred J. Yapkowitiz a/k/a Fred Yapkowitiz and Elaine M. Yapkowitiz a/k/a Elaine
Yapkowitiz, to foreclose its mortgage on the Yapkowitizes' residence; and

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Hon. Paul I. Marx, J.S.C.

JUDGMENT

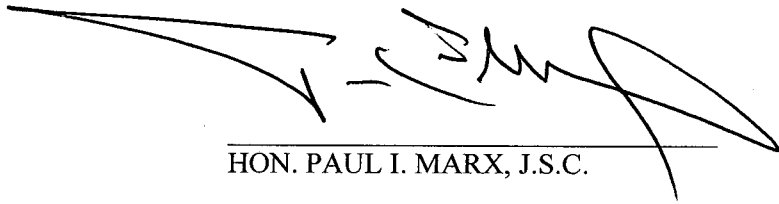
WHEREAS, on February 7, 2018, Plaintiff, Wells Fargo, N.A., as Trustee for Certificate Holders of the Merrill Lynch Mortgage Investors Certificates, Series 2005-HE3, having appeared by Laurence P. Chirch, Esq., of Sandelands Eyet LLP, and Defendants-mortgagors, Fred Yapkowitz and Elaine Yapkowitz, having appeared by Isabel L. Becker, Esq., and stipulated before Hon. Paul I. Marx, J.S.C., that the only issues to be tried, i.e. Plaintiff's compliance with the 30-day and 90-day notices condition-precedent to suit, come before this Court for disposition on papers in lieu of live testimony, and

WHEREAS, after due deliberation of the aforesaid Bench Trial Submitted On Paper, this Court rendered its Decision, dated May 21, 2018, and entered May 22, 2018, which dismissed Plaintiff's action against Defendants, Fred Yapkowitz and Elaine Yapkowitz, based on Plaintiff's failure to separately serve ^a ~~the~~ RPAPL §1304 90-day notice to each ^{borrower} in a separate envelope;

PM
JSC

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED and DECREED that the Complaint in the above-entitled action be and the same is hereby dismissed ~~on the merits,~~ based on Plaintiff's failure to show strict compliance with proper service of the RPAPL §1304 90-day notice.

Dated: July 23, 2018
New City, New York



HON. PAUL I. MARX, J.S.C.