

Wells Fargo USA Holdings, Inc. v Rusta

2019 NY Slip Op 31343(U)

May 6, 2019

Supreme Court, New York County

Docket Number: 850243/2017

Judge: Arlene P. Bluth

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 32

Justice

-----X

INDEX NO. 850243/2017

WELLS FARGO USA HOLDINGS, INC.,

MOTION DATE 04/10/2019

Plaintiff,

MOTION SEQ. NO. 001

- v -

SUSAN KAMALY RUSTA A/K/A SUSAN K. RUSTA, THE BOARD OF MANAGERS FOR 80 JOHN CONDOMINIUM LLC, BOARD OF MANAGERS OF GREENWICH CLUB, THE SOUTH STAR CONDOMINIUM ASSOCIATION, JOHN DOE

DECISION AND ORDER OF REFERENCE

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47

were read on this motion to/for JUDGMENT - SUMMARY

Upon the Summons, Complaint, and Notice of Pendency filed in this action on October 20, 2017, the Notice of Motion dated March 19, 2019, together with all the papers filed in support of the motion and the exhibits annexed thereto, and all prior papers filed in this action and prior proceedings had herein; and

Upon proof that each of the defendants herein has been duly served with the Summons and Complaint in this action and required notices;

And the case being released from the residential mortgage foreclosure settlement part (NYSCEF Doc. No. 24);

And it appearing to the satisfaction of this court that this action was brought to foreclose a mortgage on real property located at 80 John Street Unit 7I, New York New York 10038, it is hereby

ORDERED that the branch of plaintiff's motion for summary judgment against defendants Susan Kamaly Rusta is granted and any affirmative defenses and counterclaims are severed and dismissed; and it is further

ORDERED that the branch of plaintiff's motion for a default judgment in favor of plaintiff against all non-appearing defendants is granted; and it is further

ORDERED that Thomas Kleinberger, 411 5th Avenue, New York, New York, 10016 (917) 326-5523 is hereby appointed Referee in accordance with RPAPL § 1321 to compute the amount due to Plaintiff for principal, interest and other disbursements advanced as provided for in the note and mortgage upon which this action is brought, and to examine whether the mortgaged property can be sold in parcels; and it is further

ORDERED that the Referee may take testimony pursuant to RPAPL § 1321; and it is further

ORDERED that by accepting this appointment the Referee certifies that she/he is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2 (c) ("Disqualifications from appointment"), and §36.2 (d) ("Limitations on appointments based upon compensation"), and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall immediately notify the Appointing Judge; and it is further

ORDERED that, pursuant to CPLR 8003(a), and in the discretion of the court, a fee of \$350 shall be paid to the Referee for the computation of the amount due and upon the filing of her/his report and the Referee shall not request or accept additional compensation for the computation unless it has been fixed by the court in accordance with CPLR 8003(b); and it is further;

ORDERED that the Referee is prohibited from accepting or retaining any funds for herself/himself or paying funds to him/herself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED that plaintiff shall forward all necessary documents to the Referee within 30 days of the date of this order and shall promptly respond to every inquiry made by the referee (promptly means within two business days); and it is further

ORDERED that plaintiff must bring a motion for a judgment of foreclosure and sale within 30 days of receipt of the referee's report; and it is further

ORDERED that if plaintiff fails to meet these deadlines, then the Court may sua sponte vacate this order and direct plaintiff to move again for an order of reference and the Court may sua sponte toll interest depending on whether the delays are due to plaintiff's failure to move this litigation forward; and it further

ORDERED that the caption be amended to remove John Doe and add John Smith (Name Refused) as a defendant and the caption shall read as follows;

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
WELLS FARGO USA HOLDINGS, INC.

Plaintiff,

v.

SUSAN KAMALY RUSTA A/K/A SUSAN K.
RUSTA, THE BOARD OF MANAGERS FOR 80
JOHN CONDOMINIUM LLC, BOARD OF
MANAGERS OF GREENWICH CLUB, THE
SOUTH STAR CONDOMINIUM
ASSOCIATION, JOHN SMITH (NAME
REFUSED)
Defendant(s).

-----X
and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being added and removed; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address (ww.nycourts.gov/supctmanh)).

ORDERED that Plaintiff shall serve a copy of this Order with notice of entry on all parties and persons entitled to notice, including the Referee appointed herein.

Next Conference: September 17, 2019 at 2:15 p.m. If plaintiff has moved for a judgment of foreclosure and sale before the conference, then plaintiff can seek an adjournment. Please consult the part's rules for information about how to obtain an adjournment. An appearance is required if a motion for a JFS has not been made; counsel appearing for plaintiff must come prepared to explain the delay or interest may be tolled.

5-6-19

DATE

ARLENE P. BLUTH, J.S.C.
HON. ARLENE P. BLUTH

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE