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| JPMorgan Chase Bank, N.A. v Ghaffari |
| 2019 NY Slip Op 31529(U) |
| May 29, 2019 |
| Supreme Court, New York County |
| Docket Number: 850212/2017 |
| Judge: Arlene P. Bluth |
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| 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

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INDEX NO. 850212/2017

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 001

- v -

AVIDEH GHAFARI, WASHINGTON MUTUAL BANK, THE BOARD OF MANAGERS OF 330 EAST 57TH STREET CONDOMINIUM HOMEOWNERS ASSOCIATION, CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD, CITY OF NEW YORK PARKING VIOLATIONS BUREAU, CITY OF NEW YORK TRANSIT ADJUDICATION BUREAU, JOHN DOE, SAID NAME BEING FICTITIOUS, IT BEING THE INTENTION OF PLAINTIFF TO DESIGNATE ANY AND ALL OCCUPANTS OF PREMISES BEING FORECLOSED HEREIN, AND ANY PARTIES, CORPORATIONS OR ENTITIES, IF ANY,

DECISION AND ORDER OF REFERENCE

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 62, 63, 64, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75

were read on this motion to/for SUMMARY JUDGMENT

The motion by plaintiff for summary judgment is granted and the cross-motion by defendant Ghaffari for summary judgment dismissing the complaint is denied.

Background

In this mortgage foreclosure case, plaintiff seeks to recover on a loan Ghaffari executed in 2007 worth \$1.5 million for an apartment located at 330 East 57th Street in Manhattan. Plaintiff claims that Ghaffari defaulted on her monthly payments starting in March 2017.

In opposition and in support of her cross-motion, Ghaffari claims that the 90-day notice she received was premature. She contends that because this notice was sent on March 7, 2017

and the default was March 1, 2017, she was not provided the fifteen-day grace period to make a late payment.

In reply, plaintiff points out that Ghaffari actually defaulted in February 2017 and then she made a payment on May 3, 2017. That payment was credited to Ghaffari and, therefore, plaintiff pushed back her default date to March 2017 instead of February 2017. Plaintiff concludes that its 90-day notice was not premature.

Discussion

The Court finds that plaintiff is entitled to summary judgment. Plaintiff timely sent the 90-day notice in early March 2017; by that time Ghaffari had already missed two payments (February 2017 and March 2017). There is no doubt that Ghaffari was provided with the fifteen-day grace period required under the terms of the loan. Plaintiff simply credited the May 2017 payment by pushing back the default date from February to March.

To the extent that Ghaffari takes issue with the proof of mailing, those claims are denied. Plaintiff submits the Strangis affidavit (a VP for plaintiff) which details plaintiff's routines for mailing required notices (NYSCEF Doc. No. 69). Strangis explains that plaintiff obtains and images proof of mailing in its ordinary course of business and that plaintiff's records show that the 90-day notice was sent to Ghaffari (*id.*). Strangis also refers to the bulk mail receipt and next day proof of critical mailing report attached to her affidavit (*id.*, NYSCEF Doc. No. 72).

This satisfies plaintiff's burden to demonstrate mailing. Strangis may consult the business records of plaintiff to confirm that the 90-day notice was mailed (*see Bank of New York Mellon v Gordon*, 97 NYS3d 286, 293-94, 2019 NY Slip Op 02306 [2d Dept 2019]). She need not have mailed the notices herself or have direct personal knowledge of how this specific notice was mailed in order to make the business records admissible.

Ghaffari's reply envisions the business records exception to the hearsay rule as an insurmountable burden. Ghaffari contends that Strangis did not express familiarity with plaintiff's mailing practices at the time the notice was mailed nor does she claim to have been employed for plaintiff when the notice was mailed. This Court declines to pile on additional requirements to the business records exception. Of course every affidavit, including the Strangis affidavit, could be better and include more information. But this Court is not inclined to set a minimum standard that requires as much as Ghaffari seeks here.

The point of the business records exception to the rule against hearsay is to allow businesses to rely on their records rather than require personal knowledge in every instance. Strangis is entitled to review the records created in plaintiff's ordinary course of business. Those records show that the 90-day notice was sent on May 9, 2017 to the subject premises.

Accordingly, it is hereby

ORDERED that the motion by plaintiff for summary judgment is granted and the answer and affirmative defenses of defendant Avidah B. Ghaffari aka Avidah Ghaffari are severed and dismissed; and it is further

ORDERED that the cross-motion by defendant Avidah Ghaffari for summary judgment dismissing the complaint is denied; and it is further

ORDERED that plaintiff is entitled to a default judgment against the non-answering defendants; and it is further

ORDERED that Elaine Shay 800 Third Avenue, Suite 2800, New York, NY 10022, 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 from the caption, and the caption shall read as follows:

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

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JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION
Plaintiff,

v.

AVIDEH B. GHAFARI, aka AVIDEH
GHAFARI WASHINGTON MUTUAL BANK,
THE BOARD OF MANAGERS OF 330 EAST
57TH STREET CONDOMINIUM
HOMEOWNERS ASSOCIATION, CITY OF
NEW YORK ENVIRONMENTAL CONTROL
BOARD, CITY OF NEW YORK PARKING
VIOLATIONS BUREAU, CITY OF NEW YORK
TRANSIT ADJUDICATION BUREAU
Defendant(s).

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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)]; and it is further

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: November 12, 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.

5/29/19
DATE


ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL POSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

HON. ARLENE P. BLUTH