

Citibank, N.A. v Stiles
2019 NY Slip Op 31695(U)
June 12, 2019
Supreme Court, New York County
Docket Number: 850167/2014
Judge: Arlene P. Bluth
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**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. 850167/2014

CITIBANK, N.A. AS SUCCESSOR TRUSTEE TO U.S. BANK
NATIONAL ASSOCIATION AS TRUSTEE FOR MASTR
ADJUSTABLE RATE MORTGAGES TRUST 2007-HF1
MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-
HF1,

MOTION DATE N/A

MOTION SEQ. NO. 003

Plaintiff,

- v -

NATASHA STILES, BOARD OF MANAGERS OF THE
DOWNTOWN CLUB CONDOMINIUM, DISCOVER BANK,
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION AS
ASSIGNEE OF THE BANK OF NEW YORK, MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE
FOR BNY MORTGAGE COMPANY, LLC, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD, NEW YORK CITY
TRANSIT ADJUDICATION BUREAU, PEOPLE OF THE STATE
OF NEW YORK, PORTFOLIO RECOVERY ASSOCIATES LLC
A/P/O CAPITAL ONE BANK, JOHN DOE

**DECISION AND ORDER OF
REFERENCE**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83

were read on this motion to/for ORDER OF REFERENCE/REFERENCE TO COMPUTE

The motion for a default judgment by plaintiff is granted.

Background

In this mortgage foreclosure action, plaintiff seeks to recover on a loan entered into with defendant Stiles, secured by a mortgage on an apartment located at 20 West Street in Manhattan.

In opposition, Stiles argues that interest should be tolled because plaintiff delayed this case.

Stiles also contends that she did not receive the 90-day notice, plaintiff does not have standing and plaintiff did not negotiate in good faith.

Discussion

As an initial matter, plaintiff met its prima facie burden to show the 90-day notices were sent (*see* NYSCEF Doc. No. 73 [Wallace aff] and 66 [90-Day Notice]). And Stiles failed to rebut the presumption of mailing in opposition. The affidavit from Ms. Stiles does not deny receipt of the 90-Day notice (*see* NYSCEF Doc. No. 81).

Plaintiff attached the note to the complaint (NYSCEF Doc. No. 1) and, therefore, established standing to prosecute this case (*see Bank of New York Mellon v Knowles*, 151 AD3d 596, 596-97, 57 NYS3d 473 [1st Dept 2017]). With respect to Stiles' complaint about plaintiff's lack of good faith, the Court observes that this case does not fall under the ambit of CPLR 3408 as Stiles admits in her affidavit that she does not live in the apartment and uses it as an investment property (*see* NYSCEF Doc. No. 81, ¶ 2).

The Court also declines to toll interest. As plaintiff points out, Stiles has not answered nor has she moved (or cross-moved) to compel acceptance of a late answer. Rather, she has simply offered opposition to the instant motion. Stiles cannot complain about plaintiff's delays while simultaneously filing opposition (without attempting to answer) that delays this case even further.

Accordingly, it is hereby

ORDERED that the motion by plaintiff for a default judgment against the non-appearing defendants, including Natasha V. Stiles (who opposed the instant motion), is granted; and it is further

ORDERED that Jeffrey Miller, Esq. 32 Broadway 13th floor
NY NY 10004 212-227-4200, 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 order of reference dated October 29, 2014 is vacated; and it is further

ORDERED that John Doe be removed 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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CITIBANK, N.A. AS SUCCESSOR TRUSTEE
TO U.S. BANK NATIONAL ASSOCIATION AS
TRUSTEE FOR MASTR ADJUSTABLE RATE
MORTGAGES TRUST 2007-HF1 MORTGAGE
PASS-THROUGH CERTIFICATES, SERIES
2007-HF1,
Plaintiff,

v.

NATASHA STILES, BOARD OF MANAGERS
OF THE DOWNTOWN CLUB CONDOMINIUM,
DISCOVER BANK, JPMORGAN CHASE
BANK, NATIONAL ASSOCIATION AS
ASSIGNEE OF THE BANK OF NEW YORK,
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC. AS NOMINEE FOR BNY
MORTGAGE COMPANY, LLC, NEW YORK
CITY ENVIRONMENTAL CONTROL BOARD,
NEW YORK CITY TRANSIT ADJUDICATION
BUREAU, PEOPLE OF THE STATE OF NEW
YORK, PORTFOLIO RECOVERY
ASSOCIATES LLC A/P/O CAPITAL ONE
BANK,

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 19, 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.

6/12/19

DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:

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

APPLICATION:

CHECK IF APPROPRIATE:

HON. ARLENE P. BLUTH