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| Federal Natl. Mtge. Assn. (Fannie Mae) v Prensky |
| 2019 NY Slip Op 31789(U) |
| June 21, 2019 |
| Supreme Court, New York County |
| Docket Number: 850115/2016 |
| 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. 850115/2016

FEDERAL NATIONAL MORTGAGE ASSOCIATION (FANNIE MAE), A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 002

- v -

ZACHARY PRENSKY, EILEEN PRENSKY, BOARD OF MANAGERS OF THE OLMSTED CONDOMINIUM HOMEOWNERS ASSOCIATION, LAW OFFICES OF HOWARD B. FELCHER, PLLC, 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

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 99, 100, 101

were read on this motion to/for JUDGMENT - SUMMARY

The motion by plaintiff for summary judgment is granted and the cross-motion by defendant Eileen Prenskey is denied.

Background

Plaintiff seeks to recover under a loan executed by defendant Zachary Prenskey in 2002 for \$300,700 secured by an apartment located at 382 Central Park West in Manhattan. Plaintiff claims that defendant stopped making payments in June 2015.

In opposition and in support of her cross-motion, defendant Eileen Prenskey claims that plaintiff is aware that Zachary Prenskey has not lived at the subject apartment since 2011 and sending notices to this apartment was improper. Ms. Prenskey also observes that the default here was due to her ex-husband's (defendant Zachary Prenskey) failure to pay child support and that

she obtained a money judgment for \$90,000 after he didn't meet his obligations (NYSCEF Doc. No. 95). Ms. Prensky also complains about plaintiff's failure to serve the 30-day notice on Zachary Prensky or the RPAPL 1304 (90-day notice) on her.

Defendants the Board of Managers of Olmsted Condominium and the Law Offices of Howard B. Felcher, PLLC offer opposition only to the extent that they want surplus funds if any are available.

Discussion

The motion by plaintiff is granted and the cross-motion is denied. As an initial matter, Zachary Prensky has not appeared in this action and any claims with respect to the failure to send notices to him are personal to this defendant. Eileen Prensky may not raise objections with respect to whether notices were sent to her ex-husband. Moreover, without an affidavit from Mr. Prensky denying he received the required notices, there are no issues of fact on this issue. Ms. Prensky was not entitled to receive an RPAPL 1304 notice because she did not sign either the note or the mortgage.

While the Court recognizes that the default here was likely due to Mr. Prensky's utter failure to meet his obligations to his ex-wife and children, that is not a defense to a foreclosure action. The fact is that plaintiff is owed money and has not been paid since 2015.

Accordingly, it is hereby

ORDERED that the motion by plaintiff for summary judgment/default judgment is granted and the answer and affirmative defenses of defendant Eileen Prensky are severed and dismissed; and the cross-motion by this defendant is denied; and it is further

ORDERED that Roberta Ashkin, Esq., 300 E 42nd St 14th floor

NY NY 10017 646-779-8520 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 to substitute for plaintiff AJAX MORTGAGE LOAN TRUST 2018-F, MORTGAGE-BACKED SECURITIES, SERIES 2018-F, BY U.S. BANK NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE FOR FEDERAL NATIONAL MORTGAGE ("FANNIE MAE"), A CORPORATION ORGANIZED AND EXISTING UNDER THE LAW OF THE UNITED STATES OF AMERICA, and the caption shall read as follows:

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

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AJAX MORTGAGE LOAN TRUST 2018-F,
MORTGAGE-BACKED SECURITIES, SERIES
2018-F, BY U.S. BANK NATIONAL
ASSOCIATION, AS INDENTURE TRUSTEE
FOR FEDERAL NATIONAL MORTGAGE
("FANNIE MAE"), A CORPORATION
ORGANIZED AND EXISTING UNDER THE
LAW OF THE UNITED STATES OF AMERICA,

Plaintiff,

v.

ZACHARY PRENSKY, EILEEN PRENSKY, BOARD OF
MANAGERS OF THE OLMSTED CONDOMINIUM
HOMEOWNERS ASSOCIATION, LAW OFFICES OF
HOWARD B. FELCHER, PLLC

Defendant(s).

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; and it is further

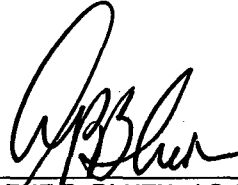
ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being removed and substituted;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

Next Conference: December 3, 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.

6/21/19
DATE


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

CHECK ONE:

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|-------------------------------------|----------------------------|-------------------------------------|-----------------------|
| <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"/> | OTHER |
| <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> | FIDUCIARY APPOINTMENT |
| | | <input type="checkbox"/> | REFERENCE |

APPLICATION:

CHECK IF APPROPRIATE: