

<b>Federal Natl. Mtge. v Grossman</b>
2019 NY Slip Op 33460(U)
June 6, 2019
Supreme Court, Nassau County
Docket Number: 607312/18
Judge: Anna R. Anzalone
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**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK**

**FORECLOSURE PART  
NASSAU COUNTY**

**PRESENT:** HON. ANNA R. ANZALONE  
J.S.C.  
Supreme Court Justice

\_\_\_\_\_  
FEDERAL NATIONAL MORTGAGE, et al.,

**Plaintiff(s),**

**- against -**

LANCE SCOTT GROSSMAN, et al.,

**Defendant(s).**

**X**

**X**

**INDEX NO.:** 607312/18

**Motion Seq. No.:** 3

**Motion Date:** 5/3/19

Motion by defendants Lance Grossman and Lori Ann Grossman (defendants) pursuant to CPLR 2221 brought on by Order to Show Cause to reargue defendants' prior motion to dismiss the complaint pursuant to CPLR 3211(a)(1), (3), (5), (7) and (8) or, in the alternative, to set the matter down for a traverse hearing on the issue of jurisdiction is denied.

Pursuant to the order of this court entered February 25, 2019, defendants' motion to dismiss plaintiff's complaint on CPLR 3211(a)(1), (3), (5), (7) and (8) grounds was denied based on the court's findings that

plaintiff established standing through annexation of a copy of the note to its complaint;

plaintiff timely commenced this action (May 21, 2018), within six years of defendants' most recent default in payment;

defendant Lori Ann Grossman's generalized denial of service was inadequate to rebut the presumption of proper service established by the process server's affidavit of service.

A motion to reargue is addressed to the discretion of the court and may be granted only upon a showing that the court overlooked or misapprehended the facts or the law or, for some reason, mistakenly arrived at its earlier decision (*Barnett v Smith*, 64 AD3d 669, 670 [2d Dept 2009]). It is not designed, however, to afford an unsuccessful party successive opportunities to reargue issues previously decided (*Rodriguez v Gutierrez*, 138 AD3d 964, 966 [2d Dept 2016]), or to present arguments different from those previously asserted (*Cruz v Mazada Auto Sales, Ltd.*, 41 AD3d 417, 418 [2d Dept 2007]).

Here, defendants' Order to Show Cause is simply a restatement of the same arguments advanced by defendants on their prior dismissal motion regarding, *inter alia*, lack of personal jurisdiction; plaintiff's failure to comply with requirements of RPAPL § 1304; statute of limitations and plaintiff's purported lack of standing which were considered and rejected by this court.

There is no basis to support defendants' contention that the complaint fails to state a cause of action. A facially adequate cause of action to foreclose a mortgage is stated where, as here the complaint asserts allegations regarding the existence of a mortgage, an unpaid note and the defendants' default thereunder which, if substantially proven, establish a *prima facie* case for relief (*US Bank N.A. v Nelson*, 169 AD3d 110, 113 [2d Dept 2019]). Defendants have failed to show that material facts claimed by plaintiff are not facts or that no significant dispute exists between them and plaintiff. Further, plaintiff demonstrated standing to commence the instant action through annexation of a copy of the note to the complaint (*Bank of N.Y. Mellon v Theobalds*, 161 AD3d 1137, 1138 [2d Dept 2018]). The lost note affidavit of Chris Sullivan, a representative of plaintiff's loan servicer, sets forth due proof of plaintiff's ownership, the facts which prevent production of the note and the terms of the note (UCC 3-804).

With respect to the purported lack of personal jurisdiction over defendant Lori Grossman, a process server's affidavit of service constitutes *prima facie* evidence of valid service (*US Bank N.A. v Ramos*, 153 AD3d 882, 884 [2d Dept 2017]). Defendant Lori

Grossman's conclusory and unsubstantiated denial of service, lacking factual specificity and detail, is insufficient to rebut the presumption of proper service created by the process server's affidavits of service or warrant a hearing (*Washington Mut. Bank v Huggans*, 140 AD3d 858, 859 [2d Dept 2016]).

As set forth in the decision at issue, defendants' debt was explicitly de-accelerated by the letter of July 15, 2015 which states, in pertinent part, as follows:

"You are hereby provided formal notice by Seterus, Inc. of the following:

The maturity of the Loan was previously accelerated by filing a lawsuit to foreclose the mortgage. A letter may have also been sent which declared all sums immediately due and payable.

The maturity of the Loan is hereby de-accelerated, immediate payment of all sums owed is hereby withdrawn and the Loan is re-instituted as an installment loan."

Further, the record establishes that subsequent default notices were sent to defendants by letters dated October 27, 2015 demanding the defendants bring their loan up-to-date.

Inasmuch as the initial mortgage foreclosure action (Index No. 6736/07) commenced in 2007 was dismissed by Order of the Hon. Daniel Palmieri entered January 2, 2009, based on Washington Mutual Bank's lack of standing (*21<sup>st</sup> Mortg. Corp. v Adames*, 153 AD3d 474 [2d Dept 2017]), and the second action (Index No. 14273/09) commenced by JPMorgan Chase National Association, as purchaser of the loans and other assets of Washington Mutual Bank, formerly known as Washington Mutual Bank, FA, commenced in 2009, was voluntarily discontinued without prejudice on May 26, 2011, the present action is not barred by the statute of limitations.

A motion to dismiss a complaint on the ground that a defense is founded on documentary evidence may only be granted where the evidence utterly refutes the plaintiff's factual allegations conclusively establishing a defense as a matter of law (*Garcia v Polsky, Shouldice & Rosen, P.C.*, 161 AD3d 828, 829 [2d Dept 2018]).

Defendants have failed to submit any documentary evidence that utterly refutes the allegations of the complaint or, in any way, conclusively establishes a defense to this mortgage foreclosure action.

Defendants' argument regarding laches and res judicata are inapposite and unavailing given the facts at bar. Under the doctrine of *res judicata* a party may not litigate a claim where a judgment on the merits exists from a prior action between the same parties involving the same subject matter (*Matter of Hunter*, 4 NY3d 260, 269 [2005]). No such judgment exists here.

ENTER:

Dated:           JUN 06 2019          

*Anna R. Amzalone*  
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HON. ANNA R. AMZALONE  
J.S.C.

**ENTERED**  
JUN 06 2019  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE