

Wilmington Sav. Fund Socy., FSB v Omar
2019 NY Slip Op 33640(U)
December 12, 2019
Supreme Court, New York County
Docket Number: 850100/2017
Judge: Arlene P. Bluth
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
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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.

850100/2017WILMINGTON SAVINGS FUND SOCIETY, FSB, AS
TRUSTEE FOR STANWICH MORTGAGE LOAN TRUST A,

MOTION DATE

N/A

Plaintiff,

MOTION SEQ. NO.

001

- v -

ZEKI I. OMAR AKA ZEKI OMAR, GUNES A. OMAR AKA
GUNES OMAR, FERIDE OMAR, BOARD OF MANAGERS
OF TRUMP TOWER CONDOMINIUM, JOHN DOE**DECISION + ORDER ON
MOTION, ORDER OF
REFERENCE**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61 were read on this motion to/for

JUDGMENT - SUMMARY

The motion by plaintiff for summary judgment is granted.

Background

In this mortgage foreclosure action, plaintiff seeks to foreclose on a property located at 721 5th Avenue, Unit 33C in Manhattan. Plaintiff contends that the borrowers (Zeki and Gunes Omar) stopped making payments in January 2013.

In opposition, Zeki and Feride Omar claim that plaintiff lacks standing, plaintiff did not comply with RPAPL § 1304 (the 90-day notice) and that it did not comply with the contractual notice requirements.

In reply, plaintiff points out that defendants did not actually deny receipt of the 90-day or contractual default notices. Plaintiff insists that the affidavit of Laura Hovis establishes its prima facie burden to show it mailed the required notices.

Discussion

The Court grants the motion. To extent that defendants challenge standing, plaintiff attached the notes that are subject of this action to the complaint (NYSCEF Doc. No. 1) thereby establishing its standing to prosecute this case (*Bank of New York Mellon v Knowles*, 151 AD3d 596, 596-97, 57 NYS3d 473 [1st Dept 2017]).

The Court also finds that the affidavit of Ms. Hovis (NYSCEF Doc. No. 31) is sufficient to establish that the RPAPL § 1304 and default notices were properly mailed. In fact, Ms. Hovis claims she has personal knowledge that the contractual notice was sent (*id.* ¶ 8). Defendants failed to raise an issue of fact in opposition. Defendants did not attach any affidavits denying that they received the 90-day or contractual notices. Only an attorney affirmation is submitted. That is not enough to rebut plaintiff's prima facie showing that it mailed the required notices.

Accordingly, it is hereby

ORDERED that the motion by plaintiff for summary judgment is granted and the answer and affirmative defenses of defendants ZEKI I. OMAR AKA ZEKI OMAR and FERIDE OMAR are severed and dismissed; and it is further

ORDERED that plaintiff is awarded a default judgment against the non-appearing defendants; and it is further

ORDERED that Alison Furman, Esq. with an address of 260 Madison Ave 15th floor NY NY 10016 ²¹²⁻⁶⁸⁴⁻⁹⁴⁰⁰ is hereby appointed Referee in

accordance with RPAPL § 1321 to compute the amount due to Plaintiff and to examine whether the tax parcel can be sold in parcels; and it is further

ORDERED that the Referee shall hold no hearing and take no testimony or evidence other than by written submission; the Court is the ultimate arbiter and the Referee's report is merely an advisory finding; and it is further

ORDERED that by accepting this appointment the Referee certifies that 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 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 himself or paying funds to himself 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 and to defendants who have appeared in this case 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 if defendant(s) have objections, they must submit them to the referee within 14 days of the mailing of plaintiff's submissions; and include these objections to the Court if opposing the motion for a judgment of foreclosure and sale; and it is further

ORDERED the failure by defendants to submit objections to the referee shall be deemed a waiver of objections before the Court on an application for a judgment of foreclosure and sale; 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 John Doe defendants 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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WILMINGTON SAVINGS FUND SOCIETY, FSB,
AS TRUSTEE FOR STANWICH MORTGAGE
LOAN TRUST A,

Plaintiff,

v.

ZEKI I. OMAR AKA ZEKI OMAR, GUNES A.
OMAR AKA GUNES OMAR, FERIDE OMAR,
BOARD OF MANAGERS OF TRUMP TOWER
CONDOMINIUM

Defendant(s).

-----X

and it is further

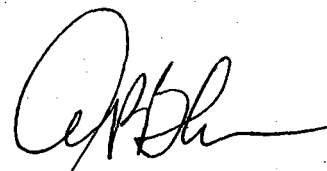
ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being removed pursuant hereto;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

Next Conference: April 21, 2020 @ 2:15 p.m. If a motion for judgment of foreclosure and sale has been filed, plaintiff may seek an adjournment of the conference. Please consult this part's rules for information on how to obtain an adjournment. If a motion has been made, then a conference is required to explore the reasons for the delay.

12.12.19
DATE


ARLENE P. BLUTH, J.S.C.

CHECK ONE:

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CASE DISPOSED

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GRANTED

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DENIED

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NON-FINAL DISPOSITION

☐

GRANTED IN PART

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OTHER

APPLICATION:

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SETTLE ORDER

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SUBMIT ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES
TRANSFER/REASSIGN

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FIDUCIARY APPOINTMENT

☐

REFERENCE