

Wells Fargo v St Louis

2019 NY Slip Op 35151(U)

September 25, 2019

Supreme Court, Kings County

Docket Number: Index No. 515917/17

Judge: Noach Dear

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FRP-1, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 25th day of September 2019.

PRESENT:

HON. NOACH DEAR,

J.S.C.

Index No.: 515917/17

WELLS FARGO,

Plaintiff,

MS 1 + 2

DECISION AND ORDER

-against-

CLAYVAN ST LOUIS et al,

Defendant,

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion:

Papers	Numbered
Motion (MS 1)	<u>1</u>
Opposition/Cross (MS 2)	<u>2</u>
Reply/Opp to Cross	<u>3</u>
Cross-Reply	<u>4</u>

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

Plaintiff moves for summary judgment and other relief. Defendant cross-moves for dismissal, alleging that the instant action is untimely and that Plaintiff failed to comply with RPAPL 1304.

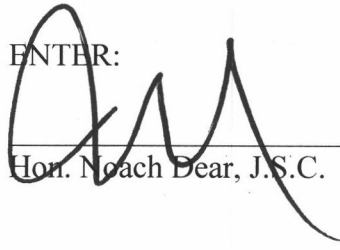
Issues of fact remain as to whether the 2010 letter accelerated the loan (whether it was sent, when [critical in light of the potential for the de-acceleration to be a day late], on behalf of whom, etc.) and whether the 2016 letter de-accelerated it (insufficient admissible evidence has been proffered to demonstrate conclusively that it was sent [Plaintiff relies on an affidavit created years later and likely not based upon recall], was it pre-textual [the timing suggests it might have been], etc.). Issues, thus, remain as to the timeliness of this action. (It is clear, however, that Plaintiff is barred from collecting installments due more than six years prior to the commencement of this action.)

Plaintiff has demonstrated compliance with RPAPL 1304 through the Daronche Aff and appended records. Defendant's arguments as to the contents of the notice are unavailing.

Plaintiff has sufficiently addressed Defendant's first through fourteenth affirmative defenses and first through fifth counterclaims and, in the absence of any meaningful argument thereupon by Defendant, those defenses and claims are dismissed. Likewise, Plaintiff has demonstrated its entitlement to default judgment against the non-appearing defendants and to amend the caption as requested.

Plaintiff's motion granted to the above extent. Defendant's cross-motion denied. Parties to proceed to complete discovery and proceed to trial on the remaining issue.

ENTER:



Hon. Noach Dear, J.S.C.

2019 OCT -4 AM 8:24

KINGS COUNTY CLERK
FILED

