

**Berger 3234 Holdings LLC v RCS Recovery Servs.
LLC**

2021 NY Slip Op 31020(U)

March 29, 2021

Supreme Court, Kings County

Docket Number: 502175/2019

Judge: Debra Silber

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 9 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 29th day of March, 2021.

P R E S E N T:

HON. DEBRA SILBER,

Justice.

----- X

BERGER 3234 HOLDINGS LLC,

Plaintiff,

- against -

RCS RECOVERY SERVICES LLC,

Defendant.

----- X

DECISION/ORDER

Index No. 502175/2019
Motion Sequence No. 1

The following e-filed papers read herein:

NYSCEF Doc. Nos.

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed _____

5-17

Opposing Affidavits (Affirmations) _____

19-24

Reply Affidavits (Affirmations) _____

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Upon the foregoing papers in this declaratory judgment action pursuant to Article 15 of the Real Property Actions and Proceedings Law (RPAPL), plaintiff, Berger 3234 Holdings LLC (Berger), moves for an order, pursuant to CPLR 3212, granting it summary judgment against defendant, RCS Recovery Services LLC (RCS), declaring that the mortgage/home equity revolving line of credit recorded on September 21, 2006 against the real property located at 564 Park Place, Brooklyn, New York, Block 1168, Lot 18 (subject

premises) is void and unenforceable, and discharging it of record. For the reasons which follow, the motion is granted.

Background

Berger commenced the instant action by electronically filing a summons and complaint in this court on January 30, 2019, along with a Notice of Pendency. The complaint alleges that plaintiff is the sole fee owner of the subject premises pursuant to a deed from Kent Charles (Charles), dated March 29, 2013 and recorded with the New York City Register, Kings County on April 16, 2013. The complaint also alleges that on August 23, 2006, Charles took out a home equity line of credit with National City Bank (which subsequently merged with PNC Bank, NA), which bank is defendant's predecessor-in-interest. Charles executed a note and a mortgage for the line of credit, both dated August 23, 2006. On that date, Charles also executed a document (E-File Doc. 9) authorizing the release of \$428,650 (the full credit line) to him. The mortgage was later recorded, on September 21, 2006.

The document authorizing the release of the funds ("Equity Reserve Initial Advance Authorization," E-File Doc. 9) allowed the borrower to choose the repayment term and whether to lock in an interest rate. Charles chose a sixty-month (five-year) installment repayment term, and, under such, the last installment was due in August of 2011. Charles defaulted under the note and mortgage in 2007. The note and mortgage were assigned to defendant herein, the current holder, by assignment dated June 4, 2018 and recorded June 28, 2018.

On or about March 5, 2019, RCS interposed an answer with several affirmative defenses. Plaintiff, immediately after receiving defendant's answer, served and filed this motion for summary judgment and the issuance of the declaratory judgment sought in the complaint, declaring the mortgage void and unenforceable and instructing the City Register to mark it discharged of record.

Plaintiff's Arguments in Support of the Motion for Summary Judgment

In support of its motion for summary judgment, Berger first points out that the mortgage encumbering the subject property was executed along with a note representing a line of credit issued by defendant's predecessor in interest. Plaintiff claims that the sixty-month repayment period under the subject note, which incorporates by reference the "Equity Reserve Initial Advance Authorization," as it references the different term and interest rate options available to the borrower, commenced on or about September 1, 2006, and the final payment was thus due five years later, on or about August 1, 2011.

Plaintiff reasons that, pursuant to CPLR §213(4) "an action upon a bond or note, the payment of which is secured by a mortgage upon real property, or upon a bond or note or mortgage so secured, or upon a mortgage of real property, or any interest therein" must be commenced within six years of the date the debt becomes due. Berger contends that, therefore, a timely action to enforce the mortgage (or to sue on the subject note) would need to have been commenced no later than September 1, 2017. Plaintiff points out that the relevant court records establish that no action to foreclose the subject mortgage has been commenced, let alone timely commenced. Plaintiff states that it has thus commenced the instant action (electronically filed on January 30, 2019) seeking a declaration, pursuant

to the Real Property Actions and Proceedings Law, that the subject mortgage is unenforceable as a matter of law. Berger maintains that, based on the above facts, the record establishes that it is prima facie entitled to such a declaration.

Plaintiff next attacks RCS' affirmative defenses, characterizing them as "entirely meritless and most of which would not be relevant even if they were true (and as will be demonstrated they are in fact not true)."

Berger states that the first affirmative defense alleges that the causes of action are barred by "res judicata, collateral estoppel, judicial estoppel and judicial admissions," but points out that there has been no underlying or collateral litigation between the parties (or their predecessors in interest), and "[r]es judicata, collateral estoppel and judicial estoppel are thus entirely irrelevant."

RCS' second affirmative defense claims plaintiff failed to serve defendant and thus lacks personal jurisdiction over defendant. Berger states that the record nevertheless establishes that, to the contrary, defendant was timely and properly served via the Secretary of State. Alternatively, plaintiff notes that defendant waived such defense by failing to move to dismiss within sixty days of asserting it.

Plaintiff next asserts that the third affirmative defense, which alleges that this court lacks subject matter jurisdiction over the plaintiff's cause of action, is meritless. Berger argues that RPAPL §1501 (4) explicitly provides this court with subject matter jurisdiction.

Defendant's fourth affirmative defense, which claims that plaintiff fails to state a cause of action, is explicitly contradicted by the Real Property Actions and Proceedings Law.

With regard to RCS' fifth affirmative defense, that "the action is barred by the Statute of Frauds," Berger reiterates that this action exists to declare a recorded mortgage void. Therefore, there is no Statute of Frauds defense that is applicable, since plaintiff is not alleging the existence of an oral contract.

Berger next contends that RCS' sixth affirmative defense, alleging that a defense exists based on documentary evidence, is entirely conclusory with no written support.

Plaintiff states that RCS' seventh affirmative defense, that "defendant's claims relating to the mortgage and note are not barred by the Statute of Limitations" confirms that the Statute of Limitations does not prevent *plaintiff's* claims relating to the mortgage and note. Plaintiff maintains that it has already established that the Statute of Limitations absolutely bars enforcement of the note and mortgage.

Berger further argues that, while the defendant's eighth and thirteenth affirmative defenses claim, respectively, that plaintiff is not a bona fide purchaser, or encumbrancer, for value, RPAPL §1501 (4) permits any property owner to seek cancellation of an unenforceable mortgage, and the status of a bona fide purchaser/encumbrancer for value is entirely irrelevant to this case.

Similarly, plaintiff continues, the ninth affirmative defense, which claims that Berger lacks standing or capacity to sue, is meritless, as RPAPL §1501 (4) explicitly makes the cause of action available to any fee-owner of real property who seeks a declaratory judgment concerning encumbrances on its property.

With regard to RCS' tenth affirmative defense, unjust enrichment, plaintiff claims that there is no basis in the plaintiff's complaint to conclude that Berger was enriched

unjustly at defendant's expense. Nevertheless, plaintiff argues, a claim of unjust enrichment does not bar the application of a statutory limitations period.

Berger asserts that defendant's eleventh affirmative defense, that plaintiff's claims are barred by the doctrine of unclean hands, is entirely frivolous. The defense of unclean hands, plaintiff argues, is only available when a plaintiff is guilty of immoral, unconscionable conduct, and even then, is only available in an action sounding in equity, unlike the statutory Real Property Actions and Proceedings Law action at law herein.

In the same vein, plaintiff adds that RCS' twelfth and seventeenth affirmative defenses, which claim "waiver, laches and/or ratification," also either sound in equity or are only applicable where there is lateness coupled with prejudice, and there is none here.

Next, Berger contends that defendant's fourteenth affirmative defense, (the thirteenth is discussed above) equitable estoppel, is also inapplicable. Plaintiff maintains that equitable estoppel requires the same elements as a laches defense, which are not present here. Berger contends that both laches and equitable estoppel are defenses in equity with no relevance to this statutory action at law.

With regard to defendant's fifteenth affirmative defense, that "plaintiff's claims are barred by the parol evidence rule," plaintiff avers that this affirmative defense is inapplicable as, similar to the plaintiff's argument regarding defendant's fifth affirmative defense, the complaint does not allege that the terms of a written contract are modified by oral or extrinsic evidence

Accordingly, plaintiff argues that it has demonstrated prima facie entitlement to summary judgment with respect to the cancellation and discharge of the subject mortgage.

Specifically, Berger contends that the record (1) establishes that the limitations period precludes enforcement of the mortgage; (2) resolves all potential issues of fact; and (3) shows that the purported affirmative defenses “are all meritless and/or are wholly irrelevant to this case.” For these reasons, plaintiff contends that this court should grant it summary judgment and issue a declaratory judgment canceling the subject mortgage.

Defendant’s Arguments in Opposition to the Motion for Summary Judgment

In opposition to the motion, RCS asserts that Berger has not established, through admissible evidence, that plaintiff is entitled to judgment as a matter of law. Defendant first points out that the applicable limitations period is six years from the day the loan matured, unless the mortgage debt was accelerated, which did not happen here, in which case the entire sum becomes due and the statute of limitations begins to run from the date of acceleration. RCS next notes that the mortgage recorded against the subject premises states that the maturity date of the loan is August 23, 2036. Defendant suggests that plaintiff has not shown, through admissible evidence, that the subject loan matured or that the debt was accelerated.

RCS argues (E-File Doc 19) that plaintiff supports its motion with an affidavit from Charles, the borrower, the note, the mortgage, and the Equity Reserve Initial Advance Authorization document. Defendant characterizes these documents as “hearsay” and argues that plaintiff fails to lay a proper foundation for them. Moreover, defendant claims, Charles’ affidavit fails to attest to personal knowledge regarding the bank’s business records and does not attest as to how the records were kept, nor if they are normally kept in the course of the bank’s business.

RCS concludes that plaintiff has not submitted admissible evidence that the loan has matured, and, consequently, that the applicable limitations period has ever begun with respect to the subject mortgage or note. Therefore, defendant argues, the instant motion should be denied.

RCS thus asserts that the subject mortgage has not matured and is still enforceable. Defendant reiterates that, according to the recorded mortgage document, the subject mortgage does not mature until August 23, 2036; defendant suggests that, therefore, the limitations period has not even begun.

Alternatively, defendant argues that, even accepting the premise of Berger's arguments regarding the Equity Reserve Initial Advance Authorization and the five-year repayment term, the subject mortgage loan does not mature until at least August 23, 2016. This is based on the fact that the revolving line of credit was, by its terms, for a period of ten years if it was not renewed and if a default did not occur. At the end of the ten years, sums still not due would have to be repaid over the term provided for in the Equity Reserve Initial Advance Authorization, but no further advances would be permitted. RCS reasons that, therefore, the applicable limitations period would not expire until August 23, 2022, six years after "draw period" in the ten-year revolving line of credit ended. RCS alleges that the terms contained in the documents are clear and unequivocal, and this court should thus enforce the agreement as stated.

RCS further proffers that plaintiff's arguments "diminish the significance of the draw period". Defendant points out that the draw period is defined in the "Line of Credit" section of the relevant loan documents as a ten-year period and claims that plaintiff's

predecessor (Charles) had credit available to him during the draw period, after payments were made toward principal. Any outstanding balances could have (depending on the option selected) been paid until the end of the draw period (August 23, 2016). Defendant reiterates that, therefore, the applicable limitations period will not end until August 23, 2022 at the earliest.

In sum, RCS argues that Berger's complaint is completely meritless. Furthermore, even though a shorter (five year) repayment period was chosen, the terms contained in the loan documents allowed payments to be timely made until the end of the draw period, and for advances to be taken if any principal was available, which was ten years from the date of the inception of the loan. Given that provision, RCS continues, the subject loan would have matured on August 23, 2016, and the limitations period will thus expire on August 23, 2022.

RCS concludes that not only has plaintiff failed to make a prima facia case for entitlement to summary judgment, but that defendant has made a prima facie showing of entitlement to summary judgment dismissing the complaint. Defendant claims, alternatively, that it has at least shown that a triable issue of fact exists as to the correct interpretation of the documents with regard to the date of maturity, which would trigger the applicable limitations period. With either of its proffered analyses, RCS concludes that this court should deny the motion for summary judgment.

Discussion

Summary Judgment Standard

Summary judgment is a drastic remedy that deprives a litigant of his or her day in court and should thus only be employed when there is no doubt as to the absence of triable issues of material fact (*Kolivas v Kirchoff*, 14 AD3d 493 [2d Dept 2005]; *see also Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). “[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Manicone v City of New York*, 75 AD3d 535, 537 [2d Dept 2010], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957], *rearg denied* 3 NY2d 941 [1957]). The motion should be granted only when it is clear that no material and triable issue of fact is presented (*Di Menna & Sons v City of New York*, 301 NY 118 [1950]).

If a movant meets the initial burden, the court must then evaluate whether the issues of fact alleged by the opponent are genuine or unsubstantiated (*Gervasio v Di Napoli*, 134 AD2d 235, 236 [2d Dept 1987]; *Assing v United Rubber Supply Co.*, 126 AD2d 590 [2d Dept 1987]; *Columbus Trust Co. v Campolo*, 110 AD2d 616 [2d Dept 1985], *affd* 66 NY2d 701 [1985]). Parties opposing a motion for summary judgment are entitled to every favorable inference that may be drawn from the pleadings, affidavits and competing contentions (*see Fortune v Raritan Building Services Corp.*, 175 AD3d 469, 470 [2d Dept 2019]; *Emigrant Bank v Drimmer*, 171 AD3d 1132, 1134 [2d Dept 2019]; *Pierre-Louis v*

DeLonghi America, Inc., 66 AD3d 859, 862 [2d Dept 2009], citing *Nicklas v Tedlen Realty Corp.*, 305 AD2d 385 [2d Dept 2003]; *Henderson v City of New York*, 178 AD2d 129, 130 [1st Dept 1991]; *Fundamental Portfolio Advisors, Inc. v Tocqueville Asset Mgt., L.P.*, 7 NY3d 96, 105-106 [2006]; *Akseizer v Kramer*, 265 AD2d 356 [2d Dept 1999]; *McLaughlin v Thaima Realty Corp.*, 161 AD2d 383, 384 [1st Dept 1990]; *Gibson v American Export Isbrandtsen Lines*, 125 AD2d 65, 74 [1st Dept 1987]; *Strychalski v Mekus*, 54 AD2d 1068, 1069 [4th Dept 1976]).

Conclusory assertions, even if believable, are not enough to defeat a summary judgment motion (*Seaboard Sur. Co. v Nigro Bros.*, 222 AD2d 574, 575 [2d Dept 1999]). More specifically, “averments merely stating conclusions, of fact or of law, are insufficient [to] defeat summary judgment” (*Banco Popular North America v Victory Taxi Management, Inc.*, 1 NY3d 381, 383 [2004], quoting *Mallad Constr. Corp. v County Fed. Sav. & Loan Assn.*, 32 NY2d 285, 290 [1973]). Summary judgment “should not be granted where there is any doubt as to the existence of such issues or where the issue is ‘arguable’; issue-finding, rather than issue-determination, is the key to the procedure” (*Sillman*, 3 NY2d at 404 [internal citations omitted]). “The court’s function on a motion for summary judgment is ‘to determine whether material factual issues exist, not resolve such issues’” (*Ruiz v Griffin*, 71 AD3d 1112, 1115 [2d Dept 2010] quoting *Lopez v Beltre*, 59 AD3d 683, 685 [2d Dept 2009]). Lastly, if there is no genuine issue of fact, a trial court should summarily decide the issues raised in a motion for summary judgment (*Andre*, 35 NY2d at 364).

Applicable Limitations Period for Note and Mortgage

First, the court notes that Article 15 of the Real Property Actions and Proceedings Law (“Action to Compel the Determination of a Claim to Real Property”) permits the holder of any interest in real property situated in this State to commence an action in the Supreme Court seeking a declaration with respect to title to the subject property; specifically, “[w]here a person claims an estate or interest in real property; . . . such person or municipal corporation, as the case may be, may maintain an action against any other person, known or unknown, including one under disability as hereinafter specified, to compel the determination of any claim adverse to that of the plaintiff which the defendant makes, or which it appears from the public records, or from the allegations of the complaint, the defendant might make[.]” (RPAPL § 1501 [1]). For this reason, the asserted affirmative defenses alleging lack of standing and lack of subject matter jurisdiction are meritless.

Moreover, “[w]here the period allowed by the applicable statute of limitation for the commencement of an action to foreclose a mortgage, or to enforce a vendor's lien, has expired, any person having an estate or interest in the real property subject to such encumbrance may maintain an action against any other person or persons, known or unknown, including one under disability as hereinafter specified, to secure the cancellation and discharge of record of such encumbrance, and to adjudge the estate or interest of the plaintiff in such real property to be free therefrom[.]” (RPAPL § 1501 [4]). Here, there is no dispute that Berger is the fee owner of the subject premises. Moreover, there is no dispute that RCS is the holder of the note and mortgage, and that the mortgage encumbers the

subject premises and constitutes an interest adverse to plaintiff. For these reasons, plaintiff may properly commence and maintain the instant action.

CPLR §213 (“Actions to be commenced within six years: where not otherwise provided for; on contract; on sealed instrument; on bond or note, and mortgage upon real property . . .”) states, in subsection 4, that the six-year limitations period applies to “an action upon a bond or note, the payment of which is secured by a mortgage upon real property, or upon a bond or note and mortgage so secured, or upon a mortgage of real property, or any interest therein[.]”

Berger correctly notes that if the indebtedness related to a mortgage is payable in installments, there are separate causes of action for each installment payment, and the limitations period begins to run on the date each installment becomes due (*see e.g. Notarnicola v Lafayette Farms*, 288 AD2d 198, 199 [2d Dept 2001] [“Here, the six-year Statute of Limitations under CPLR 213 (4) began to run upon the plaintiffs' failure to make each installment payment. Because Turturro never exercised his option to accelerate the entire mortgage debt, the mortgage matured on March 25, 1982, the date of the last scheduled payment.”]).

Here, the applicable documents – the note representing the home equity line of credit, and the accompanying authorization for the release of funds – indicate that plaintiff’s predecessor in interest had sixty months (five years) from August of 2006 to repay the advanced funds in monthly installments. Therefore, and as plaintiff correctly

computes, the last installment was due on or about August 1, 2011,¹ and any cause of action relating to the debt thus accrued no later than that month. Since this debt is secured by a mortgage, the six-year limitations period of CPLR §213 (4) applies, and the applicable limitations period thus ended on or about August 1, 2017. Since no acceleration of mortgage occurred, and since no mortgage foreclosure action – or, any action on the note, relating to the home equity line of credit – was commenced by defendant or its predecessor in interest, and since the record contains no indication that any toll of the statute of limitations is applicable, the subject mortgage and note are, therefore, unenforceable on the ground that the applicable limitations period expired.

RCS' arguments in opposition lack merit. First, defendant mistakenly relies on the significance of the loan maturity date printed on the mortgage. The court acknowledges that this document indicates a maturity date in August of 2036. However, the note and the Equity Reserve Initial Advance Authorization (E-File Doc. 9) contain no mention of a thirty-year term for a borrower who elects a five-year term.² The two relevant time periods described in the note and the Equity Reserve Initial Advance Authorization (E-File Doc. 9) documents are the ten-year draw period (during which the borrower could have borrowed additional funds to the limit of the line of credit) and the five-year repayment period elected by the borrower here, and indicated on the funds release authorization. Those two periods appear to be the only time periods relevant to the subject debt; for that reason, defendant fails to show the significance of the maturity date printed on the

¹ It is not clear from the papers if the first payment was due on September 1, 2006 or October 1, 2006.

² This document provides a choice of fixed rate terms from five to twenty years, a “regular line advance” or a seven-year interest only option.

mortgage document, and this argument fails. To be clear, the note states that a borrower who chose a “regular line advance” and not a “fixed rate lock” would have any loan balance which was outstanding at the end of the ten year draw period converted to a twenty year fixed rate loan on that date. Thus, the date on the mortgage document is the latest date that the mortgage could mature, pursuant to the terms in the note, depending on the option selected by the borrower when taking an advance against the available principal.

Similarly, RCS fails to show why the end of the draw period has any significance for purposes of establishing the applicable limitations period. As noted above, a cause of action related to a debt to be repaid in installments and secured by a mortgage on real property accrues when the last installment is due. Given that the last installment here was due in August or September of 2011, defendant fails to show the relevance of the ten-year period during which the borrower could have (but did not) borrow additional funds. If this court were to decide that the end of the draw period was the date the loan matured, the court would be ignoring the appellate authority noted above. For this reason, the court finds that the five-year repayment term contained in the Equity Reserve Initial Advance Authorization (E-File Doc. 9) is the sole relevant repayment term.

Also, RCS’s argument that copies of relevant documents have not been authenticated is both meritless and disingenuous. First, the copies of the relevant documents have in fact been authenticated, given the affidavit of Charles, who has personal knowledge of the relevant facts and can identify his signature thereon. It is well-settled that a document authenticated on personal knowledge constitutes admissible evidence (*see e.g. Inwood Equities Group v Wadsworth Condos*, 47 Misc 3d 1228[A], 2014 NY Slip Op

51941[U] [Sup Ct NY County 2014]). Assuming arguendo that the affidavit of the borrower (which attests to the authenticity of the documents) is insufficient, defendant itself relies on the same documents in its opposition papers. Specifically, defendant provides an affidavit from an authorized person at defendant's company (Doc 20) who authenticates the very same documents and others (Doc 21) that defendant's counsel argues are hearsay in his affirmation (Doc 19). Further, contrary to RCS' contention, any discrepancies between the copies proffered by defendant and those submitted by plaintiff are minor differences due to photocopying issues and do not affect the court's ability to analyze the substance of the documents.

The unambiguous terms of the note and the funds release document ("Equity Reserve Initial Advance Authorization," E-File Doc. 9) indicate that the last installment payment under the note was due in August or September of 2011. "When the terms of a written contract are clear and unambiguous, the intent of the parties must be found within the four corners of the contract, giving practical interpretation to the language employed and the parties' reasonable expectations (*see Westchester County Corr. Officers Benevolent Assn., Inc. v County of Westchester*, 99 AD3d 998, 999 [2 Dept 2012]). Thus, a written agreement that is complete, clear, and unambiguous on its face must be enforced according to the plain meaning of its terms (*see id.*). Furthermore, interpretation of an unambiguous contract provision is a function for the court (*see id.*). "When interpreting a contract, the court should arrive at a construction which will give fair meaning to all of the language employed by the parties to reach a practical interpretation of the expressions of the parties so that their reasonable expectations will be realized (*see G3-Purves St., LLC v Thomson*

Purves, LLC, 101 AD3d 37, 40 [2012]; *Patsis v Nicolina*, 120 AD3d 1326, 1327-8 [2 Dept 2014]). Given that the promissory note here relates to a mortgage on real property, and given the applicable case authority cited above, the six-year limitations period began to run in August or September of 2011, depending on when the first payment was due, and ended in August or September of 2017; in this period, no foreclosure action was commenced, nor was an action on the note commenced. Accordingly, the limitations period has expired, and plaintiff is thus entitled to summary judgment declaring that the mortgage is void and unenforceable and discharging it.

In addition, as plaintiff is the sole owner of the property, it is not clear why it filed a notice of pendency, but it must be canceled (See CPLR 6514).

Conclusions of Law

Accordingly, it is **ORDERED** that plaintiff's motion for summary judgment declaring that the mortgage dated August 23, 2006 and recorded as CRFN 2006000532187, and the assignment of mortgage to defendant dated June 4, 2018 and recorded as CRFN 2018000214407, against the real property located at 564 Park Place, Brooklyn, New York, known as Block 1168, Lot 18, is unenforceable, and discharging the same, is granted; and it is further

ORDERED, ADJUDGED and DECLARED that the subject mortgage is void and unenforceable because the applicable limitations period has expired; and it is further

ORDERED, ADJUDGED and DECLARED that the mortgage is therefore discharged of record; and it is further

ORDERED that the County Clerk of Kings County is directed to cancel and discharge the Notice of Pendency filed in this action on January 30, 2019, against Block 1168, Lot 18, and said Clerk is hereby directed to enter upon the margin of the record of the same a Notice of Cancellation referring to this Order; and it is further

ORDERED that this judgment may be recorded with the City Register, Kings County; and it is further

ORDERED that the County Clerk is directed to enter judgment accordingly, with costs and disbursements to plaintiff.

The foregoing constitutes the decision, order, and judgment of the court.

E N T E R :



Hon. Debra Silber, J.S.C.

County Clerk