SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. FRANCIS KAHN, III **PART** 32

Justice

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INDEX NO. 850141/2019

MOTION DATE

MOTION SEQ. NO. 002

B AND H FLORIDA NOTES LLC,

Plaintiff,

- v -

ALEXANDER ASHKENAZI, W89D5 LLC, BCN DEVELOPMENT NY LLC,HERTZL MOEZINIA, THE 251 CONDOMINIUM C/O NEW BEDFORD MANAGEMENT CORP., JOAN UNGARO

Defendant.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 158, 159, 160, 161, 162, 163, 164, 165, 166

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, the motion and cross-motion are determined as follows:

In this action, Plaintiff B and H Florida Notes LLC ("B and H") seeks to foreclose on a mortgage on real property located at 251 West 89th Street, Unit 5D, New York, New York. Issue was joined separately by Defendants W89D5 LLC ("W89D5") and Board of Managers of the 251 Condominium s/h/a "The 251 Condominium c/o New Bedford Management Corp." ("251 Condo"). The facts underlying this and the several related actions were recounted by the Court in its decision and order dated October 19, 2021 (NYSCEF Doc No 157) and will only be repeated here as necessary.

In that order, the branch of Plaintiff's motion for summary judgment on its cause of action for foreclosure and appointment of a referee was denied as a *prima facie* case was not proffered. However, the branch of the motion to dismiss Defendant W89D5's affirmative defenses was granted to the extent that the second, fifth, sixth, seventh, eighth, ninth, twelfth, thirteenth, fourteenth, eighteenth, nineteenth twenty-first, twenty-second, twenty-third, twenty-fourth and twenty-fifth affirmative were dismissed.

While the foregoing motion was *sub judice* Defendant W89D5 moved for summary judgment dismissing Plaintiff's complaint. Plaintiff opposed the motion and cross-moved to reargue the Court's October 19, 2021 decision. Opposition to the cross-motion was not filed on NYSCEF.

As Defendant W89D5 is now the movant on a motion for summary judgment, it was required to establish *prima facie* that one of the essential elements of Plaintiff's cause of action for foreclosure cannot be met or that one of its remaining affirmative defenses defeats the complaint as a matter of law (*see US Bank NA v Pickering-Robinson*, 197 AD3d 757, 763 [2d Dept 2021]; *Bank of NY Mellon v Alli*, 175 AD3d 1472, 1473 [2d Dept 2019]). Proof supporting a *prima facie* case on a motion for summary judgment must be in admissible form (*see* CPLR §3212[b]; *Tri-State Loan Acquisitions III, LLC v Litkowski*, 172 AD3d 780 [1st Dept 2019]).

In support of the motion, Defendant W89D5 posited as follows: [1] Plaintiff lacked standing when the action was commenced, [2] the action is barred by the statute of limitations, [3] the action was commenced in violation of RPAPL §1301, [4] the action is barred by the parties' stipulation in the Michigan litigation and [5] the action is barred by the doctrine of champerty.

When standing is raised as a defense to a mortgage foreclosure action, it is ordinarily Plaintiff's obligation to prove same to be entitled to foreclose (*see eg Wells Fargo Bank, N.A. v Tricario*, 180 AD3d 848 [2nd Dept 2020]). However, as the movant seeking summary judgment it is Defendant W89D5's obligation to demonstrate *prima facie* Plaintiff lacked standing as a matter of law (*see Wilmington Sav. Fund Socy., FSB v Matamoro*, 200 AD3d 79 [2d Dept 2021]; *DLJ Mtge. Capital v Mahadeo*, 166 AD3d 512 [1st Dept 2018]). Standing in a foreclosure action is established in one of three ways: [1] direct privity between mortgagor and mortgagee, [2] physical possession of the note prior to commencement of the action that contains an indorsement in blank or bears a special indorsement payable to the order of the plaintiff either on its face or by allonge, and [3] assignment of the note to Plaintiff prior to commencement of the action (*see eg Wells Fargo Bank, N.A. v Tricario*, 180 AD3d 848 [2d Dept 2020]; *Wells Fargo Bank, NA v Ostiguy*, 127 AD3d 1375 [3d Dept 2015]). As such, Movant needed to demonstrate *prima facie* "that the plaintiff was not in direct privity with them, was not in physical possession of the note indorsed to it or in blank at the time of the commencement of the action, and that the assignment of the note . . . to the plaintiff was invalid." (*Wilmington Sav. Fund Socy., FSB v Matamoro,* supra). "To defeat a defendant's motion, the plaintiff has no burden of establishing its standing as a matter of law" (*Deutsche Bank Trust Co. Ams. v Vitellas*, 131 AD3d 52, 60 [2d Dept 2015]).

As to the first category of standing, there is no dispute that Plaintiff is not the original lender and not in privity with Defendant W89D5. With respect to the second category of standing, "[t]he attachment of a properly endorsed note to the complaint may be sufficient to establish, prima facie, that the plaintiff is the holder of the note at the time of commencement" (*Deutsche Bank Natl. Trust Co. v Webster,* 142 AD3d 636, 638 [2d Dept 2016]; *cf. JPMorgan Chase Bank, N.A. v Grennan*, 175 AD3d 1513 [2d Dept 2019]). However, "mere physical possession of a note at the commencement of a foreclosure action is insufficient to confer standing or to make a plaintiff the lawful holder of a negotiable instrument for the purposes of enforcing the note" (*U.S. Bank N.A. v Moulton*, 179 AD3d 734, 737 [2d Dept 2020]). "Holder status is established where the plaintiff possesses a note that, on its face or by allonge, contains an indorsement in blank or bears a special indorsement payable to the order of the plaintiff" (*Wells Fargo Bank, NA v Ostiguy*, supra at 1376 [citations omitted]; *see also Federal Natl. Mtge. Assn. . Hollien*, 198 AD3d 615, 617 [2d Dept 2021]). The indorsement must be made either on the face of the note or by an allonge "so firmly affixed thereto as to become a part thereof" (UCC §3-202[2]; *see also Wells Fargo Bank, N.A. v Maleno-Fowler*, 194 AD3d 1094 [2d Dept 2021]).

In support of its claim that the allonges in this case were not appropriately affixed to the note, Movant argues its *prima facie* case is demonstrated by: [1] Plaintiff's motion for summary judgment which had the note and allonges annexed as separate exhibits, [2] Plaintiff's introduction of the note and allonge as separate exhibits at the trial of the prior foreclosure action, [3] the face of the allonge endorsing the note to Plaintiff, and [4] Plaintiff's complaint which had the allonges annexed before the note.

Annexing *copies* of the note and allonges as separate or misordered exhibits does not *ipso facto* mean the *originals* were disconnected or likewise misordered. It is obvious that even firmly affixed documents are capable of being photocopied. Further, this evidence does not verify that the note and allonges were not firmly affixed at the time they were delivered or when the action was commenced. The purported absence of hole punches in the face of the allonge endorsing the note to Plaintiff, while probative, is hardly conclusive of the state of the note and allonges when the action was commenced. The exhibits introduced and referenced at the 2013 trial of the prior action to foreclose on the within mortgage are similarly inconclusive. Copies of the note

and allonges, which were contained in Plaintiff's trial book and were introduced into evidence with Defendant's consent, does not disprove the originals were not firmly affixed. The trial judge's comment about the documents shown to the witness is also not definitive as the Court noted the copies proffered were "not stapled *now*" (emphasis added).

Defendant W89D5 also posits that Plaintiff is collaterally estopped from establishing the validity of the allonge transferring the note to Plaintiff based upon a finding by the Appellate Division, First Department[1] affirming Justice Engoron's trial decision. Movant argues this finding is decisive on the issue of standing in this matter.

The doctrine of collateral estoppel prevents a party from relitigating an issue that was "raised, necessarily decided and material in the first action", provided the party had a full and fair opportunity to litigate the issue (*see Parker v Blauvelt Volunteer Fire Co.*, 93 NY2d 343, 349 [1999]; *Ryan v New York Tel Co.*, 62 NY2d 494, 500 [1984]; *Sclafani v Story Book Homes, Inc.*, supra). The doctrine is an equitable defense "grounded in the facts and realities of a particular litigation, rather than rigid rules" (*Buechel v Bain*, 97 NY2d 295, 303 [2001]). "[T]he burden rests upon the proponent of collateral estoppel to demonstrate the identicality and decisiveness of the issue, while the burden rests on the opponent to establish the absence of a full and fair opportunity to litigate the issue in [the] prior action or proceeding" (*Ryan v New York Tel Co.*, supra at 501).

Justice Engoron's entire decision, dated April 17, 2019, is as follows:

> After a non-jury trial in this matter held on December 12-13, 2018, this Court finds as a matter of fact that plaintiff did not physically possess either the subject mortgage of note at the time it commenced this action and therefore lacks standing to do so. Thus, the case must be dismissed, mooting all other issues, and the clerk is hereby directed to enter a judgment in favor of defendants and against plaintiff, dismissing the instant action without prejudice (see CPLR 205).

The portion of the Appellate Division, First Department's affirmance that Defendant W89D5 relies on is as follows:

> The trial evidence establishes, at most, that the note was in the possession of Grand Pacific Holdings Corp. at that time, and there is no evidence showing that, as the complaint alleges, Grand Pacific Holdings was Wells Fargo's subservicer or that there was any other connection between the two entities.
>
> *B & H Fla. Notes LLC v Ashkenazi*, 182 AD3d 525, 526 [1st Dept 2020]

Contrary to Movant's assertion, it failed to establish an identity of the issues of standing in this and the prior action (*see Nationstar Mtge., LLC v Cogen*, 159 AD3d 428, 429 [1st Dept 2018]; *see also HSBC Bank USA, N.A. v Pantel*, 179 AD3d 650 [2d Dept 2020]; *U.S. Bank Natl. Assn. v Friedman*, 175 AD3d 1341 [2d Dept 2019]; *HSBC Bank USA, N.A. v Carchi*, 177 AD3d 710 [2d Dept 2019]). In the prior action, Plaintiff failed to establish that Wells Fargo had possession of the original endorsed note at the time *that* action was commenced. In the present action, the issue is whether Plaintiff B & H had possession of the original endorsed note at the time *this* action was commenced (*HSBC Bank USA, N.A. v Pantel*, supra at 651-652). Also, unlike the prior action, the note and allonges were annexed to the complaint when this action was commenced which, in certain circumstances, can establish Plaintiff's possession of the note when the action was commenced (*see*

[1] *B & H Fla. Notes LLC v Ashkenazi*, 182 AD3d 525 [1st Dept 2020].

Aurora Loan Servs., LLC v Taylor, 25 NY3d 355, 361 [2015]; *U.S. Bank N.A. v Russell*, 186 AD3d 1181 [1st Dept 2020]; *Deutsche Bank Natl. Trust Co. v Murray*, 176 AD3d 1172, 1175 [2d Dept 2019]). Furthermore, the dismissal of the 2013 action by Justice Engoron was expressly "without prejudice" (*see Nationstar Mtge., LLC v Cogen*, supra at 429).

Defendant W89D5's argument that testimony in the 2013 action and the evidence presented here demonstrates in the first instance that the endorsed note was never delivered to Wells Fargo and that Plaintiff gained possession from Grand Holdings, not Wells Fargo are unavailing. That the note was not delivered from Wells Fargo to Plaintiff does not demonstrate it was never delivered to Wells Fargo. At best, this establishes a gap in Plaintiff's proof, but does not eliminate the prospect of delivery to Wells Fargo altogether and is, therefore, insufficient (*see LGF Holdings, LLC v Skydel*, 139 AD3d 814, 815 [2d Dept 2016]; *Nationwide Prop. Cas. v Nestor*, 6 AD3d 409 [2d Dept 2004]). That Grand Holdings, rather than Wells Fargo, may have sent the note and allonges to Plaintiff is not dispositive as the Uniform Commercial Code only specifies who must receive the delivery of a specially endorsed instrument, not who must make the delivery. Indeed, negotiation is effective even if it is made by a "person without capacity" (UCC §3-207[1][a]).

Defendant W89D5's position that the note at issue is not a "negotiable instrument" is without merit. Inclusion of language memorializing a lender's right to make a partial assignment of a note does not disqualify it as a negotiable instrument (UCC §3-105[1][a]). UCC §3-202[3] recognizes a holder's right to partially transfer an instrument. However, a partial assignment does not operate as a negotiation of the transferred portion of the instrument (*see Hewett v Marine Midland Bank, N.A.*, 86 AD2d 263, 267 [2d Dept 1982]).

As to whether the note was conveyed to Plaintiff by assignment Movant fails to establish a *prima facie* case. To the extent Defendant W89D5 posits that a "gap in title" or the series of assignments of the note from the original lender to Plaintiff exists, that argument is simply noting breaks in Plaintiff's proof which is insufficient on a motion for summary judgment (*see LGF Holdings, LLC v Skydel*, supra; *Nationwide Prop. Cas. v Nestor*, supra). Movant's reliance on the purported collateral estoppel effect of the 2013 proceeding is ineffective. Nothing in Justice Engoron's decision or the parties' post trial briefs indicates that the issue of whether Wells Fargo's standing could be based on a series of assignments was essential to the decision rendered therein (*see Bank of N.Y. Mellon v Chamoula*, 170 AD3d 788, 790-791 [2d Dept 2019]).

As to the branch of Defendant W89D5's motion for summary judgment dismissing the foreclosure cause of action as barred by the statute of limitations, the Movant bears the initial burden of showing that the time to sue has expired (*see Wilmington Sav. Fund Socy., FSB v Alam*, 186 AD3d 1464 [2d Dept 2020]; *Benn v Benn*, 82 AD3d 548 [1st Dept 2011]). An action to foreclose on a mortgage is governed by a six-year statute of limitations (CPLR §214[6]; *Citimortgage, Inc. v Dalal*, 187 AD3d 567 [2d Dept 2020]). To meet its burden, "the Defendant must establish, *inter alia*, when the Plaintiff's cause of action accrued" (*Lebedev v Blavatnik*, 144 AD3d 24, 28 [1st Dept 2016], *quoting Cottone v Selective Surfaces, Inc.*, 68 AD3d 1038, 1041 [2d Dept 2009]). Where the movant demonstrates preliminarily that a claim is barred by the statute of limitations, the Plaintiff must establish that a toll or stay is applicable or that an issue of fact exists (*see Matter of Schwartz*, 44 AD3d 779 [2d Dept 2007]).

Movant established that the time to commence a foreclosure action based upon the note and mortgage in question accrued when the note matured on September 1, 2007 (*see generally Trust v Barua*, 184 AD3d 140, 150 [2d Dept 2020]) and that this action was commenced more than six-years later. In opposition, Plaintiff demonstrated that the action was timely under the savings provision of CPLR §205[a] (*Wells Fargo Bank, N.A. v Eitani*, 148 AD3d 193 [2d Dept 2017]). That section permits a plaintiff to commence a new action based upon the same transaction within six months of the conclusion of the prior action where it "is terminated in any

other manner than by a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for neglect to prosecute the action or a final judgment on the merits" (CPLR §205[a]). Here, the prior action was dismissed, without prejudice, based upon Plaintiff's lack of standing which does not constitute an adjudication on the merits (*see Landau, P.C. v LaRossa, Mitchell & Ross*, 11 NY3d 8, 14 [2008]). As such, Plaintiff was required to commence this action within six months from the date its right to take a nondiscretionary appeal was exhausted (*see Malay v City of Syracuse*, 25 NY3d 323, 328 [2015]). The within action was commenced on June 27, 2019, some two months after Justice Engoron's dismissal and is, therefore, timely.

The branch of Defendant W89D5's motion to dismiss pursuant to RPAPL §1301[3] is denied as that section bars the commencement or maintenance of a mortgage foreclosure action while another action to recover all or part of the mortgage debt is "pending". That statute is subject to strict construction as it is in derogation of a plaintiff's right to pursue multiple remedies against a mortgagor (*see Hometown Bank of Hudson Val. v Belardinelli*, 127 AD3d 700, 702 [2d Dept 2015]; *Valley Sav. Bank v Rose*, 228 AD2d 666, 667 [2d Dept 1996]). Since the complaint prior foreclosure action was dismissed by Justice Engoron before this action was commenced, that action was not "pending" (*see Hometown Bank of Hudson Val. v Belardinelli*, supra). The argument that Plaintiff's action commenced in New York State Supreme Court, Richmond County (Index No. 150868/2019) constitutes a bar to this action requiring its dismissal is also unavailing. Although that action was indisputably pending when this action was commenced, it has laid entirely dormant since Defendant W89D5 filed its answer therein six days after it was commenced. Indeed, a Request for Judicial Intervention has never been filed. Hence, Defendant W89D5 has not faced any expense or annoyance from that action, the pendency of same may be disregarded (*see U.S. Bank N.A. v Beymer*, 183 AD3d 454 [2d Dept 2020]; *US Bank v Stern*, 189 AD3d 1313, 1314 [2d Dept 2020]).

Movant's reliance on RPAPL §1301[2] as a basis for dismissal is similarly misplaced. As there has been no demonstration or allegation of prejudice by Plaintiff's failure to comply with this section, it is a mere irregularity that may be ignored (*see Marton Assocs. v Vitale*, 172 AD2d 501 [2d Dept 1991]).

Defendant W89D5's assertion that this action is barred as a matter of law by the public stipulation in the Michigan litigation is entirely meritless and has been repeatedly rejected by multiple courts. As this Court noted in its October 19, 2021 decision, the Appellate Division, First Department found in the 2009 action to foreclose on a common charge lien that "[t]he terms of the judgment of foreclosure explicitly provide that Louzon's purchase of the condominium unit at issue is subject to prior liens of record . . . [and that] the terms of sale, which were announced before the bidding began, made clear that the unit was being sold subject to [Grand Finance's] mortgage" (*Grand Pac. Fin. Corp. v Ashkenazi*, 108 AD3d 425 [1st Dept 2013]). That argument was again rejected in the prior mortgage foreclosure action by Justice Mendez and the Appellate Division, First Department (*see B & H Fla. Notes LLC v Ashkenazi*, 149 AD3d 401, 403 [1st Dept 2017]["We have considered Louzon's remaining contentions, including his argument that plaintiff has violated RPAPL 1301, and find them unavailing"]).

Lastly, Defendant W89D5's assertion that this action must be dismissed as Plaintiff engaged in champerty is unfounded. Judiciary Law §489[1] prohibits champerty which is the solicitation, purchase or assignment "of a bond, promissory note, bill of exchange, book debt, or other thing in action, or any claim or demand, with the intent and for the purpose of bringing an action or proceeding thereon…" (*see* Judiciary Law §489[1]; *see also Justinian Capital SPC v WestLB AG*, 28 NY3d 160, 163 [2016]). The ban of champerty in New York has continually been "limited in scope and largely directed toward preventing attorneys from filing suit merely as a vehicle for obtaining costs" (*Bluebird Partners, L.P. v. First Fid. Bank, N.A.*, 94 NY2d 726, 734 [2000]). "[S]imply intending to bring a lawsuit on a purchased security is not champerty, …[rather] the

primary purpose of the purchase must be to enable [one] to bring a suit, and the intent to bring a suit must not be merely incidental and contingent" (*id.* at 166 [internal citations and quotations omitted]). "In short, the champerty statute does not apply when the purpose of an assignment is the collection of a legitimate claim" (*Trust for the Certificate Holders of the Merrill Lynch Mortg. Investors v. Love Funding Corp.*, 13 NY3d 190, 201 [2009]).

Here, Defendant W89D5's affirmative defense of champerty was dismissed by this Court as insufficiently pled and abandoned. Moreover, the claim of champerty fails as the "mortgage loan had already fallen into default and been accelerated before its assignment to plaintiff" (*Bf Holdings I, Inc. v. S. Oak Holding, Inc.*, 251 AD2d 1 [1st Dept 1998]). Irrespective of the foregoing, Plaintiff established that the note and mortgage were acquired for the purpose of enforcing same via a foreclosure action (*see 71 Clinton St. Apts. LLC v 71 Clinton Inc.*, 114 AD3d 583, 585 [2d Dept 2014]).

Accordingly, Defendant W89D5's motion for summary judgment dismissing Plaintiff's complaint is denied in its entirety.

Concerning the cross-motion to reargue this Court decision dated October 19, 2021, Plaintiff was required to establish the Court overlooked or misapprehended the relevant facts or misapplied a controlling principle of law (*see* CPLR 2221; *Foley v Roche*, 68 AD2d 558 [1st Dept 1979]). Plaintiff's argument that it established its standing as a matter of law is inapposite. Leave to reargue is granted and upon same, the Court determines as follows.

On the issue of Plaintiff's *prima facie* case for summary judgment, contrary to Plaintiff's assertion, "mere physical possession of a note at the commencement of a foreclosure action is insufficient to confer standing or to make a plaintiff the lawful holder of a negotiable instrument for the purposes of enforcing the note" (*U.S. Bank N.A. v Moulton*, 179 AD3d 734, 737 [2d Dept 2020]; *see also Federal Natl. Mtge. Assn. v Hollien,* 198 AD3d 615 [2d Dept 2021]; *Wells Fargo Bank, N.A. v Maleno-Fowler,* 194 AD3d 1094 [2d Dept 2021]). As noted by the Court of Appeals "[t]he physical delivery of the note to the plaintiff from its owner prior to commencement of a foreclosure action *may, in certain circumstances*, be sufficient to transfer the mortgage obligation and create standing to foreclose (*Aurora Loan Servs., LLC v Taylor*, 25 NY3d 355, 361 [2015][emphasis added]; *see also Nationstar Mtge., LLC v. Calomarde*, ____AD3d____, 2022 NY Slip Op 00428 [2d Dept 2022]["Although the plaintiff attached to the complaint copies of the note and an undated purported allonge endorsed in blank, the plaintiff did not demonstrate that the purported allonge, which was on a piece of paper completely separate from the note, was "so firmly affixed thereto as to become a part thereof," as required by UCC 3-202(2)]).

Plaintiff's reliance on *U.S. Bank N.A. v Askew*, 138 AD3d 402 [1st Dept 2016] is misplaced. The Appellate Division, First Department did not hold that mere annexation of a note and series of allonges to the complaint, without proof of firm affixation, can establish standing. That finding would be impossible as review of the Court file in that case revealed that the note and allonges were not annexed to the complaint. Additionally, the issue of whether the allonges were "firmly affixed" was not raised by the Defendant therein, who, it should be noted, was acting *pro se*. What the *Askew* Court found was that Plaintiff therein proffered *other* evidence to demonstrate it physically possessed the note and allonges (*see eg PNC Bank, N.A. v Salcedo*, 161 AD3d 571 [1st Dept 2018]). Plaintiff's reliance on this Court's decision in *United States Bank, N.A. v Nassau County Pub. Admin.*, ____Misc3d____, 2021 NY Slip Op 31570[U] is also misplaced since it was

determined that, unlike the present case, a note "endorsed in blank" was at issue.[2] On the underlying motion, the proof presented of Plaintiff's standing via the affidavit of Eyal Steve Levy was conclusory and based upon inadmissible documentary evidence (*see U.S. Bank Trust, N.A. v Francis*, 198 AD3d 501 [1st Dept 2021]). As to proof of the Mortgagor's default, again, that evidence was determined to be inadmissible. Plaintiff's reliance on Justice Mendez's decision is futile as it was rendered in the prior action.

Accordingly, the branch of Plaintiff's motion to reargue this Court's holding it failed to establish entitlement to judgment as a matter of law on its foreclosure cause of action is denied.

On the issue of the affirmative defenses, based upon the foregoing determinations, those numbered third [statute of limitations], tenth [release], eleventh [res judicata], seventeenth [violation of RPAPL §1301[2] and [3] and twenty-fourth ["payment, accord, and discharge"], reargument is granted and those affirmative defenses are dismissed. Reargument is denied as to dismissal of the first, fourth, fifteenth and sixteenth affirmative defenses.

Accordingly, it is

ORDERED the motion for summary judgment by Defendant W89D5 LLC is denied, and it is

ORDERED the cross-motion to reargue by Plaintiff is granted only to the extent that the third, tenth, eleventh, seventeenth and twenty-fourth affirmative defenses are dismissed, and it is

ORDERED that this matter is set down for a status conference on **March 23, 2022 @ 2:15 pm via** Microsoft Teams.

2/4/2022
DATE

FRANCIS KAHN, III, A.J.S.C.
HON. FRANCIS A. KAHN III J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	DENIED	X	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE

[2] Also noted in the decision was that Plaintiff was the successor by merger to the original lender. Thus, that Plaintiff was in direct privity with the Mortgagor by operation of Banking Law §502.