

**Stormfield Capital Funding 1, LLC v M Rental
Brooklyn LLC**

2022 NY Slip Op 31034(U)

March 23, 2022

Supreme Court, Kings County

Docket Number: Index No. 524166/20

Judge: Lawrence Knipel

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part Comm 6 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 23rd day of March, 2022.

P R E S E N T:

HON. LAWRENCE KNIPEL,

Justice.

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STORMFIELD CAPITAL FUNDING I, LLC,

Plaintiff,

- against -

Index No. 524166/20

M RENTAL BROOKLYN LLC, RAFI MANOR (a/k/a RAFAEL MANOR), WIFI CONSTRUCTION LLC, BERGER 3424 HOLDINGS LLC, TRI STATE LUMBER LTD., and "JOHN AND JANE DOE NO. 1" through "JOHN AND JANE DOE NO. 100" inclusive, the names of the latter defendants being fictitious, the true names of said defendants being unknown to plaintiff, it being intended to designate persons or entities, unknown to plaintiff, who may have a mechanic's lien, mortgage, judgment, warrant or other lien against the property, or against the owners thereof or other parties having or claiming an interest in or lien upon the liened premises, if the aforesaid individual defendants are living, and if any or all of said individual defendants be dead, their heirs at law, next of kin, distributees, executors, administrators, trustees, committees, devisees, legatees, and the assignees, lienors, creditors and successors in interest of them, and generally all persons having or claiming under, by, through, or against the said defendants named as a class, of any right, title, or interest in or lien upon the property described in the complaint herein,

Defendants.

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<u>The following e-filed papers read herein:</u>	<u>NYSCEF Doc Nos.</u>
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) _____	<u>22-34, 70</u>
Opposing Affidavits (Affirmations) _____	<u>41-61</u>
Reply Affidavits (Affirmations) _____	<u>64-67</u>

Upon the foregoing papers in this action to foreclose commercial mortgages encumbering the property at 517 Brooklyn Avenue in Brooklyn (Block 1332, Lot 1) (Property), plaintiff Stormfield Capital Funding 1, LLC (Stormfield) moves (in motion sequence [mot. seq.] one) for an order: (1) granting it summary judgment as against defendant M Rental Brooklyn LLC (M Rental or borrower), pursuant to CPLR 3212; (2) granting it a default judgment against defendants Wifi Construction LLC (Wifi), Berger 3424 Holdings LLC (Berger) and Tri State Lumber Ltd. (Tri State), pursuant to CPLR 3215; (3) severing this action as to defendant Rafi Manor (a/k/a Rafael Manor) (Manor or guarantor), discontinuing this action as against the John Doe defendants and amending the caption to strike defendant Manor and the John Doe defendants from the caption, pursuant to CPLR 3025 (i); and (4) appointing a referee to ascertain and compute the amount due to it for principal and interest under the subject mortgage and to examine and report whether the Property can be sold in one parcel, pursuant to RPAPL 1321.

Background

On December 3, 2020, Stormfield commenced this foreclosure action by filing a summons, a verified complaint and a notice of pendency against the Property. On

December 9, 2020, Stormfield filed an amended verified complaint. The amended complaint alleges that Stormfield seeks to foreclose on four mortgages encumbering the Property, three of which were consolidated by a November 3, 2017 Consolidated Note in the principal amount of \$1,790,000.00 executed by M Rental, the borrower, in favor of Genesis Capital Master Fund II, LLC (Genesis), which was secured by a “Mortgage, Assignment of Leases and Rents and Security Agreement” encumbering the Property (Consolidated Mortgage) (amended complaint at ¶ 1). The fourth mortgage is allegedly evidenced by a November 3, 2017 Building Loan Note in the principal amount of up to \$2,350,000.00 executed by M Rental in favor of Genesis, which is secured by a building loan mortgage (Building Mortgage) (*id.*). The amended complaint also alleges that defendant Manor is the guarantor under the notes and mortgages (*id.* at ¶ 5).

The amended complaint alleges that the Consolidated Mortgage and the Building Mortgage were assigned to plaintiff “by that certain Assignment of Mortgage . . . dated October 16, 2020, and recorded on October 23, 2020 as CRFN: 2020000296692, and Plaintiff is the owner and holder of the aforesaid Consolidated Note and Consolidated Mortgage” (*id.*). The October 16, 2020 assignment of mortgage, annexed as Exhibit A to the original complaint (*see* NYSCEF Doc No. 3),¹ reflects that Goldman Sachs Bank USA (Goldman Sachs), *and not Genesis*, assigned the mortgages to Stormfield

¹ Stormfield’s amended complaint, which was not filed with any exhibits, incorporates the exhibits annexed to the original complaint by reference (*see* NYSCEF Doc Nos. 14 and 2).

“**TOGETHER** with the bonds, notes and/or obligations described in said mortgages . . .”

Notably, while the assignment of mortgage is dated and was executed by Goldman Sachs on October 16, 2020, the document reflects that it was previously notarized on October 14, 2020. Copies of the *unendorsed* Building Loan Note and the Consolidated Note are annexed to the original complaint as Exhibits B and D (*see* NYSCEF Doc Nos. 4 and 6) and are also incorporated into the amended complaint by reference.

The amended complaint alleges that “Defendant has defaulted in the performance of its monetary obligations under the terms of the Notes and Mortgages, in that the Mortgages matured on November 1, 2018, and Defendant has failed to pay to Plaintiff the principal amount, interest and other charges due under the Notes and Mortgages . . .” (*id.* at ¶ 2). The amended complaint asserted the following five causes of action: (1) against M Rental to foreclose the Building Mortgage; (2) against M Rental to foreclose the Consolidated Mortgage; (3) against M Rental and Manor for a deficiency judgment; (4) against M Rental to recover taxes, assessments, water charges, sewer charges, insurance premiums and other charges affecting the Property; and (5) against M Rental for reasonable attorneys’ fees.

On February 8, 2021, M Rental and Manor collectively answered the amended complaint, denied the material allegations therein and asserted affirmative defenses, including waiver, estoppel, unclean hands, that any default was caused by Stormfield’s predecessors, Genesis and/or Goldman Sachs, and Stormfield lacks standing to foreclose.

None of the other defendants answered or otherwise responded to the complaint, and their time within which to do so has expired.

Stormfield's Instant Summary Judgment Motion

On September 14, 2021, Stormfield filed the instant motion for summary judgment, an order of reference, a default judgment against the non-appearing and non-answering defendants, to sever its claim against Manor and to amend the caption.

Stormfield submits a fact affidavit from Wesley W. Carpenter (Carpenter), its “authorized signatory” who verified the amended complaint and attests now that he is “fully familiar with the facts set forth herein and with the business records of Plaintiff.” Carpenter’s affidavit, which annexes copies of the pleadings, copies of the Consolidated Note and Mortgage and the Building Note and Mortgage, the Assignment of Mortgage, the affidavits of service and a September 9, 2021 payoff statement in the form of a chart, reiterates the allegations in the amended complaint and asserts that “Plaintiff has established a prima facie case for foreclosure of the mortgages . . .” based on its production of the notes and mortgages, “the uncontested proof of default by M Rental in failing to pay the mortgages *upon maturity on November 1, 2018*” and that “[t]he mortgages were assigned to Plaintiff [on October 16, 2020] and recorded on October 23, 2020, and Plaintiff is the owner and holder of the notes and mortgages” (emphasis added). Carpenter further attests that “when Plaintiff commenced this action, Plaintiff was in possession of the Notes and it was the holder of the Mortgages” and “Plaintiff remains in

possession of the Notes to date.”

Regarding M Rental’s payment default, Carpenter alleges that “I have reviewed the attached ‘Excel spreadsheet’ that is annexed hereto as Exhibit 9 and incorporated by reference herein” (*see* NYSCEF Doc No. 32). Carpenter asserts that:

“I hereby submit this Excel spreadsheet as a business record of Plaintiff (a) that was made at or near the time of the occurrence, (b) that was kept in the course of Plaintiff’s business, and (c) that was made in the course of the regularly conducted activity of Plaintiff’s business.”

Notably, the “spreadsheet” submitted with Carpenter’s affidavit as Exhibit 9 is a payoff statement in the form of a chart, which identifies the borrower, M Rental, and lists: (1) the “Payoff Date” as 9/9/2021; (2) the “Maturity Date “ as 11/1/2018; (3) the “Interest Paid to Date” as 11/1/2018; (4) the “Next Payment Due Date” as 12/1/2018; (5) the Unpaid Principal Balance” as \$3,990,878.41; (6) the “Note Interest Rate” as 8.5000%; (7) the “Current Interest Rate” as 24.0000%; (8) the “Note Rate Interest Due” as \$869,203.70; (9) the “Default Interest Due” as \$1,585,018.50; (10) the “Accrued/Unpaid Interest Due” as \$0; (11) the “Unpaid Loan Charges” as \$4,535.62; (12) the “Demand Forwarding Fee” as \$350.00; (13) the “Total” of \$6,449,986.23; and (14) “Add Per-Diem” \$2,624.14 (NYSCEF Doc No. 32).

Regarding defendant Manor, the guarantor, Carpenter avers that in April 2021, Manor filed a bankruptcy petition, the automatic stay was lifted by the Bankruptcy Court’s July 9, 2021 order “to permit Plaintiff to exercise all of its rights with respect to

the subject property and M Rental, but Plaintiff was directed to sever from this action its claims against Manor, without prejudice, so that after the conclusion of this action, the Bankruptcy Court may determine the amount of a deficiency judgment, if any, to be awarded [against Manor].” Stormfield submits a copy of the Bankruptcy Court’s order.

M Rental and Manor’s Opposition

M Rental and Manor, in opposition, submit an affidavit from Manor, who argues that Stormfield was assigned the loans on October 16, 2020, “and either was never given, or is actively seeking to hide, the actual business relationship between M Rental and Genesis . . . Plaintiff’s predecessor in interest . . . and the holder of the Notes and Mortgages on November 1, 2018, the date upon which Plaintiff would like to claim that M Rental defaulted on its loan obligations.”

Manor attests that Genesis, the originator of the Consolidated and the Building loans, held the loan proceeds in escrow, funded M Rental’s construction project at the Property and agreed to extend the November 1, 2018, maturity date of the loans, as evidenced by email correspondence and Genesis’ funding of the construction project after November 1, 2018. Manor thus asserts that:

“Plaintiff fails to mention that prior to the [November 1, 2018] Maturity Date, (a) Genesis agreed to continue taking interest-only payments on the unpaid principal balance from the Building Loan Escrow . . . for the period after the Maturity Date that Genesis was holding on behalf of M Rental on the Building Note, (b) that Genesis agreed to continue to fund the construction on the subject Premises from the unspent escrow funds that Genesis was still holding on M

Rental's behalf for this project (in the sum of approximately \$1,500,000.00), and (c) that Genesis induced M Rental to continue to spend tens of thousands of its own capital on repairing the Building on the Premises, all of which occurred after the Maturity Date.

"As it will become clear from the documents and email correspondence presented below, Genesis orally agreed to extend the terms of the subject notes and mortgages before the [November 1, 2018] Maturity Date in order to allow M Rental to continue to build a ten (10) family residential apartment building with a community facility (the 'Building') on the subject real property . . .

"It was only in February 2020, after M Rental began to challenge the amounts that Genesis was claiming that M Rental owed Genesis on the subject notes and began to question whether Genesis improperly allocated funds from the subject notes to other unrelated projects that have the s[a]me . . . principals (but are not cross-collateralized), that Genesis suddenly and unilaterally decided to call M Rental in default using the [November 1, 2018] Maturity Date as the date of default.

"The email correspondence between Genesis and M Rental in the period after the [November 1, 2018] Maturity Date and Genesis' acts of funding the construction of the Building after the [November 1, 2018] Maturity Date, conclusively demonstrates that Genesis actually agreed to extend the loan terms passed the [November 1, 2018] Maturity Date. The conduct of Genesis with M Rental during the period after the [November 1, 2018] Maturity Date also demonstrates this fact."

While Manor admits that "the terms of that extension were never formalized in a written extension agreement between the parties," he claims that "the relationship and email correspondence clearly demonstrates that this was the agreement between the parties."

Defendants submit as Exhibit B what Manor characterizes as “Genesis’ own borrower statement of account dated December 31, 2019[,]” “which was provided by Genesis to M Rental on or about December 31, 2019,” *prior to* the October 16, 2020 assignment of the loans to Stormfield and *more than one year after* the November 1, 2018 maturity date of the loans (NYSCEF Doc No. 43). Manor argues that “[a]lthough Genesis had agreed to lend \$2,350,000[.00] to M Rental to complete the construction on the Building as a part of the Building Note prior to the Maturity Date . . .” the statement reflects that Genesis “only released \$673,000.00 from the Building Loan Escrow to M Rental before the Maturity Date . . .” Manor thus avers that on November 1, 2018, \$2,463,000.00 was due and owing, which was comprised of the \$1,790,000.00 due on the Consolidated loan and the \$673,000.00 that Genesis released from escrow from the Building loan.

The payoff statement contains a “Summary” which lists: (1) the reporting period as January 1, 2019 through December 31, 2019; (2) the principal balance as \$3,840,617.58; (3) the Trust balance as \$0.00; (4) the unpaid late charges as \$4,359.62; (5) unpaid charges of \$112.00; (6) *unpaid interest of \$0.00*; (7) *accrued late charges of \$0.00*; (8) regular payment of \$17,207.26; and (9) note rate of 8.500% (rather than the 24% default rate). Under the Summary is an “Account Activity” chart reflecting that there was a total of \$1,377,617.58 in “Funding” paid out on eight separate occasions from January 7, 2019 through December 23, 2019. Notably, the payoff statement that Genesis

provided to M Rental reflects that it was prepared by FCI Lender Services, Inc. (FCI), presumably the servicer of the loans at the time that the 2019 payoff statement was prepared.

Manor attests that “[a]s the Maturity Date approached, Genesis orally agreed with M Rental that Genesis would extend the terms of the First Note and Building Note.” Manor attests that he personally had conversations with John Day (Day), Genesis’ Chief Business Development Officer, in which Genesis agreed: (1) not to hold M Rental in default for failure to pay the balance of the loans on the maturity date; (2) to extend the terms of the loans “in order to allow M Rental to use the funds remaining in the Building Loan Escrow to complete construction on the Building”; and (3) “that the monthly interest-only payments that would become due and owing on the First Note and Building Note as of December 1, 2018 would be paid from the Building Loan Escrow.”

Defendants also submit email chains between Gina Siu (Siu), Genesis’ Construction Lead Administrator, and Nirit Reuveni (Reuveni) of M Rental from December 21, 2018 to December 28, 2018 (and copied to Manor, Day and others), *nearly two months after* the November 1, 2018 maturity date, in which: (1) Siu admits that the balance in the Building Loan escrow was \$1,677,000.00 and is needed to “finish the project”; (2) Siu discusses “processing” a “draw request” to pay contractors, including iron work, plumbing, garbage removal and demolition, for the construction project and requests W-9s for the contractors getting paid; and (3) references the “fund control team”

to process “draws” in the future. In a December 28, 2018 email to Manor, Reuveni and others, Day advises that:

“In regard to funding the submitted draw request on 517 Brooklyn, our counsel (Lino Lauro) is providing to Menachem a form Letter of Direction that will need to be signed by Rafi [Manor], allowing us to pay the mechanic’s lien holder directly and we will need a release of lien from the mechanic’s lien holder. With those documents we will be able to pay the lien holder and *fulfill this single draw request* (though once we have the required documentation in place, it will likely take 5 business days to effectuate payment through our third party/local payment servicer). *Any further draw requests will be on hold until such time that we have a forbearance agreement in place*” (emphasis added).

In an email chain from January 24, 2019 through February 1, 2019, Genesis requests, and Reuveni, in response, provides Genesis with the costs to complete the construction project. In a May 22, 2019 email, Siu advised Reuveni and Manor:

“We will be using a new fund control inspection company called Trinity, our previous inspection company is no longer able to perform, and we feel this change will help expedite the draws. Inspections have been ordered and please note the inspection company will not start processing the draw unless all documents are 100%.

“To reach the quickest turnaround time for your future draws, please make sure all your backups are in order. I am providing a list below off all items needed to help speed up your draws and please let me know when is a good time to walk you through this list . . .”

Manor argues that “[d]ue to the relationship between Genesis and M Rental during 2019, M Rental expended tens of thousands of its own dollars towards construction on the

Building in reliance of the promises of Genesis that Genesis would continue to release funds to complete construction on the Building.” Defendants submit additional email chains between Genesis and M Rental, which Manor argues “demonstrate that Genesis and M Rental were actively working together to get the Building completed by using the Building Loan Escrow through the end of December 2019.” Manor further attests that “[d]ue to the fact that the Building Loan Escrow was about to be exhausted, Genesis and M Rental began discussions in January, 2020 about M Rental getting a written extension and modification of the Building Note where Genesis would be able to lend M Rental the remainder of the funds that M Rental would need to complete the Building.” Defendants also submit a January 28, 2020 email from Siu in which she provides a “breakdown” of the fourteen “funded” “draws” from the building escrow from November 3, 2017 through December 20, 2019 (*see* NYSCEF Doc No. 58). Manor contends that this “Loan Report does not show that M Rental was in default on the loan as of January 30, 2020” and is proof that “Genesis agreed to extend the First Note and the Building Note and that Genesis waived its rights to call the loan in default on the Maturity Date.”

Manor explains that “[u]pon receipt of the Loan Report, M Rental began to request backup for the draws that were remitted on the Building Note from the Building Loan Escrow” and then “Genesis abruptly stopped negotiations with M Rental with regards to the new funds that Genesis agreed to lend M Rental in order to complete the Building, and Genesis sent M Rental a demand loan payment dated February 26, 2020” demanding

24% default interest running from the November 1, 2018 maturity date.

Manor alleges that “Genesis abruptly decided to call the Building Note in default due to the fact that Genesis realized that thousands of dollars from the Building Loan Escrow were misapplied and/or improperly released by Genesis or Trinity to other projects unrelated to the Building, the Premises and the Building Note” but cannot prove this without discovery. Manor argues that “Genesis should be legally estopped from abruptly deciding to call the Maturity Date as the date of default on February 26, 2020 after it had led M Rental to believe that it would be lending M Rental the funds to complete the Building, had admittedly released approximately \$1,500,000 from the Building Loan Escrow after the Maturity Date, and had actively told M Rental that it was not in default on the Building Note for the entire period after the Maturity Date through February 2020.” Manor also contends that Stormfield waived its right to call M Rental in default.

Stormfield's Reply

Stormfield, in reply, submits another affidavit from Carpenter, who attests that Manor's claim that Genesis “orally agreed to an open-ended extension of the mortgages beyond the November 1, 2018 maturity date is “simply a smoke and mirrors defense that lacks merit and cannot withstand judicial scrutiny” because “Defendants have failed to submit a single document proving any alleged oral modification . . .” Carpenter argues that a review of the emails produced by defendants “shows that not a single email or

document actually confirms Defendants' claim of an alleged oral modification or waiver."

Carpenter also asserts that "Manor has failed to disclose to this court the pre-negotiation letter that he signed in June 2020 . . . wherein . . . Defendants affirmed that the mortgages matured on November 1, 2018, were not modified or extended, and have not been repaid." Stormfield submits a June 5, 2020 letter *executed by its predecessor, Goldman Sachs*, and defendants setting down certain terms for their settlement negotiations and states (at paragraph 11) that "[n]either this letter nor any Negotiations or other action undertaken pursuant to this letter shall constitute a waiver of any claim or defense (legal or equitable), counterclaim, set-off, recoupment, cross claim . . ."

Carpenter claims that the loan files of Genesis and Goldman Sachs are admissible because:

"[a]s the servicing agent for Stormfield, the successor-in-interest to the mortgages, I am familiar with the loan files that Stormfield received from Genesis and Goldman, as the prior servicers, that have been incorporated into Stormfield's business records. Said records were created and maintained in the ordinary course of Genesis's and Goldman's servicing businesses. Said records were created by someone with personal knowledge of the act, transaction, occurrence or event being recorded. Said records were created at or near the time of the act, transaction, occurrence or event being recorded. Said records are relied upon by Stormfield in its day-to-day course of its servicing business."

Carpenter asserts that paragraph 3.21 of the Building Mortgage "defeat Defendants' claim of oral modification and estoppel and waiver" because it provides that

the Mortgage, Note and Building loan can be extended and modified “only in writing executed by the Mortgagee and that none of the rights or benefits of the Mortgagee can be waived permanently except in a written document executed by the Mortgagee” Carpenter similarly cites to paragraph 3.11 of the Building Mortgage, which similarly provides that:

“This Mortgage cannot be altered, amended, waived, modified or discharged orally, and no executory agreement shall be effective to modify, waive or discharge, in whole or in part, anything contained in this Mortgage unless it is in writing and signed by the party against whom enforcement of any modification, alteration, amendment, waiver or discharge is sought.”

Carpenter cites other provisions in the notes and asserts that the opposition fails to raise a triable issue of fact to preclude summary judgment in Stormfield’s favor.

Discussion

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 [2005]; see also *Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). “The proponent of a motion for summary judgment 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 [2010], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; see also *Zuckerman v City of New York*, 49

NY2d 557, 562 [1980]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). If it is determined that the movant has made a prima facie showing of entitlement to summary judgment, “the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493 [1989]).

Generally, to establish prima facie entitlement to judgment as a matter of law in an action to foreclose a mortgage, a plaintiff must produce the mortgage, the unpaid note, and admissible evidence of the borrower’s default (*see Deutsche Bank Natl. Trust Co. v Karibandi*, 188 AD3d 650, 651 [2020]; *Christiana Trust v Moneta*, 186 AD3d 1604, 1605 [2020]; *Deutsche Bank Trust Co. Ams. v Garrison*, 147 AD3d 725, 726 [2017]). Where the issue of standing is raised by a defendant in his or her answer, a plaintiff must also establish its standing as part of its prima facie case (*see Deutsche Bank Trust Co. Ams. v Garrison*, 147 AD3d at 726; *Security Lending, Ltd. v New Realty Corp.*, 142 AD3d 986, 987 [2016]; *LGF Holdings, LLC v Skydel*, 139 AD3d 814, 814 [2016]). When a plaintiff establishes prima facie entitlement to summary judgment, the burden then shifts to the defendant to raise a triable issue of fact as to a bona fide defense to the action (*CitiMortgage, Inc. v Guillermo*, 143 AD3d 852, 853 [2016]; *Mahopac Natl. Bank v Baisley*, 244 AD2d 466, 467 [1997]).

Here, Stormfield failed to satisfy its prima facie burden of demonstrating its right

to summary judgment and an order of reference because its moving papers failed to include any evidence of M Rental's payment default on the November 1, 2018 maturity date of the loans. Carpenter admits that the notes and mortgages were not assigned to Stormfield until October 16, 2020, *nearly two months before* Stormfield commenced this action on December 3, 2020, and *nearly two years after* M Rental's alleged payment default on the November 1, 2018 maturity date of the loans. Carpenter, nevertheless, submits Stormfield's September 9, 2021 payoff chart (*see* NYSCEF Doc No. 32) as a Stormfield business record evidencing M Rental's alleged failure to pay off the loans *nearly three years earlier* on November 1, 2018, *prior to* Stormfield's alleged acquisition of the loans. There is nothing in the record to indicate that Carpenter, or anyone else at Stormfield, has personal knowledge regarding M Rental's alleged payment default on the November 1, 2018 maturity date.

In addition, Stormfield failed to establish its standing to foreclose. While Stormfield references and relies upon the October 16, 2020 assignment of mortgage, which reflects that Goldman Sachs assigned the mortgages to Stormfield "TOGETHER with the bonds, notes and/or obligations described in said mortgages . . ." the mortgage assignment is seemingly defective since it states that it was executed by Yvonne Gruenberg of Goldman Sachs on October 16, 2020, but her signature was previously notarized on October 14, 2020 (*see* NYSCEF Doc No. 3). Although Carpenter generally attests that "when Plaintiff commenced this action, Plaintiff was in possession of the

Notes and it was the holder of the Mortgages[,]" Carpenter does not provide any testimony whatsoever regarding Goldman Sach's *physical delivery of the notes* to Stormfield prior to Stormfield's commencement of this foreclosure action and the notes in the record before the court are not endorsed at all (*see* NYSCEF Doc Nos. 4 and 6).

It is axiomatic that "a plaintiff's standing may generally be demonstrated by showing either a written assignment of the underlying note or the physical delivery of the note prior to the commencement of the foreclosure action" (*Deutsche Bank Trust Co. Americas v Vitellas*, 131 AD3d 52, 59 [2015]). Stormfield has failed to demonstrate its standing as part of its prima facie case because the mortgage assignment in the record seems to have been defectively executed and notarized and Carpenter provides no testimony or documentary evidence of the physical delivery of the notes to Stormfield.

Accordingly, it is hereby

ORDERED that Stormfield's motion (mot. seq. one) is only granted to the extent that: (1) this action is severed and discontinued as against defendant Manor; (2) this action is discontinued as against the John and Jane Doe defendants; and (3) the Caption is amended to delete defendant Manor and the John and Jane Doe defendants; the motion is otherwise denied without prejudice and with leave to renew after the conclusion of discovery; and it is further

ORDERED that the caption shall hereinafter read:

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STORMFIELD CAPITAL FUNDING 1, LLC,

Plaintiff,

- against -

M RENTAL BROOKLYN LLC, WIFI CONSTRUCTION
LLC, BERGER 3424 HOLDINGS LLC and TRI STATE
LUMBER LTD.

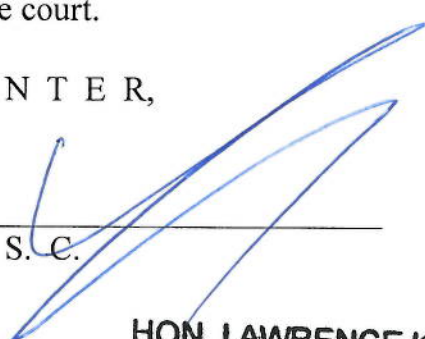
Defendants.

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This constitutes the decision and order of the court.

E N T E R,

J. S. C.



**HON. LAWRENCE KNIPEL
ADMINISTRATIVE JUDGE**