

U.S. Bank N.A. v Jung

2023 NY Slip Op 30845(U)

March 20, 2023

Supreme Court, New York County

Docket Number: Index No. 650558/2022

Judge: Louis L. Nock

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LOUIS L. NOCK PART 38M

Justice

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U.S. BANK NATIONAL ASSOCIATION,

Plaintiff,

- v -

HILDA JUNG, JEAN LUC JUNG, ENVIRONMENTAL
CONTROL BOARD OF THE CITY OF NEW YORK, THE
CITY OF NEW YORK, PEOPLE OF THE STATE OF NEW
YORK, and JOHN DOE NOS. 1-25,

Defendants.

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INDEX NO. 650558/2022

MOTION DATE 06/13/2022

MOTION SEQ. NO. 001

**AMENDED DECISION + ORDER
ON MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, and 87

were read on this motion for SUMMARY JUDGMENT.

LOUIS L. NOCK, J.

Upon the foregoing documents, so much of plaintiff's motion as seeks summary judgment against defendant Jean Luc Jung ("Mr. Jung") is granted for the reasons set forth in the moving and reply papers (NYSCEF Doc. Nos. 20, 22, 30, 74-75, 82) and the exhibits attached thereto, in which the court concurs as summarized herein. Plaintiff submits the original note and mortgage (NYSCEF Doc. Nos. 24-25); the allonges assigning the note and mortgage to plaintiff (NYSCEF Doc. Nos. 26-27); and the notices of default and acceleration sent to defendant Hilda Jung ("Ms. Jung") (NYSCEF Doc. No. 28, Exhibits H-I), who is the record owner of the mortgaged property located at 458 West 51st Street, New York, New York (the "mortgaged premises"). Plaintiff also submits the affidavit and reply affidavit of its loan servicer's asset manager, sufficiently authenticating the documentary evidence submitted and attesting to Ms. Jung's default on the note and mortgage (NYSCEF Doc. Nos. 30, 82). Accordingly, plaintiff has

established *prima facie* entitlement to summary judgment (*CitiMortgage, Inc. v Moran*, 188 AD3d 407, 408 [1st Dept 2020] [“Plaintiff demonstrated its prima facie entitlement to foreclosure by producing the notes, mortgages, and evidence of defendant's default”]).

Mr. Jung offers no meaningful opposition to the motion. He asserts seven affirmative defenses in his answer, yet by his silence in opposition to the motion has waived reliance on all but the second affirmative defense, which is for lack of standing to sue (*Steffan v Wilensky*, 150 AD3d 419, 420 [1st Dept 2017] [“By his silence in his opposition brief, defendant concedes, as plaintiff argues, that the second, third, and sixth affirmative defenses should be dismissed”]). Moreover, plaintiff, as both the holder and the assignee of the original note and mortgage has standing to commence and maintain this action. “In a foreclosure action, a plaintiff has standing if it is the holder, or the assignee, of the underlying note at the time the action is commenced” (*Central Mtge. Co. v Davis*, 149 AD3d 898, 899 [2d Dept 2017]). Physical delivery of the note prior to the commencement of the action is sufficient to establish standing (*Aurora Loan Services, LLC v Taylor*, 25 NY3d 355, 361 [2015]; *Bank of N.Y. Mellon Trust Co. NA v Sachar*, 95 AD3d 695, 696 [1st Dept 2012]). Here, the documentary evidence shows that the note and mortgage were validly assigned to plaintiff (assignments of mortgage, NYSCEF Doc. Nos. 26-27). Moreover, plaintiff’s counsel attests that he has been in possession of the original note, mortgage, and assignments since prior to the commencement of the action (Tross affirmation, NYSCEF Doc. No. 30, ¶ 9). To the extent that Mr. Jung asserts an oral agreement pursuant to which Ms. Jung was to transfer the property back to him on demand, such agreement is barred by the statute of frauds (General Obligations Law § 5-703[1] [“An estate or interest in real property . . . cannot be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing”]).

Mr. Jung's cross-motion to dismiss for lack of standing, or alternatively, to stay this action in favor of a related action before the Hon. Sabrina Kraus captioned *Jean Luc Jung v Kobler, a/k/a Hilda Joan Jung, et al.* (index No. 652436/2021 [Sup Ct NY County]), is denied. As set forth above, plaintiff has standing to sue. With regard to a stay, defendant cannot establish the necessary identity of parties and causes of action necessary to support such relief (*Bridgemarket Assoc. v City of New York*, 190 AD2d 561, 561-62 [1st Dept 1993] ["These two actions, while arising from the same set of transactions, do not have complete identity of parties and causes of action, and thus a stay under CPLR 2201 is not warranted"]).

Further, so much of plaintiff's motion for a default judgment against Ms. Jung and defendants the Environmental Control Board of the City of New York, the City of New York, and the State of New York (collectively, the "non-appearing defendants"), is granted on default and without opposition. A plaintiff that seeks entry of a default judgment for a defendant's failure to answer must submit proof of service of the summons and complaint upon the defendant, proof of the facts constituting the claim, and proof of the defendant's default (CPLR 3215). "The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts" (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]). "[D]efaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them" (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). Nevertheless, "CPLR 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear have been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action" (*Guzetti v City of N.Y.*, 32 AD3d 234, 235 [1st Dept 2006] [internal quotations and citations omitted]).

Here, plaintiff submits the affidavits of service upon the non-appearing defendants (NYSCEF Doc. Nos. 33, 35-37), the above-mentioned documentary evidence and affidavit of its loan servicer's asset manager (NYSCEF Doc. Nos. 22-29), and the affirmation of its counsel, Scott T. Tross, Esq., who attests that none of the non-appearing defendants have appeared or answered the complaint (Tross affirmation, NYSCEF Doc. No. 30, ¶ 4). While the City of New York has belatedly appeared by counsel (notice of appearance, NYSCEF Doc. No. 88), it does not oppose the motion. Accordingly, plaintiff has established its entitlement to a default judgment.

THEREFORE, upon the documents referenced above, and upon the summons, complaint, and *lis pendens* duly filed with the Clerk of the County of New York on February 9, 2022, and the plaintiff having appeared by its attorneys, Herrick Feinstein LLP, and defendant Jean Luc Jung having appeared by his attorneys, Tsyngauz & Associates, P.C., and defendant the City of New York having appeared by its attorney, Bernard J. Tordesillas, Esq., and not opposed the motion, and defendants Hilda Jung, the Environmental Control Board of the City of New York, and the People of the State of New York having defaulted in appearance, and the court having heard oral argument on the motion on November 3, 2022, and due deliberation having been had thereon,

NOW, upon motion of Herrick Feinstein LLP, attorneys for plaintiff, it is hereby

ORDERED that the motion of plaintiff U.S. Bank National Association for summary judgment against defendant Jean Luc Jung and for default judgment against defendants Hilda Jung, the Environmental Control Board of the City of New York, the City of New York, and the People of the State of New York, is granted, and the cross-motion of defendant Jean Luc Jung is denied; and it is further

ORDERED that the answer of defendant Jean Luc Jung dated May 9, 2022, be and the same hereby is stricken; and it is further

ORDERED that Lawrence B. Goodman, Esq., with an office at 160 Broadway, 4th Floor, New York, New York 10038, (212) 725-5305, is hereby appointed Referee to ascertain and compute the amount due upon the note and mortgage which this action was brought to foreclose, and to examine and report whether the mortgaged premises can be sold in one parcel; and it is further

ORDERED that defendants captioned “John Doe Nos. 1-25,” not having been served with copies of the summons and complaint, are not necessary parties defendant and should be excised from the caption, and the caption is amended to read as follows, without prejudice to any of the proceedings heretofore had herein:

“-----X
U.S. BANK NATIONAL ASSOCIATION, as Trustee for the Registered holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Multifamily Mortgage Pass-Through Certificates, Series 2017-SB42, by and Through its special servicer, LNR Partners LLC,

Plaintiff,

- v-

HILDA JUNG, JEAN LUC JUNG, ENVIRONMENTAL CONTROL BOARD OF THE CITY OF NEW YORK, CITY OF NEW YORK, PEOPLE OF THE STATE OF NEW YORK

Defendants.

-----x”; and it is further;

ORDERED that upon the issuance of the Referee’s report and confirmation of same, plaintiff U.S. Bank National Association may seek a final judgment of foreclosure and sale.

This constitutes the amended decision and order of the court.

ENTER:



<u>3/20/2023</u>				<u>LOUIS L. NOCK, J.S.C.</u>	
	DATE				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input checked="" type="checkbox"/>
					OTHER
					REFERENCE