

**Wilmington Trust, N.A. v Singer**

2024 NY Slip Op 33353(U)

September 19, 2024

Supreme Court, New York County

Docket Number: Index No. 850196/2019

Judge: Francis A. Kahn III

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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. FRANCIS A. KAHN, III PART 32**

*Justice*

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INDEX NO. 850196/2019

WILMINGTON TRUST, NATIONAL ASSOCIATION,

MOTION DATE \_\_\_\_\_

Plaintiff,

MOTION SEQ. NO. 003

- v -

GREGG L. SINGER, ELEANOR B. SINGER INTERVIVES  
REVOCABLE TRUST AGREEMENT DATED 2/26/91  
ELEANOR B. SINGER TTEE, CHESTERFIELD 19, L.L.C.,  
PEOPLE OF THE STATE OF NEW YORK, BOARD OF  
MANAGERS OF THE CHESTERFIELD CONDOMINIUM,  
NEW YORK CITY ENVIRONMENTAL CONTROL BOARD,  
NEW YORK STATE DEPARTMENT OF TAXATION AND  
FINANCE,

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 106, 119, 120, 121, 122, 123, 124

were read on this motion to/for

JUDGMENT - SUMMARY

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

In this mortgage foreclosure action, Plaintiff moves for, *inter alia*, summary judgment against Defendant Gregg L. Singer (“Singer”) and other appearing parties, a default judgment against the non-appearing parties, appointment of a referee to compute and to amend the caption. Defendant Perkins *pro se* opposes the motion. A prior motion for summary judgment was granted without opposition but was restored to the calendar upon Singer’s motion to vacate his default.

On the branches of the motion for summary judgment and a default judgment and appointment of a referee, Plaintiff established the mortgage, note, and evidence of Mortgagor’s default in repayment via the affidavit of Rebecca C. Wallace (“Wallace”), a Document Execution Associate for Plaintiff’s servicer, which was sufficiently supported by admissible business records annexed thereto (*see eg Bank of NY v Knowles*, 151 AD3d 596 [1<sup>st</sup> Dept 2017]; *Fortress Credit Corp. v Hudson Yards, LLC*, 78 AD3d 577 [1<sup>st</sup> Dept 2010]). Wallace’s the copy of the note, endorsed in blank by the original lender, which was annexed to the complaint, sufficiently demonstrated Plaintiff’s standing in this matter (*see Ocwen Loan Servicing LLC v Siame*, 185 AD3d 408 [1st Dept 2020]; *Bank of NY v Knowles*, supra at 597). Likewise, the submissions proved that all the statutory and contractual pre-foreclosure requisites were fulfilled (*see generally United States Bank Trust, N.A. v Mehl*, 195 AD3d 1054 [2d Dept 2021]; *Citimortgage, Inc. v Ustick*, 188 AD3d 793, 794 [2d Dept 2020]).

In opposition, Defendant Singer’s arguments failed to raise an issue of fact as to any defense to the action, including whether Plaintiff neglected to act in good faith as required by CPLR §3408, since there was no proof “plaintiff’s representative was not fully authorized to negotiate a settlement of this residential foreclosure action on plaintiff’s behalf or that the negotiations that were had were a sham” (*Wells Fargo Bank, N.A. v Van Dyke*, 101 AD3d 638 [1<sup>st</sup> Dept 2012]). To the extent Singer seeks this Court to compel Plaintiff to reduce the

amount owed or offer a short sale, that relief is unavailable as a court cannot force an agreement on the parties (*see Citibank, NA v Barclay*, 124 AD3d 174, 177 [1<sup>st</sup> Dept 2014]).

All the affirmative defenses and counterclaims are entirely conclusory and unsupported by any facts in the answer or by the papers submitted in opposition. As such, these affirmative defenses are nothing more than an unsubstantiated legal conclusion which is insufficiently pled as a matter of law (*see Board of Mgrs. of Ruppert Yorkville Towers Condominium v Hayden*, 169 AD3d 569 [1<sup>st</sup> Dept 2019]; *see also Bosco Credit V Trust Series 2012-1 v. Johnson*, 177 AD3d 561 [1<sup>st</sup> Dept 2020]; *170 W. Vil. Assoc. v G & E Realty, Inc.*, 56 AD3d 372 [1<sup>st</sup> Dept 2008]; *see also Becher v Feller*, 64 AD3d 672 [2d Dept 2009]; *Cohen Fashion Opt., Inc. v V & M Opt., Inc.*, 51 AD3d 619 [2d Dept 2008]). Further, to the extent that no specific legal argument was proffered in support of a particular affirmative defense or claim, they were abandoned (*see U.S. Bank N.A. v Gonzalez*, 172 AD3d 1273, 1275 [2d Dept 2019]; *Flagstar Bank v Bellafiore*, 94 AD3d 1044 [2d Dept 2012]; *Wells Fargo Bank Minnesota, N.A v Perez*, 41 AD3d 590 [2d Dept 2007]).

Any reliance on the economic forces caused by the COVID-19 pandemic as a basis for this Court to invoke its equitable powers, is unavailing (*see Pentagon Fed Credit Union v Popovic*, 217 AD3d 480 [1<sup>st</sup> Dept 2023]). Equity will only intervene in a foreclosure action in a rare case where there is an element of fraud, exploitive overreaching or unconscionable conduct demonstrated (*see Key International Mfg., Inc. v Stillman*, 103 AD2d 475, 477 [2d Dept 1985]). Further, “[s]ympathy for the defendants cannot be permitted to undermine the stability of contractual obligations” (*L & L Assoc. Holding Corp. v Seventh Day Church of God of the Apostolic Faith*, 188 AD3d 1180, 1181 [2d Dept 2020]; *see also Pentagon Fed. Credit Union v. Popovic*, 217 AD3d 480 [1<sup>st</sup> Dept 2023]).

The branch of Plaintiff’s motion for a default judgment against the non-appearing parties is granted (*see CPLR §3215; SRMOF II 2012-1 Trust v Tella*, 139 AD3d 599, 600 [1<sup>st</sup> Dept 2016]).

The branch of Plaintiff’s motion to amend the caption is granted (*see generally CPLR §3025; JP Morgan Chase Bank, N.A. v Laszio*, 169 AD3d 885, 887 [2d Dept 2019]).

Accordingly, it is

ORDERED that Plaintiff’s motion for summary judgment against the appearing parties and for a default judgment against the non-appearing parties is granted; and it is further

ORDERED that the affirmative defenses pled by all the appearing Defendants are dismissed; and it is further

ORDERED that **Clark Whitsett, Esq. 66-05 Woodhaven Blvd., Rego Park, New York 11374 – 718-850-0003** is hereby appointed Referee in accordance with RPAPL § 1321 to compute the amount due to Plaintiff and to examine whether the property identified in the notice of pendency can be sold in parcels; and it is further

ORDERED that in the discretion of the Referee, a hearing may be held, and testimony taken; and it is further

ORDERED that by accepting this appointment the Referee certifies that he is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2 (c) (“Disqualifications from appointment”), and §36.2 (d) (“Limitations on appointments based upon compensation”), and, if the

Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall immediately notify the Appointing Judge; and it is further

ORDERED that, pursuant to CPLR 8003(a), and in the discretion of the court, a fee of \$350 shall be paid to the Referee for the computation of the amount due and upon the filing of his report and the Referee shall not request or accept additional compensation for the computation unless it has been fixed by the court in accordance with CPLR 8003(b); and it is further

ORDERED that the Referee is prohibited from accepting or retaining any funds for himself or paying funds to himself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED that if the Referee holds a hearing, the Referee may seek additional compensation at the Referee's usual and customary hourly rate; and it is further

ORDERED that Plaintiff shall forward all necessary documents to the Referee and to Defendants who have appeared in this case within 30 days of the date of this order and shall *promptly* respond to every inquiry made by the referee (promptly means within two business days); and it is further

ORDERED that if Defendant(s) have objections, they must submit them to the referee within 14 days of the mailing of plaintiff's submissions; and include these objections to the Court if opposing the motion for a judgment of foreclosure and sale; and it is further

ORDERED that failure to submit objections to the referee may be deemed a waiver of objections before the Court on an application for a judgment of foreclosure and sale; and it is further

ORDERED, that "John Doe" be removed as a party defendant in this action and that the caption of this action be amended to reflect the removal of "John Doe" as a party defendant; and it is further

ORDERED the caption is amended as follows:

SUPREME COURT STATE OF NEW YORK  
COUNTY OF NEW YORK

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WILMINGTON TRUST, NATIONAL  
ASSOCIATION, AS SUCCESSOR TRUSTEE  
TO CITIBANK, N.A., AS TRUSTEE FOR  
BEAR STEARNS ALT-A TRUST,  
MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2006-5,

Plaintiff,

-against-

GREGG L. SINGER, ELEANOR B. SINGER  
INTERVIVES REVOCABLE TRUST  
AGREEMENT DATED 2/26/91 ELEANOR B.  
SINGER TTEE, CHESTERFIELD 19, L.L.C.,  
PEOPLE OF THE STATE OF NEW YORK,  
BOARD OF MANAGERS OF THE

CHESTERFIELD CONDOMINIUM, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE,

Defendants.

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and it is further,

ORDERED that Plaintiff must bring a motion for a judgment of foreclosure and sale within 45 days of receipt of the referee's report; and it is further

ORDERED that if Plaintiff fails to meet these deadlines, then the Court may sua sponte vacate this order and direct Plaintiff to move again for an order of reference and the Court may sua sponte toll interest depending on whether the delays are due to Plaintiff's failure to move this litigation forward; and it further

ORDERED that counsel for Plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being removed pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address (www.nycourts.gov/supctmanh)); and it is further

ORDERED that Plaintiff shall serve a copy of this Order with notice of entry on all parties and persons entitled to notice, including the Referee appointed herein.

All parties are to appear for a virtual conference via Microsoft Teams on **January 16, 2025, at 11:20 a.m.** If a motion for judgment of foreclosure and sale has been filed Plaintiff may contact the Part Clerk (SFC-Part32-Clerk@nycourts.gov) in writing to request that the conference be cancelled. If a motion has not been made, then a conference is required to explore the reasons for the delay.

**Mortgage Servicer: Nationstar Mortgage LLC -- Phone: 1-888-480-2432.**

9/19/2024

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER J.S.C.

REFERENCE

*Francis Kahn III*

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

**HON. FRANCIS A. KAHN III**

J.S.C.