

NYCTL 1998-2 Trust v James

2024 NY Slip Op 34479(U)

December 16, 2024

Supreme Court, Kings County

Docket Number: Index No. 501048/2018

Judge: Derefim B. Neckles

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FRP-2 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, 11201 on the 16th day of December, 2024.

PRESENT:

HON. DEREKIM B. NECKLES,

Acting Justice.

-----X
NYCTL 1998-2 TRUST SUCCESSOR IN INTEREST TO
NYCTL 2009-A TRUST AND THE BANK OF NEW
YORK MELLON AS COLLATERAL AGENT AND
CUSTODIAN,

Plaintiff,

- against -

Index No. 501048/2018

LAWRENCE JAMES INDIVIDUALLY AND AS ALLEGED
EXECUTOR FOR THE ESTATE OF FANNIE J. DEBOSE;
RAYMONA JAMES, INDIVIDUALLY AND AS TRUSTEE
OF THE "JAMES FAMILY TRUST"; HARVEY JAMES, JR.
CYRAISSE JAMES A/K/A CYRAISSE LEGRAIR-
CLARKE; ET AL,

Defendants.

-----X
The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Affidavits (Affirmations) Annexed
Opposition Affirmation to Motion
Reply Affirmation to Opposition

78-91
104; 110
98; 109-112

Upon the foregoing papers in this proceeding, plaintiff moves (under mot. seq. 4) for an order granting (1) summary judgment against defendants Raymona James, Individually and as Trustee of the James Family Trust, Harvey James, Jr., Cyraisse James, Madrese James and Deidre James, and to strike the answer of said defendant, (2) default judgment against the remaining defaulting party-defendants, (3) an order of reference to

refer this matter to a referee for computation pursuant to RPAPL §1321, and (4) to amend the caption.

Background

Plaintiff commenced this action on January 18, 2018, to foreclose on a tax lien encumbering the subject property located at 2025 Strauss Street in Brooklyn (Block 03555, Lot 0021). On July 16, 2019, plaintiff moved for an order for service by publication for defendant Jacqueline Grant. Plaintiff's motion was granted by order dated October 17, 2019. On November 9, 2020, plaintiff moved for an order granting summary judgment against defendants, a default judgment, and an order of reference. Plaintiff then withdrew its motion on May 19, 2021, because defendant Raymona James ("defendant") had entered into a forbearance payment plan with plaintiff. On June 15, 2021, the appointed Guardian Ad-Litem moved for an order approving and directing an allowance of fees. This motion was granted, without opposition, by order dated July 19, 2022.

Defendant defaulted on the forbearance agreement with plaintiff, and plaintiff now brings the instant motion for an order granting summary judgment, a default judgment, and an order of reference.

Defendant offers two affirmations in opposition to plaintiff's motion. One affirmation was filed as a pro-se defendant on September 18, 2023, and another affirmation was filed by the defendant's recently retained attorney on October 15, 2024. Defendant's pro se affirmation challenges the purported outstanding balance asserted in the servicer's affidavit and whether service, on herself and other defendants, was proper. Through her attorney, defendant contends that the servicer's affidavit lacks probative value since it was

executed outside the state of New York, and without a certificate of conformity, the servicer's affidavit should not be considered, nor should the attorney's affidavit because he lacks personal knowledge of the facts asserted.

Discussion

The 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 (*Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, 501 N.E.2d 572, 574 (1986)). The plaintiff has to establish its prima facie entitlement to foreclosure as a matter of law by submitting proof that defendant made no payments on the tax lien (*NYCTL 2008-A Tr. v. Lee Zhen Xiang*, 121 A.D.3d 1062, 1063 (2014)). Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*Zuckerman v. City of New York*, 427 N.Y.S.2d 595).

Here, plaintiff offers the affidavit of Kenneth LaVine, the senior asset manager for plaintiff's servicer, MTAG Services LLC. LaVine testifies to plaintiff's ownership of the tax lien, defendant's default, and that the lien remains outstanding. Plaintiff attaches, as exhibit A, a fully executed servicing agreement, granting MTAG Services LLC, the authority to proceed with a foreclosure action, (*NYCTL 2009-A Tr. v. 273 Brighton Beach Ave. Realty Co.*, 926 N.Y.S.2d 345 (Sup Ct, Kings County 2011); *EMC Mortg. Corp. v. Batista*, 15 Misc.3d 1143(A), (Sup Ct, Kings County 2007)). Accordingly, plaintiff has established its prima facie entitlement to foreclosure as a matter of law.

Here, defendant fails to sufficiently establish a triable issue of fact that would require a trial. Upon review of the submitted forbearance agreement, defendant admits to the existence of the tax lien and her default. In entering the forbearance agreement, defendant waived all rights to assert "any and all defenses." Furthermore, the absence of a certificate of conformity is a mere irregularity, not a fatal defect, which can be disregarded in the absence of a showing of actual prejudice (*Christiana Tr. v. McCobb*, 187 A.D.3d 981, 983 [2020]). Thus, defendant's contentions fail to sufficiently establish a triable issue of fact.

Accordingly, it is

ORDERED that plaintiff's motion (mot. seq. 4) is granted in all respects.

This constitutes the decision and order of the court.

E N T E R,



HON. DEREFIM B. NECKLES
A. J. S. C.

KINGS COUNTY CLERK,
FILED
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