

**Bank of N.Y. Mellon v Bisogno**

2024 NY Slip Op 34938(U)

December 31, 2024

Supreme Court, Nassau County

Docket Number: Index No. 604034/2023

Judge: Gary F. Knobel

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT – STATE OF NEW YORK**

Present:

HON. GARY F. KNOBEL  
Justice of the Supreme Court

THE BANK OF NEW YORK MELLON FKA THE BANK  
OF NEW YORK, AS TRUSTEE FOR THE  
CERTIFICATEHOLDERS OF CWALT, INC.,  
ALTERNATIVE LOAN TRUST 2006-HY13, MORTGAGE  
PASS THROUGH CERTIFICATES, SERIES 2006-HY13,

Plaintiff,

-against-

BONNIE BISOGNO A/K/A BONNIE SALSONE et. al.,

Defendant(s).

IAS/TRIAL PART 18

NASSAU COUNTY

INDEX NO. 604034/2023

DECISION & ORDER

MOTION SEQ #: 001

Papers Considered:

NYSCEF Document No. 34-72.....1

Upon the foregoing papers, the plaintiff motion for an Order (1) pursuant to CPLR § 3212 granting the plaintiff summary judgment on its complaint and striking the affirmative defenses asserted by the defendants; (2) pursuant to CPLR §3215 for a default judgment against the non-appearing defendants; and (3) pursuant to RPAPL §1321 appointing a referee to compute the amount due and owing the plaintiff. The defendant, Bonnie Bisogno Salsonne, has submitted opposition.

On or about November 22, 2006, Shirley Bisogno executed and delivered a note to Countrywide Bank, N.A., for the sum of \$470,500.00 with interest and executed a Mortgage to mortgage Electronic Registration Systems, Inc. as nominee for Countrywide Bank, N.A. This mortgage was recorded on December 7, 2006. Subsequently, on or about September 27, 2007, the mortgage was assigned to the plaintiff. On or about January 26, 2010, the loan documents were

amended and supplemented by a loan modification agreement (Exhibit 4). On April 6, 2014 Shirley Bisogno passed away leaving the defendant as her heir. On or about March 13, 2019, the defendant executed an Assumption and Release Agreement, recorded on September 2, 2020. A Second loan modification agreement was executed around on or about March 14, 2024 (Exhibit 7). The plaintiff alleges that the defendant defaulted by failing to make the month installment due on July 1, 2019 and has remained in default to the present date.

Plaintiff now moves for summary judgment on its complaint so that it may proceed with the foreclosure and sale of the underlying premises. The defendant has submitted opposition stating the plaintiff has failed to state a cause of action, failed to prove standing, failed to prove transfer of the indorsed note, failed to meet its burden, failed to comply with CPLR § 3408, failed to comply with RPAPL § 1304, among other opposition.

It is well settled in New York that a plaintiff in a foreclosure action, must, in order to have standing to bring the case, be “both the holder or assignee of the subject mortgage and the holder or assignee of the underlying note prior to commencement of the action with the filing of the complaint.” (*GRP Loan, LLC v Taylor*, 95 AD3d 1172, 1173 [2<sup>nd</sup> Dept 2012][internal citations omitted]). “Where the issue of standing has been raised by the defendant, a plaintiff must prove its standing in order to be entitled to relief,” through “either a written assignment of the underlying note or the physical delivery of the note prior to the commencement of the foreclosure action.” (*GRP Loan*, 95 AD3d at 1173).

Summary judgment is appropriate when there is no issue of material fact and the movant is entitled to judgment as a matter of law. (CPLR §3212; *Zuckerman v New York*, 49 NY2d 557 [1980]; *St. Claire v Empire Gen. Contr. & Painting Corp.*, 33 AD3d 611 [2d Dept. 2006]). A movant has the initial burden of showing that no genuine issue of material fact exists. (*Alvarez v*

*Prospect Hosp.*, 68 NY2d 320 [1986]). The burden then shifts to the party opposing the motion for summary judgment to come forth with evidence, in admissible form, showing the existence of a triable issue of fact. (*Bercy Invx. v Sun*, 239 AD2d 161 [1st Dept. 1997]; *Federal Home Loan Mtge. Corp. v Karastathis*, 237 AD2d 558 [2nd Dept 1997]. Conclusory allegations unsupported by competent evidence are insufficient to defeat a motion for summary judgment. (*Alvarez v Prospect Hosp.*, *supra* at 324-25; *Zuckerman v New York*, *supra* at 562). Rather, dispositive motions based upon debt instruments will be granted unless a defendant brings forth demonstrative proofs beyond “shadowy and conclusory statements”. (*Hogan & Co. v Saturn Mgt.*, 78 AD2d 837 [1st Dept 1981]).

A plaintiff’s right to judgment of foreclosure is established as a matter of law through the production of the unpaid note, mortgage and evidence of the mortgagor’s default, thereby shifting the burden to the defendant to demonstrate, through both competent and admissible evidence, any defense which could raise a question of fact. (*Emigrant Mtge. Co., Inc. v Beckerman*, 105 AD3d 895 [2d Dept. 2013]; *Solomon v Burden*, 104 AD3d 839 [2d Dept. 2013]; *US Bank N.A. v Denaro*, 98 AD3d 964 [2d Dept. 2012]).

Here, the plaintiff has sufficiently proven the assignment of the mortgage. The affidavit of Winston Johnson, the note, mortgage, assignment of mortgage, first loan modification, assumption agreement, second loan medication, notice of default, RPAPL § 1304 notice, certificate of merit, affidavits of service, and other exhibits clearly satisfy the plaintiff’s *prima facie* burden (Exhibits 1-15). a true copy of the subject note endorsed to blank were annexed to the complain in this action. The defendant’s opposition fails to address any issue but standing, thereby waiving all remaining defenses. The defendant raises new opposition such as the alleged RESPA violation, certificate of merit, and the additional objections in the defendant’s September sur reply in

opposition which mirror the aforementioned claims. Even considering these defenses and arguments as timely, the defendant has failed to raise any trial issue of fact and has failed to put forth admissible evidence to challenge the plaintiff's motion. The defendant relies on conclusory allegations unsupported by the provided documents.

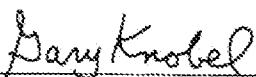
Accordingly, it is hereby

ORDERED, that plaintiff's motion is hereby granted in its entirety and the proposed order is executed simultaneously herewith.

This shall constitute the Decision and Order of the Court.

ENTER

DATED: December 31, 2024

  
HON. GARY F. KNOBEL J.S.C.

**ENTERED**

**Mar 07 2025**

NASSAU COUNTY  
COUNTY CLERK'S OFFICE