

HOF I Grantor Trust 5 v YLW Squared Inc.

2025 NY Slip Op 30681(U)

February 26, 2025

Supreme Court, Kings County

Docket Number: Index No. 531361/22

Judge: Lawrence Knipel

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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 26 day of February, 2025.

P R E S E N T:

HON. LAWRENCE KNIPEL,

Justice.

-----X

HOF I GRANTOR TRUST 5,

Plaintiff,

- against -

Index No. 531361/22

YLW SQUARED INC., YVONNE WILLIAMS, NYS DEPARTMENT OF TAXATION & FINANCE,

Defendants.

-----X

The following e-filed and hard copy papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations)_____

81, 143 82, 86-142, 145 1-3 247-262, 329
267-328, 399 330-366, 400 368-397, 401
417-419 421-427 475-476 480 481-482
489-492 493-494 496-498 510-511 516-517

Opposing Affidavits (Affirmations)_____

177 163-176 181-183 439 461-465 500-502
504-508 512 513-515 971, 973-1004

Reply Affidavits (Affirmations)_____

88-89 4 566 568-596 643, 645-696 703-753
790 792-855 862, 864-886 916, 918-947

Supplemental Affidavits (Affirmations)_____

890-893 894-897 898-901 902-905 906-909

Upon the foregoing papers in this action to foreclose a commercial mortgage encumbering the property at 53 Madison Street in Brooklyn (Property), non-party Leon Watson (Watson), a self-represented litigant and a 50% shareholder in the corporate borrower defendant, YLW Squared Inc. (YLW Squared or Defendant Borrower), moves (in motion sequence [mot. seq.] four), by order to show cause (OSC), for an order: (1)

staying the foreclosure auction of the Property that was scheduled on June 13, 2024;¹ (2) vacating the February 29, 2024 judgment of foreclosure and sale,² pursuant to CPLR 317, 5015 (a) (1), 5015 (a) (4), 1001 and in the substantial interest of justice; (3) vacating the June 6, 2023 order of reference, pursuant to CPLR 317, 5015 (a) (1), 5015 (a) (4), 1001 and in the substantial interest of justice; (4) dismissing this action for lack of personal jurisdiction, pursuant to CPLR 3211 (a) (8); and (5) awarding defendants actual, compensatory, punitive, statutory and treble damages (NYSCEF Doc No. 81). Defendant and guarantor of the mortgage, Yvonne Williams (Defendant Guarantor or Williams), a self-represented litigant, moves (in mot. seq. five), by OSC, for the identical relief that Watson seeks (NYSCEF Doc No. 82). Watson also moves (in mot. seq. seven) for an order: (1) granting him leave to intervene in this action; (2) vacating any default judgment entered against Defendant Borrower YLW Squared; and (3) dismissing the complaint as against YLW Squared (NYSCEF Doc No. 159).

YLW Squared moves (in mot. seq. eight) for an order, pursuant to CPLR 5015 vacating any and all default judgments entered against it and Yvonne Williams and dismissing the complaint (NYSCEF Doc No. 247). Defendant YLW Squared also redundantly moves (in mot. seq. nine) for an order:

¹ After oral argument, by a June 13, 2024 order, this court granted Watson's OSC only to the extent that the June 13, 2024 foreclosure auction was stayed (*see* NYSCEF Doc No. 144).

² Watson's OSC references a "**March 29, 2024**" judgment of foreclosure and sale, rather than the February 29, 2024 judgment of foreclosure and sale, which was subsequently entered on March 29, 2024 (NYSCEF Doc No. 81 [emphasis added]).

“dismissing the complaint, vacating all orders issued in this matter, for an order pursuant to CPLR § 5015 vacating any and all default judgments entered against [it] and Yvonne Williams. **Dismissing the Summons and Complaint** on the grounds that the pleadings were improperly served and verified by an attorney, and/or based on procedural and substantive deficiencies, including lack of standing, fraud, improper service, and lack of jurisdiction” (NYSCEF Doc No. 267).

After YLW Squared was “denied permission to submit an oversized brief . . .,” defense counsel claims that she “was forced to proceed with multiple motions so that the Court would be presented with the facts . . .” (NYSCEF Doc No. 331 at ¶ 3). YLW Squared moves in three separate motions (mot. seq. 10, 11 and 12) for the identical relief previously sought in motion sequences eight and nine:

“an order dismissing the complaint, vacating all orders, and vacating any default judgments against YLW Squared . . . and Yvonne Williams pursuant to CPLR § 5015 and CPLR § 317. The dismissal is sought due to extrinsic fraud, improper service, attorney-verified pleadings, and procedural deficiencies, including lack of standing, fraud and lack of jurisdiction” (NYSCEF Doc Nos. 330, 368 and 417).

Defendant Borrower YLW Squared moves (in mot. seq. 13), by OSC, for an order:

- (1) striking all submissions containing disparaging remarks against defense counsel;
- (2) striking all submissions failing to use defense counsel’s official name;
- (3) striking submissions of unauthorized reply briefs disguised as letters;
- (4) striking correspondence containing defense counsel’s personal information;
- (5) directing counsel to destroy all electronic or hard copies of NYSCEF Doc No. 464, regarding a prior action involving defense counsel and her former employer;
- (6) issuing defense counsel a protective order

“sealing” NYSCEF Doc No. 464; (7) disqualifying Doris Barkhordar, Esq. (Attorney Barkhordar) and the law firm of Deutsch & Schneider LLP from representing the Plaintiff; (8) imposing sanctions upon Attorney Barkhordar, Deutsch & Schneider LLP and its supervisors/partners Brian Goldberg, Esq., Joshua Deutsch, Esq., and William Felding, Esq., pursuant to 22 NYSCRR § 130-1.1 (Part 130); (9) reporting Attorney Barkhordar, Goldberg, Deutsch and Felding to the grievance committee for disciplinary action; and (10) awarding Defendants attorneys’ fees and treble damages (NYSCEF Doc No. 480).

YLW Squared also moves (in mot. seq. 14) for an order: (1) striking Plaintiff’s opposition in mot. seq. nine “for failing to comply with 22 NYCRR § 202.8-b governing word limits for briefs and motion papers in civil matters”; (2) imposing sanctions on Plaintiff’s counsel, pursuant to Part 130, for the willful disregard of procedural rules, failure to include a required certification of compliance and violations of the New York Rules of Professional Conduct and the New York Judiciary Law § 487; (3) awarding it attorneys’ fees and costs; and (4) awarding it treble damages (NYSCEF Doc No. 481).

Plaintiff and its counsel at Deutsch & Schneider LLP cross-move (in mot. seq. 16) for an order: (1) awarding treble damages incurred by Plaintiff and its counsel as against defense counsel Theresa Gedeon for her violation of Judiciary Law § 487; (2) awarding Plaintiff reasonable attorneys’ fees, pursuant to Part 130, incurred in responding to 11 frivolous post-judgment motions filed by YLW Squared, Williams and Watson.

Background

By a June 6, 2023, decision and order, this court granted Plaintiff an order of reference on default and without opposition appointing a referee to compute the amount due and owing to Plaintiff and to determine whether the Property can be sold in one parcel (NYSCEF Doc No. 22). By a February 29, 2024, order, this court granted Plaintiff's motion for a judgment of foreclosure and sale, confirmed the referee's report of amounts due and ordered that the referee sell the Property at a foreclosure auction (NYSCEF Doc No. 74). By a May 13, 2024, notice of sale, a foreclosure auction was scheduled to take place on June 13, 2024 (NYSCEF Doc No. 78).

The Pro Sé Motions to Vacate and Dismiss

On June 7, 2024, one week before the scheduled auction and *three months after* the February 29, 2024 judgment of foreclosure and sale was issued, Watson, a 50% shareholder in the corporate Defendant Borrower, YLW Squared, and Williams, the Defendant Guarantor of the corporate loan, separately moved by OSC in *identical motions* to stay the June 13, 2024 foreclosure auction, vacate the June 6, 2023 order of reference, vacate the February 29, 2024 judgment of foreclosure and sale and dismiss this foreclosure action, pursuant to CPLR 3211 (a) (8), based on improper service (NYSCEF Doc Nos. 81 and 82).

Williams submits an affidavit asserting that she has "meritorious defenses," including: (1) plaintiff forged loan and closing documents that rendered the note, mortgage and guaranty void at their inception on August 2, 2021; (2) "the contract of August 2, 2021, is void and therefore unenforceable since there was no agreement and no meeting of the

minds between YLW Squared Inc. and [the original lender] Insula Capital Group”; (3) Plaintiff lacks standing to sue as it was not “the true holder of the note at the commencement of the lawsuit”; (4) Plaintiff stole YLW Squared Inc. funds from an unrelated New Jersey construction draw; (5) “the loan matured on August 2, 2022, and should have been discharged”; (6) “plaintiff unlawfully and illegally removed YLW Squared Inc.’s co-owner Leon Watson from the pleadings”; and (7) “Yvonne Williams never guaranteed a loan for \$1,665,900” (NYSCEF Doc No. 86 at ¶ 2).

Williams, however, admits that she and Watson, each 50% shareholders in YLW Squared, hired a loan consultant, who, together with a loan officer, “secured financing for the purchase of 53 Madison Street through Insula Capital Group” (*id.* at ¶¶ 15-17). Williams attests that LaFleur David, Esq. was the attorney who incorporated YLW Squared and represented her and Watson as buyers of the Property through YLW Squared, but he never reviewed the loan documents with them prior to closing “as required by NYS law” (*id.* at ¶¶ 11, 22 and 25). Williams claims that she eventually learned on January 18, 2024, that the loan documents and YLW Squared’s biennial corporate statement were “altered and forged on June 29, 2021” by someone named Tammy Greenwald (*id.* at ¶¶ 87-95).

Watson’s Motion to Intervene

On September 6, 2024, three months after moving to vacate and dismiss, Watson moved for leave to intervene in this foreclosure action. Defense counsel for corporate defendant YLW Squared submits an attorney affirmation in support of Watson’s pro se motion emphasizing that “the proper question when deciding whether a person has a right

to intervene is whether ‘*the intervenor has a real and substantial interest in the outcome of the proceedings*’” (Theresa Gedeon, Esq. September 6, 2024 affirmation at ¶ 4). Defense counsel asserts, without explanation, that “Watson was excluded from the proceeding due to defective service and alleged fraudulent conduct by the plaintiff[.]” “Watson’s substantial ownership stake in the corporation and the property at stake justifies his intervention” and “[t]he foreclosure and potential sale of the property significantly impacts his financial interests in the corporation” (*id.* at ¶ 8).

Watson also submits an affirmation asserting that “Plaintiff secured a default judgment against Company YLW Squared Inc. and co-owner Yvonne Williams by committing fraud to prevent them from appearing in court[.]” “Plaintiff never included me, co-owner Leon Watson, in the suit, aiming to seize 100% control of the company” and “Plaintiff committed extrinsic fraud by keeping me away from the lawsuit and not serving me” (Leon Watson Affirmation at ¶¶ 1, 2 and 5). Essentially, Watson asserts that dismissal is warranted because he is a necessary party to this action (*id.* at ¶ 7).

Plaintiff’s Opposition

Plaintiff, in opposition to Watson’s intervention motion and OSC seeking relief on behalf of the corporate defendant, YLW Squared, argues that the motions are meritless because “said corporation has had two attorneys herein, has filed a prior motion seeking

the similar relief . . .”³ (NYSCEF Doc No. 181 at ¶ 2). Defense counsel asserts that Watson’s intervention motion “is baseless, as the borrower corporation has been named herein, and alleged shareholders are not necessary parties to foreclosure, to be individually named” (*id.* at ¶ 3). Plaintiff’s counsel further asserts that “Watson does not own the property, nor lived or lives at the property, and he solely claims to own shares in the corporation that owns the property, which corporation was named herein[,]” and thus, Watson is not a necessary party to this commercial foreclosure action under RPAPL 1311 and intervention is not warranted either as of right or by permission (*id.* at ¶¶ 22-23).

Plaintiff’s counsel argues that “intervention will unduly prejudice the substantial rights of plaintiff, by delaying this foreclosure at its last stage, especially given lack of equity with accruing statutory interest” (*id.* at ¶ 23). Counsel asserts that “the Corporation is the only owner and borrower, and its alleged shareholders who failed to appear to defend the Corporation herein, cannot now intervene individually to undo the foreclosure two years after its commencement, especially as they have no valid defense . . .” (*id.* at ¶ 24).

Plaintiff, in opposition to Williams’ OSC, submits an attorney affirmation arguing that “defaulting” Defendant Guarantor Williams’ motion is a meritless “delay tactic to stop the sale of her investment property” (NYSCEF Doc No. 163 at ¶ 2). Plaintiff’s counsel also notes that “Defendant Williams does not deny ratifying the mortgage by making

³ On July 10, 2023, Defendants YLW Squared and Williams collectively moved (in mot. seq. two) for an order vacating their appearance defaults and dismissing this action for lack of personal jurisdiction (NYSCEF Doc No. 34). By a September 19, 2023, decision and order, this court denied defendants’ motion (NYSCEF Doc No. 61).

interest payments, nor does she deny her corporation's default in paying off the mortgage upon [the August 2, 2022] maturity" of the loan (*id.* at ¶ 9).

Plaintiff's counsel further notes that defendants' former counsel filed a motion in 2023 seeking to vacate defendants' appearance default, pursuant to CPLR 3211 (a) (8), based on improper service, which was denied by the court's September 19, 2023, order, and Defendants failed to timely file a notice of appeal of that order (*id.* at ¶¶ 15-16). Plaintiff's counsel argues that the branch of Williams' OSC seeking to dismiss this action under CPLR 3211 (a) (8) for improper service must be denied under the law of the case doctrine (*id.* at ¶¶ 27-30). Notably, Plaintiff's counsel demonstrates that corporate Defendant YLW Squared was served through the New York Secretary of State and that Williams was personally served (*id.* at ¶ 31). Plaintiff's counsel also asserts that any motion filed by Williams on behalf of YLW Squared should be rejected because "corporations cannot proceed pro se and must be represented by counsel" pursuant to CPLR 321 (a) (*id.* at ¶¶ 24-25).

YLW Squared's Successive Motions to Vacate

YLW Squared's counsel requested *and was denied* leave to submit an oversized brief on its motion to vacate the order of reference and judgment of foreclosure and sale. To intentionally circumvent the court rule regarding the maximum length of motion papers, defense counsel admittedly divided her oversized moving papers into five motions all of which seek identical relief. Defense counsel thus admits that:

“Given that corporate counsel was verbally denied permission to submit an oversized brief, despite informing the court of the voluminous issues presented and the inability to thoroughly and accurately present the issues in one brief with a limit of 7,000, I was forced to proceed with multiple motions so that the Court would be presented with the facts since prior to the defendants entering the case, the plaintiff’s attorney verified complaint was devoid of any facts. Therefore, I further present motions #10, #11, and #12 to demonstrate that the July 3, 2023, default judgment was obtained through extrinsic fraud, that jurisdiction was never established, and that service in this case was fundamentally defective” (NYSCEF Doc No. 331 at ¶ 3 [emphasis added]).

On September 27, 2024, YLW Squared moved in mot. seq. eight for an order, pursuant to CPLR 5015, “vacating any and all default judgments entered against [it] and Yvonne Williams [and] dismissing the complaint . . .” (NYSCEF Doc No. 247).

On October 7, 2024, YLW Squared filed mot. seq. nine, once again seeking an order, pursuant to CPLR 5015, “vacating any and all default judgments entered against [it] and Yvonne Williams” and “[d]ismissing the Summons and Complaint on the grounds that the pleadings were improperly served and verified by an attorney, and/or based on procedural and substantive deficiencies, including lack of standing, fraud, improper service, and lack of jurisdiction” (NYSCEF Doc No. 267). On October 18, 2024, October 21, 2024, and October 28, 2024, YLW Squared filed mot. seq. 10, 11 and 12, respectively, seeking the same relief (NYSCEF Doc Nos. 330, 368 and 417). Because these redundant motions all seek the exact same relief, and this court specifically denied defense counsel’s application to submit oversized moving papers, this court will only consider the arguments asserted in support of YLW Squared’s first filed motion (mot. seq. eight).

YLW Squared submits an attorney affirmation seeking an order “vacat[ing] all orders issued in this matter,” including the order of reference and the judgment of foreclosure and sale and dismissing the summons and complaint (NYSCEF Doc No. 248). Despite the fact that service was previously challenged, defense counsel, once again, asserts that “[t]he Corporate Defendant nor its agent received actual notice of the summons, which was delivered to the Secretary of State . . .” (*id.* at ¶ 9). Williams submits an affidavit claiming that “the Corporate Entity was never served by the Secretary of State because Loan Funder’s co-conspirators, the Greenwalds, committed fraud on service by tampering with our 2021 biennial statement” (NYSCEF Doc No. 399 at ¶ 105). Defense counsel also argues that Williams’ signature was forged on the August 2, 2021, note and guaranty (NYSCEF Doc No. 248 at ¶ 15), while Williams inconsistently claims that she was defrauded *after* the August 2, 2021 loan closing (NYSCEF Doc No. 261 at ¶¶ 48-49).

Defense counsel further asserts that dismissal is warranted for lack of standing because “Plaintiff has failed to properly demonstrate that it was the holder of the note at the time the action was commenced” (*id.* at ¶ 16). Defense counsel argues that “[a]lthough *the allonge contains a special indorsement payable to the plaintiff*, it fails to comply with U.C.C. § 3-202 . . .” because “there was sufficient space - four inches of white space at the bottom, and two inches of white space at the top - to include the endorsements on the note, therefore an allonge was unnecessary” (*id.* at page 15 [emphasis added]).

In the final pages of defense counsel’s hybrid moving affirmation/brief, she asserts that CPLR 5015 warrants vacatur of the “default judgments” because the action was

commenced by fraud (*id.* at page 22). Defense counsel claims that “[t]he allonge is not firmly affixed to the note, which undermines its validity and casts doubt on the plaintiff’s claim of standing” (*id.* at page 23). Defense counsel asserts that “neither the plaintiff’s loan servicer nor the sub-servicers mentioned the existence of these purported allonges or assignments in their affidavits, further calling into question the authenticity of these documents” (*id.*). Essentially, defense counsel argues that the order of reference and judgment of foreclosure and sale should be vacated because the allonge in which the note was endorsed to Plaintiff appears on a separate page rather than on the four inches of space at the very bottom of the note.

Plaintiff’s Opposition

Plaintiff, in opposition to mot. seq. eight, submits an attorney affirmation arguing that “the relief sought in the latest notice of motion (Sequence #8) must be denied, based on Law of the Case doctrine, as there is no basis in law or fact for said relief” because “defendants have no excuse for default, no meritorious defense, and no other basis to vacate the Order granting default, and Judgment of Foreclosure and sale entered herein” (NYSCEF Doc No. 439 at ¶ 3).

Plaintiff’s counsel asserts that “[n]one of the defendants filed an Answer herein since being served in November/December 2022 . . .” (*id.* at ¶ 12). Counsel explains that given defendants’ default, Plaintiff moved for an order of reference *on notice* to defendants at the address listed in the loan documents and the address at which Williams was served (*id.* at ¶ 13 at fn. 2). Counsel affirms that notice of entry of the court’s June 6, 2023 order

granting Plaintiff an order of reference was also served upon Defendants YLW Squared and Williams, who failed to timely notice an appeal (*id.* at ¶ 14; NYSCEF Doc No. 23). Plaintiff's counsel recounts that "[t]hereafter, on 8/31/23, the plaintiff served defendants' counsel with a Notice of referee's computations (indicating that if no objections to the proposed report attached thereto is filed, the report would be signed based on the evidence plaintiff provided)" (NYSCEF Doc No. 439 at ¶ 18). When defense counsel did not file objections to the proposed report, it was issued by the referee on September 25, 2023 (*id.*, NYSCEF Doc No. 60). Counsel asserts that Plaintiff's November 16, 2023, motion to confirm the referee's report and for judgment of foreclosure and sale, which was opposed, was granted by this court's February 5, 2024 order (NYSCEF Doc No. 439 at ¶ 19; NYSCEF Doc No. 68).

Plaintiff's counsel asserts that the corporate defendant YLW Squared has "filed four (4) other similar motions subsequently, as sequence # 9-12 . . . clearly showing their abuse of Court system in filing repeated motions for similar relief" (NYSCEF Doc No. 439 at ¶ 24). Plaintiff's counsel asserts that "[c]ounsel for Corporate defendant/movant argues that the default Judgment must be vacated per CPLR 5015, but does not prove such, instead submits a 24 page affirmation and memo of law, wherein her main erroneous argument is that plaintiff lacks standing . . ." (*id.* at ¶ 25).

Counsel argues that "the fact that both corporate defendant and guarantor's prior counsel . . . appeared and did not raise any of the newly raised allegations in an Answer cannot be undone now after the entry of Judgment of Foreclosure and sale" (*id.* at ¶ 26).

Counsel further argues that defendants previously moved to vacate the order of reference in mot. seq. two based on lack of service, which was denied by a September 19, 2023 order (*id.* at ¶¶ 27 and 29). Counsel asserts that:

“Now, over a year since that prior motion was denied, in a motion by new counsel, corporate defendant has come up with all kinds of fabricated stories as to why corporate borrower and guarantor’s default should be vacated, with new proposed alleged defenses. However, procedurally such request must be denied as untimely, and in violation of the law of the case doctrine” (*id.* at ¶ 30).

Plaintiff’s counsel asserts that Defendants have failed to proffer any excuse for their defaults and that they lack a meritorious defense to this action (*id.* at ¶ 31). Counsel notes that “[a]lthough defendant Williams baselessly and baldly alleges ‘forgery’ in the loan documents, she does not deny going to the closing and signing loan documents . . .” (*id.* at ¶ 32). Counsel asserts that Williams’ conclusory assertion of forgery is insufficient to raise an issue of fact, and “defendants **ratified** the alleged ‘forged’ loan documents by continuing to remit mortgage interest payments after receiving copies of such documents after the closing and by retaining the benefits of the loan” (*id.* at ¶¶ 33-34).

Regarding standing, Plaintiff’s counsel asserts that the defense was waived because Defendants failed to assert it in an answer or in a timely dismissal motion (*id.* at ¶ 39). Counsel also contends that standing was established when the endorsed note was annexed to the complaint, thereby establishing that Plaintiff was in possession of the note at the time of commencement (*id.* at ¶ 37).

Discussion

(1)

Watson's Motion to Intervene

CPLR 1012 (a) (3) provides that a party may intervene as of right “when the action involves the disposition or distribution of, or the title or a claim for damages for injury to, property and the person may be affected adversely.” CPLR 1013 provides that a court has discretion to permit a person to intervene “when the person’s claim or defense and the main action have a common question of law or fact” and, in exercising its discretion, “the court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party.”

Specifically in mortgage foreclosure actions, “RPAPL 1311 codifies the equitable principle that persons holding title to the premises or acquiring any right to or lien on the property subsequent to the mortgage should be made defendants in the foreclosure action” (*Polish Nat. All. of Brooklyn, U.S.A. v White Eagle Hall Co.*, 98 AD2d 400, 403 [2d Dept 1983]), and *does not include* shareholders of a corporate borrower (RPAPL 1311).

A property owner’s motion for leave to intervene in an action to foreclose the property must be made “[u]pon a timely motion . . .” (*HSBC Bank USA, National Assoc. v Minogue*, 202 AD3d 662, 662 [2d Dept 2022] [affirming denial of proposed intervenor’s motion for leave to intervene in foreclosure action as untimely since it was made “months after the judgment of foreclosure and sale was issued”]; *JP Morgan Chase Bank, N.A. v Edelson*, 90 AD3d 996, 996-997 [2d Dept 2011] [same]). The Second Department has

indicated that a motion for leave to intervene in a foreclosure action *after* a judgment of foreclosure and sale has been issued would be prejudicial to the plaintiff (*ABM Resources, Corp. v Doraben, Inc.*, 89 AD3d 773, 774 [2d Dept 2011]).

Additionally, the Second Department has held that “[t]he court has no power to grant leave to intervene where . . . the prospective intervenor[] did not include in [its] motion papers a proposed pleading setting forth the claim or defense for which intervention is sought” (*New Hope Missionary Baptist Church, Inc. v 466 Lafayette Ltd.*, 169 AD3d 811, 812 [2d Dept 2019] [internal quotation marks omitted]).

Here, Watson, a shareholder of the corporate Defendant Borrower, YLW Squared, has provided no grounds upon which to intervene in this foreclosure action. Watson inexplicably waited more than six months after the February 29, 2024 judgment of foreclosure and sale was issued before moving for leave to intervene in this foreclosure action, which delay is prejudicial to the Plaintiff. In addition to being untimely, Watson fails to submit a proposed answer to the complaint with his intervention motion, which is mandatory under CPLR 1014.⁴ Finally, Watson does not have a substantial interest in the outcome of this foreclosure action simply because he is a shareholder of the corporate Defendant Borrower, nor does he claim that the corporation’s counsel is insufficient. Under the facts and circumstances of this commercial foreclosure action, denial of Watson’s untimely motion for leave to intervene (mot. seq. seven) is warranted, as a matter of law.

⁴ CPLR 1014 provides that “[a] motion to intervene shall be accompanied by a proposed pleading setting forth the claim or defense for which intervention is sought.”

Consequently, non-party Watson's OSC (in mot. seq. four) seeking substantive relief in this action, is denied as moot.

(2)

The Successive Motions to Vacate and Dismiss

YLW Squared and its counsel redundantly filed five successive motions (mot. seq. eight through twelve), all of which seek an order vacating the order of reference granted on default and the judgment of foreclosure and sale, pursuant to CPLR 5015, and dismissing the complaint for lack of standing and lack of personal jurisdiction. Williams, a self-represented litigant, also filed a nearly identical OSC in mot. seq. five.

“When a defendant seeking to vacate a default judgment raises both a jurisdictional objection pursuant to CPLR 5015 (a) (4) and seeks a discretionary vacatur pursuant to CPLR 5015 (a) (1), the court is required to resolve the jurisdictional question before determining whether it is appropriate to grant a discretionary vacatur of the default . . .” (*E*Trade Bank v Vasquez*, 126 AD3d 933, 933-934 [2d Dept 2015] [internal quotation marks omitted]).

Defendants' challenge to service of process upon defendant YLW Squared by delivery of the summons and complaint to the Secretary of State was previously denied by this court's September 19, 2023 order (NYSCEF Doc No. 61). That same order denied defendants' challenge to personal service upon Williams, the Defendant Guarantor (*id.*). This court's prior finding of proper service of process constitutes the law of the case (*Globe Trade Cap., LLC v Hoey*, 199 AD3d 772, 774 [2d Dept 2021]). Thus, YLW Squared's and

Williams' motions to vacate and dismiss are denied to the extent that they are based on a lack of personal jurisdiction.

Similarly unavailing is defendants' assertion that Plaintiff HOF I lacks standing to foreclose, which Defendants assert as a "meritorious defense" in support of their CPLR 5015 (a) (1) motions. HOF I commenced this action on October 28, 2022, by filing a summons and a complaint which annexed, as an exhibit, a copy of the August 2, 2021 promissory note in favor of the original lender, Insula Capital Group (Insula), together with two allonges with endorsements: (1) from Insula payable to the order of Loan Funder LLC Series 23400 (Loan Funder), and (2) from Loan Funder payable to the order of HOF I (NYSCEF Doc No. 2 at 8). It is well-settled that a plaintiff establishes its standing to foreclose, as a matter of law, by attaching the promissory note to the summons and complaint with the proper endorsements (*Wilmington Sav. Fund Soc'y, FSB v Hack*, 209 AD3d 798, 800 [2d Dept 2022] [holding that "defendant failed to proffer any evidence rebutting the plaintiff's showing that it had physical possession of the consolidated note at the time it commenced the action, as evidenced by its attachment of a copy of the note, endorsed in blank, to the summons and complaint"]).

Here, defendants admit that the note was assigned to Plaintiff HOF I *before* Plaintiff commenced this action on October 28, 2022 (*see* NYSCEF Doc No. 248 at page 17). The fact that the endorsed note was annexed to the summons and complaint demonstrates that HOF I had possession of the note and had the requisite standing at the time HOF I commenced this commercial foreclosure action. Contrary to defense counsel's assertion,

the four inches of space at the bottom of the promissory note contains insufficient room for the endorsements of the note and does not raise an issue regarding Plaintiff's standing to foreclose.

Defense counsel further argues that Williams' signature was forged on the promissory note (NYSCEF Doc No. 248 at ¶ 15). Williams, however, inconsistently admits (in an affidavit submitted in support of mot. seq. five) that she and Watson, as shareholders of YLW Squared, hired a loan consultant and "secured financing for the purchase of 53 Madison Street through Insula . . ." (NYSCEF Doc No. 86 at ¶¶ 15-17). Defense counsel's assertion that the loan documents were forged is unavailing since Williams admits that she and Watson knowingly obtained financing for YLW Squared's purchase of the Property. The claim of forgery for the first time at this late juncture is indeed suspect, especially since Williams and YLW Squared do not deny that Williams made interest payments on the loan.

In conclusion, neither YLW Squared and its counsel, nor Williams, provided any valid legal or factual ground to vacate their appearance defaults, the order of reference or the judgment of foreclosure and sale. Consequently, the motions to vacate and dismiss filed by Williams and YLW Squared in mot. seq. five and eight are denied, and the redundant and duplicative motions seeking the identical relief (mot. seq. nine, 10, 11 and 12) are denied as moot.

(3)

“[T]he court, in its discretion may impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in frivolous conduct as defined in this Part . . .” (22 NYCRR 130-1.1 [a]). Conduct is frivolous if “it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law” or “it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another” (*id.* at [c] [1], [2]). “The plain meaning, and the only reasonable construction of the language used in this rule, indicates that conduct meeting either of the two definitions of frivolousness can be sanctioned” (*Gordon v Marrone*, 202 AD2d 104, 110 [2d Dept 1994]). Notably, New York appellate courts have held that “the imposition of sanctions involves a more persistent pattern of repetitive or meritless motions” (*Sarkar v Pathak*, 67 AD3d 606, 607 [1st Dept 2009]; *c.f. Minister, Elders & Deacons of Reformed Protestant Dutch Church of City of New York v 198 Broadway, Inc.*, 76 NY2d 411, 414 [1990] [holding that the tenant had used the courts and improperly filed duplicative motions “not as a means of resolving a genuine legal dispute, but rather as a mechanism to delay [its] inevitable eviction” from the property]; *Ofman v Campos*, 12 AD3d 581, 582 [2d Dept 2004] [holding that imposition of Part 130 sanctions were warranted where appellant made three consecutive motions seeking, in essence, the same relief because “such duplicative motions unnecessarily prolonged the litigation”]).

While YLW Squared and its counsel admittedly filed duplicitous motions for the same relief in an effort to circumvent this court's denial of its request to submit oversized moving papers, the court, in its discretion, denies Plaintiff's cross-motion for the imposition of Part 130 sanctions. Defense counsel is admonished, however, that sanctions may be imposed if YLW Squared continues with vexatious litigation and repetitive motions seeking the same relief to further delay the final stage of these proceedings.

This court has reviewed the voluminous papers submitted by the parties and the redundant arguments that were previously raised, considered and rejected by this court. The court has also considered the merits of the remaining motions filed by the parties, including what appears to be a motion for a protective order *for defense counsel* based on an unrelated prior action involving her former employer, a motion to disqualify Plaintiff's counsel and for the imposition of Part 130 sanctions against Plaintiff's counsel. The forgoing motions are each denied, as they have no merit and seem to have been filed in an obvious attempt to delay a foreclosure sale of the Property. Accordingly, it is

ORDERED that Watson's motion for leave to intervene (mot. seq. seven) is denied and Watson's OSC (mot. seq. four) is denied as moot; and it is further

ORDERED that Williams' OSC to vacate and dismiss (mot. seq. five) is denied; and it is further

ORDERED that YLW Squared's motion to vacate the order of reference and judgment of foreclosure and sale (mot. seq. eight) is denied with prejudice and the redundant motions (mot. seq. nine, 10, 11 and 12) are all denied as moot; and it is further

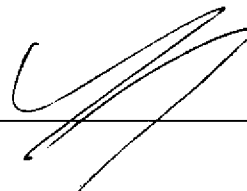
ORDERED that YLW Squared's OSC for a protective order and other relief (mot. seq. 13) and motion for the imposition of Part 130 sanctions (mot. seq. 14) are denied; and it is further

ORDERED that Plaintiff's cross-motion for the imposition of Part 130 sanctions (mot. seq. 16) is denied.

This constitutes the decision and order of the court.

E N T E R,

J. S. C.



**HON. LAWRENCE KNIPEL
SUPREME COURT JUSTICE**