

Santander Bank, N.A. v Locicero

2025 NY Slip Op 31671(U)

April 22, 2025

Supreme Court, Kings County

Docket Number: Index No. 525175/2022

Judge: Carolyn E. Wade

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At an IAS Part 84 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Brooklyn, New York 11201 on the 7th day of April, 2025

PRESENT: Hon. Carolyn E. Wade, J.S.C.

SANTANDER BANK, N.A.,

Plaintiff,

-against-

STEVEN LOCICERO and 4220 3RD AVE HOUSING LLC, and JOHN DOES #1 – 10,

Defendants.

Index No. 525175/2022

DECISION AND ORDER

Mot. Seq. 001

The following papers were submitted in connection with Plaintiff, Santander Bank, N.A.’s (“Plaintiff”) Motion for Summary Judgment (the “Motion”):

- (i) the Summons and Verified Complaint and the exhibits thereto (ECF Dkt No. 1-5),
- (ii) the Answer of the defendants, Steven Locicero and 4220 3rd Housing, LLC (jointly, the “Defendants”) (ECF Dkt No. 7),
- (iii) the Notice of Motion (ECF Dkt No. 9), the Affidavit of Ana Stesney (the “Stesney Affidavit”) and the exhibits thereto in support of the Motion (ECF Dkt No. 10-12), the Affirmation of Linda Mandel Gates (the “Gates Affirmation”) and the exhibits thereto in support of the Motion (ECF Dkt No.’s 13-17), the Memorandum of Law in Support of the Motion (ECF Dkt No. 18), and the Statement of Material Facts in Support of the Motion (ECF Dkt No. 19) (“Plaintiff’s Statement of Material Facts”);
- (iv) the Affirmation of Jerald J. DeSocio and the exhibits thereto in Opposition to the Motion

(ECF Dkt No. 21), the Affidavit of Steven Locicero (ECF Dkt No. 22) (the “Locicero Affidavit”), and the respective exhibits annexed to said Affirmation and Affidavit in Opposition to the Motion (ECF Dkt No.’s 23-29), and

(v) the Reply Affirmation of Linda Mandel Gates dated in Further Support of the Motion (ECF Dkt No. 31).

The Court having heard the parties hereto, upon oral argument of the Motion held before the Court on December 4, 2024; and for good and sufficient cause having been shown, it is hereby determined that:

“[T]he 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 NY2d 320, 324 [1986]; see also *William J. Jèneck Estate Appraisers & Auctioneers, Inc. v. Rabizadeh*, 22 NY3d 470, 475-476 [2013]; CPLR 3212 [b]). Once the movant makes the proper showing, “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” (*Alvarez*, 68 NY2d at 324). The “facts must be viewed in the light most favorable to the non-moving party” (*Vega v. Restani Constr. Corp.*, 18 NY3d 499, 503 [2012] [internal quotation marks omitted]). However, bald, conclusory assertions or speculation and “[a] shadowy semblance of an issue” are insufficient to defeat summary judgment (*S.J. Capelin Assoc. v. Globe Mfg. Corp.*, 34 NY2d 338, 341 [1974]), as are merely conclusory claims (*Putrino v. Buffalo Athletic Club*, 82 NY2d 779, 781 [1993]).

Plaintiff’s *prima facie* entitlement to summary judgment is established by: (a) the Stesney Affidavit and attached exhibits, which includes: (i) executed copies of the Loan Documents (as

defined in the Stesney Affidavit) upon which each of its claims are based; and (ii) account records of Plaintiff demonstrating the amount owed; and, (b) the Gates Affirmation, and attached exhibits, which includes a copy of the deed dated November 24, 2015 (the "Deed"), whereby the borrower and defendant, Steven Locicero (the "Borrower") conveyed record title of the property subject to Plaintiff's mortgage, and located at 4220 Third Avenue, Brooklyn, New York (the "Property"), to defendant, 4220 3rd Ave Housing LLC ("3rd Ave Housing"), and which further includes copies of transfer documents showing the title transfer was for no consideration, and that the Borrower is the sole member of 3rd Ave Housing, and which the Stesney Affidavit, the Gates Affirmation, and the respective Exhibits accompanying same further show:

Borrower defaulted under the terms and conditions of the above-described Loan Documents by, *inter alia*: (1) conveying the Deed for the Property to 3rd Ave Housing for no consideration, which default was admitted by Defendants based upon their failure to respond to Plaintiff's Statement of Material Facts (See Plaintiff's Statement of Material Facts, ¶¶ 4-5), and which default is not otherwise disputed by Defendants (See Locicero Affidavit, ¶ 9); and, (2) as a result of other defaults under the Loan Documents, including without limitation, the failure to pay the real estate taxes assessed against the Property when due, which default was admitted by Defendants based upon their failure to respond to Plaintiff's Statement of Material Facts (See Plaintiff's Statement of Material Facts, ¶7) and otherwise acknowledged by defendant, Steven Locicero (See Locicero Affidavit, ¶ 17); and

Since the Plaintiff has made its *prima facie* showing, the burden shifted to the Defendants to present sufficient evidence to establish the existence of material issues of fact requiring a trial. See, CPLR 3212(b); *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320 (1986); and,

The Affirmative Defenses asserted by Defendants in the Answer have either been waived

pursuant to the express provisions of the Loan Documents (*Malsin v. Stockman*, 265 A.D.2d 533, 697 N.Y.S.2d 139 (2nd Dept. 1999) (enforced defendant's waiver of right to raise defenses as counterclaim or setoff to enforcement of note and affirmed summary judgment to plaintiff pursuant to CPLR § 3213), or the Affirmative Defenses otherwise independently lack merit for the reasons set forth in Point V of Plaintiff's Memorandum of Law filed in Support of the Motion on January 12, 2023 (ECF Dkt No. 18) (*Cohen Fashion Optical, Inc. v. V & M Optical, Inc.*, 51 A.D.3d 619, 619-620 (2d Dept. 2008) (dismissing affirmative defenses that "were unsubstantiated by any factual allegations and conclusory in nature"); *Glenesk v. Guidance Realty Corp.*, 36 A.D.2d 852, 853, 321 N.Y.S.2d 685 (2nd Dept. 1971) (finding affirmative defenses plead as conclusions of law without supporting facts "are fatally deficient and should be struck"); *Bentivegna v. Meenan Oil Co., Inc.*, 126 A.D.2d 506, 510 N.Y.S.2d 626 (2nd Dept. 1987) (striking boilerplate defenses plead without supporting facts); and

Plaintiff having submitted the Affirmation of Robert Hewitt sworn to on January 8, 2025 (ECF Docket No. 49) (the "Hewitt Affirmation") which Hewitt Affirmation was submitted solely to reflect that the Plaintiff is now seeking to enter summary judgment in a lesser amount than the amount originally sought by Plaintiff when the Motion was initially filed on January 12, 2023, to properly reflect all payments that have been remitted by Defendants to Plaintiff subsequent to said date; it is hereby

ORDERED, that Plaintiff's Motion is hereby GRANTED in its entirety; and it is further

ORDERED, that Defendants' Answer and all the affirmative defenses contained therein are hereby stricken with prejudice; and it is further

ORDERED, that as set forth in the Hewitt Affirmation, SANTANDER BANK, N.A., plaintiff herein, located at 95 Amara Street, East Providence, Rhode Island 02915, does recover

of defendant, STEVEN LOCICERO, an individual residing at 8019 Ridge Avenue, Brooklyn, New York 11209 and/or 176 33rd Street, Brooklyn, New York 11232: (a) the outstanding principal sum of \$88,207.03, as of January 7, 2025, plus (b) outstanding interest accrued thereon through January 7, 2025 in the sum of \$957.49, plus (c) interest on the principal sum continuing to accrue from January 8, 2025 through the date of entry of Judgment at the default rate of 18% per annum provided in the Note, plus (d) costs as taxed by the Clerk, and, it is further

ORDERED, that 4220 3rd Ave Housing LLC is directed to immediately transfer title to the Property located at 4220 Third Avenue, Brooklyn, New York back to Steven Locicero, paying all required fees for the recording of a deed to effectuate the transfer; and it is further

ORDERED, that the Clerk enter judgment forthwith and that the Plaintiff have execution therefor.

This constitutes the Decision and Order of the Court.

Dated: April 12, 2025
Brooklyn, New York

ENTER



Honorable Carolyn E. Wade, J.S.C.

**Hon. Carolyn E. Wade
Supreme Court Justice**

**KINGS COUNTY CLERK
FILED
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