

NPL Fund LLC v 324 E. 14th St. LLC

2025 NY Slip Op 31675(U)

April 3, 2025

Supreme Court, New York County

Docket Number: Index No. 850622/2023

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. 850622/2023
NPL FUND LLC, MOTION DATE _____
Plaintiff, MOTION SEQ. NO. 003

- v -

324 EAST 14TH STREET LLC, NEJATOLLAH SASSOUNI,
SUSAN SASSOUNI, NAMDAR EAST VILLAGE HOLDINGS
LLC, THE CITY OF NEW YORK ENVIRONMENTAL
CONTROL BOARD, THE CITY OF NEW YORK, CRIMINAL
COURT OF THE CITY OF NEW YORK, JOHN DOE #1
THROUGH JOHN DOE #20

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 93, 94, 95, 127

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, the motion is determined as follows:

In this action, Plaintiff seeks to foreclose on a mortgage encumbering residential real property located at 324 East 14th Street, New York, New York. The mortgage, dated April 6, 2016, was given by Defendant 324 East 14th Street LLC (“East”) to non-party Dime Savings Bank of Williamsburgh (“Dime”) to secure an indebtedness with an original principal amount of \$1,500,000.00. The loan is memorialized by a note dated the same as the mortgage. The loan documents were signed by Defendant Nejatollah Sassouni as Member of East. Concomitantly with the note and mortgage, Defendant Nejatollah and Defendant Susan Sassouni executed an indemnity and guaranty agreement. Plaintiff commenced this action alleging that the Mortgagor committed multiple defaults not related to repayment of the loan. Defendants East and Sassounis answered and pled nineteen affirmative defenses, including lack of standing and failure to comply with RPAPL §§1303, 1304 and 1306.

Now, Plaintiff moves for summary judgment against the appearing Defendants, to strike their answers and affirmative defenses, for an order of reference and to amend the caption. Defendants East and Sassounis oppose the motion. Defendant Namdar East Village Holdings LLC initially opposed the motion but withdrew same while this matter was *sub judice*.

In moving for summary judgment, Plaintiff was required to establish *prima facie* entitlement to judgment as a matter of law though proof of the mortgage, the note, and evidence of Defendants’ default in repayment (*see U.S. Bank, N.A. v James*, 180 AD3d 594 [1st Dept 2020]; *Bank of NY v Knowles*, 151 AD3d 596 [1st Dept 2017]; *Fortress Credit Corp. v Hudson Yards, LLC*, 78 AD3d 577 [1st Dept 2010]). Proof supporting a *prima facie* case on a motion for summary judgment must be in admissible form (*see*

CPLR §3212[b]; *Tri-State Loan Acquisitions III, LLC v Litkowski*, 172 AD3d 780 [1st Dept 2019]). Also, based on the affirmative defenses pled, Plaintiff was required to demonstrate its standing (*see eg Wells Fargo Bank, N.A. v Tricario*, 180 AD3d 848 [2nd Dept 2020]). Plaintiff was also obliged to establish strict compliance with, or demonstrate the inapplicability of, RPAPL §§1303, 1304 and 1306 (*see U.S. Bank, NA v Nathan*, 173 AD3d 1112 [2d Dept 2019]; *HSBC Bank USA, N.A. v Bermudez*, 175 AD3d 667, 669 [2d Dept 2019]). As proof in support of the motion, a plaintiff in a foreclosure action may rely on evidence from persons with personal knowledge of the facts, documents in admissible form and/or persons with knowledge derived from produced admissible records (*see eg U.S. Bank N.A. v Moulton*, 179 AD3d 734, 738 [2d Dept 2020]). No specific business records must be proffered, as long as the admissibility requirements of CPLR 4518[a] are fulfilled and the records evince the facts for which they are relied upon (*see eg Citigroup v Kopelowitz*, 147 AD3d 1014, 1015 [2d Dept 2017]).

Plaintiff's motion was supported by an affidavit from Daniel Nadri, ("Nadri"), the manager of Plaintiff. Nadri avers that his affidavit is based on personal knowledge of Plaintiff's record keeping practice as well as a review of those records. Nadri's affidavit laid a proper foundation for the admission Plaintiff's records into evidence under CPLR §4518 by sufficiently showing that the records "reflect[ed] a routine, regularly conducted business activity, and that it be needed and relied on in the performance of functions of the business", "that the record[s][were] made pursuant to established procedures for the routine, habitual, systematic making of such a record" and "that the record[s] [were] made at or about the time of the event being recorded" (*Bank of N.Y. Mellon v Gordon*, 171 AD3d 197, 204 [2d Dept 2019]; *see also Bank of Am v Brannon*, 156 AD3d 1 [1st Dept 2017]). The records of other entities were also admissible since Nadri established that those records were received from the makers and incorporated into the records Plaintiff kept and that it routinely relied upon such documents in its business (*see eg U.S. Bank N.A. v Kropp-Somoza*, 191 AD3d 918 [2d Dept 2021]). Further, the records referenced by Nadri were annexed to the moving papers (*cf. Deutsche Bank Natl. Trust Co. v Kirschenbaum*, 187 AD3d 569 [1st Dept 2020]). Nadri's review of the attached records demonstrated the material facts underlying the claim for foreclosure, to wit the mortgage, note, and evidence of mortgagor's default (*see eg ING Real Estate Fin. (USA) LLC v Park Ave. Hotel Acquisition, LLC*, 89 AD3d 506 [1st Dept 2011]; *see also Bank of NY v Knowles*, *supra*; *Fortress Credit Corp. v Hudson Yards, LLC*, *supra*).

As to standing in a foreclosure action, it is established in one of three ways: [1] direct privity between mortgagor and mortgagee, [2] physical possession of the note prior to commencement of the action that contains an indorsement in blank or bears a special indorsement payable to the order of the plaintiff either on its face or by allonge, and [3] assignment of the note to Plaintiff prior to commencement of the action (*see eg Wells Fargo Bank, N.A. v Tricario*, 180 AD3d 848 [2d Dept 2020]; *Wells Fargo Bank, NA v Ostiguy*, 127 AD3d 1375 [3d Dept 2015]). Here, annexed to Nadri's affidavit were three written assignments of the mortgage, all dated before the action was commenced. Although a written assignment of a mortgage is often a nullity in this context (*see eg U.S. Bank N.A. v Dellarmo*, 94 AD3d 746, 748 [2d Dept 2012]), all three assignments provide the mortgage was transferred "together" with any "note". This language sufficiently established conveyance of the note and rendered any issues concerning the allonges and physical delivery of the note irrelevant (*see Broome Lender LLC v Empire Broome LLC*, 220 AD3d 611 [1st Dept 2023]; *US Bank Natl. Assn. v Ezugwu*, 162 AD3d 613 [1st Dept 2018]).

In opposition, Defendants' claim that Plaintiff failed to lay a proper foundation under CPLR §4518 is ineffective. The affidavit and proffered business documents were all in admissible form. Further, since none of the salient facts on the issues of the note, mortgage and the default were

contradicted by any of the appearing Defendants, they are “deemed to be admitted” (*Bank of Am NA v Brannon*, 156 AD3d, 1, 6 [1st Dept 2017]). The arguments concerning standing notice fail for the reasons stated supra. The argument that Plaintiff has not demonstrated Nadri’s authority to act is inapposite. One with a relation to the parties (eg. an employee), to the cause of action or an eyewitness to events, related to the action or otherwise, often constitutes, in and of itself, satisfactory proof of an affiant’s knowledge (*see eg Wallace v Baring*, supra at 478; *see also Klein v Trout Lake Preserve Homeowners’ Assn.*, 179 AD2d 967, 968 [3d Dept 1992]). Nadri’s statement that as “the manager” of Plaintiff with express knowledge of its record keeping practices and the within loan establishes Nadri’s bona fides.

As to the branch of Plaintiff’s motion to dismiss Defendants’ affirmative defenses and counterclaims, CPLR §3211[b] provides that “[a] party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit”. For example, affirmative defenses that are without factual foundation, conclusory or duplicative cannot stand (*see Countrywide Home Loans Servicing, L.P. v Vorobyov*, 188 AD3d 803, 805 [2d Dept 2020]; *Emigrant Bank v Myers*, 147 AD3d 1027, 1028 [2d Dept 2017]). When evaluating such a motion, a “defendant is entitled to the benefit of every reasonable intendment of its pleading, which is to be liberally construed. If there is any doubt as to the availability of a defense, it should not be dismissed” (*Federici v Metropolis Night Club, Inc.*, 48 AD3d 741, 743 [2d Dept 2008]).

RPAPL §1304 is inapplicable to this action as the encumbrance is not a residential mortgage, to wit the borrower was not a “natural person” and debt was not incurred by the borrower primarily for “personal, family, or household purposes” (*see* RPAPL §1304[6][a][1][i] and [ii]; *Bernstein v Dubrovsky*, 169 AD3d 410 [1st Dept 2019]; *Independence Bank v Valentine*, 113 AD3d 62 [2d Dept 2013]). Since RPAPL §1304 is inapplicable, compliance with RPAPL §1306 was not required (*see* RPAPL §1306[1]). The affirmative defense pursuant to RPAPL §1303[1][a] is also inapplicable as the subject property was not an “owner-occupied” dwelling as the owner is a limited liability company.

However, RPAPL §1303[1][b] which requires service of a notice on any tenants was not demonstrated to be inapplicable. That section provides that in a building with more than five dwelling units, service is made by posing a legible copy of the notice . . . outside of each entrance and exit of the building” (RPAPL §1303[4]). In a building with less than five units, notice must be “delivered to the tenant, by certified mail, return receipt requested, and by first-class mail to the tenant’s address at the property if the identity of the tenant is known to the plaintiff, and by first-class mail delivered to “occupant” if the identity of the tenant is not known to the plaintiff” (*id.*). Here, Plaintiff failed to annex any proof of compliance with this section.

All the other affirmative defenses 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 [1st Dept 2019]; *see also Bosco Credit V Trust Series 2012-1 v. Johnson*, 177 AD3d 561 [1st Dept 2020]; *170 W. Vil. Assoc. v G & E Realty, Inc.*, 56 AD3d 372 [1st 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]). 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]).

The branch of Plaintiff's motion for a default judgment against the non-appearing parties is granted without opposition (*see* CPLR §3215; *SRMOF II 2012-I Trust v Tella*, 139 AD3d 599, 600 [1st Dept 2016]).

The branch of Plaintiff's motion to amend the caption is granted without opposition (*see generally* CPLR §3025; *JP Morgan Chase Bank, N.A. v Laszlo*, 169 AD3d 885, 887 [2d Dept 2019]).

Accordingly, it is

ORDERED that the branches of Plaintiff's motion for summary judgment on its causes of action for foreclosure and the appointment of a referee are denied, and it is

ORDERED that all the affirmative defenses in Defendants' answer, except RPAPL §1303[1][b] are stricken, and it is

ORDERED that the caption shall be amended to read as follows:

SUPREME COURT STATE OF NEW YORK
COUNTY OF NEW YORK

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NPL FUND LLC,

Plaintiff,

-against-

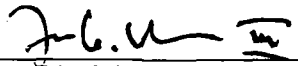
324 EAST 14TH STREET LLC; NEJATOLLAH
SASSOUNI; SUSAN SASSOUNI; NAMDAR EAST
VILLAGE HOLDINGS LLC; THE CITY OF NEW
YORK ENVIRONMENTAL CONTROL BOARD;
THE CITY OF NEW YORK; CRIMINAL COURT OF
THE CITY OF NEW YORK,

Defendants.

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and it is

ORDERED that this matter is set down for a status conference on **July 30, 2025 @ 10:20 am** via Microsoft Teams.

<u>4/3/2025</u>					
DATE			FRANCIS A. KAHN III, A.J.S.C.		
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
				REFERENCE	

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