

U.S. Bank N.A. v Bouderau

2025 NY Slip Op 32131(U)

June 9, 2025

Supreme Court, New York County

Docket Number: Index No. 850278/2021

Judge: Francis 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

U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE FOR VELOCITY COMMERCIAL CAPITAL LOAN TRUST VCC 2021-02,

Plaintiff,

- v -

RAYMOND BOUDERAU, INDIVIDUALLY AND AS TRUSTEE OF THE RAYMOND BOUDERAU TRUST DATED MAY 27, 2015, FOXTRAIL INVESTMENTS, LLC, MARY CRIPPON, VICTORIA JOHNSON

Defendant.

DECISION + ORDER ON MOTION

INDEX NO. 850278/2021

MOTION DATE

MOTION SEQ. NO. 004

The following e-filed documents, listed by NYSCEF document number (Motion 004) 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 97, 98, 99, 100, 101

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents the motion is determined as follows:

In this action to foreclose on a mortgage encumbering real property located 421 East 119th Street, New York, New York, a judgment of foreclosure and sale was entered on January 5, 2023. The motion by Defendants Raymond Bouderau, individually, and as Trustee of the Raymond Bouderau Revocable Trust dated May 27, 2015, ("Defendants"), to vacate their default was granted by order dated August 2, 2024. Now, Plaintiff moves for, inter alia, summary judgment against Defendants, a default judgment against the non-appearing parties, appointment of a referee to compute and to amend the caption. Defendants oppose the motion.

On the branches of the motion for summary judgment and a default judgment and appointment of a referee, Plaintiff established the mortgage, note, and evidence of Mortgagor's default in repayment via the affirmation of Sandie Lawrence ("Lawrence"), a Department Manager for Special Servicing for Velocity Commercial Capital, the servicer and attorney-in-fact for Plaintiff, which was sufficiently supported by admissible business records annexed thereto (see eg Bank of NY v Knowles, 151 AD3d 596 [1st Dept 2017]; Fortress Credit Corp. v Hudson Yards, LLC, 78 AD3d 577 [1st Dept 2010]). Lawrence's affirmation and a copy of the Assignment of Collateral Agreements and Other Loan Documents, dated before this action was commenced, sufficiently demonstrated Plaintiff's standing in this matter (see Broome Lender LLC v Empire Broome LLC, 220 AD3d 611 [1st Dept 2023]).

In opposition, Defendants' claim that the Assignment of Collateral Agreements and Other Loan Documents Plaintiff was not annexed to the moving papers is factually incorrect. Further, the assertion that it failed to effect transfer of the note is unavailing. By referring to assignment of the "Loan

Documents” and the indebtedness “as evidenced by a Promissory Note”, this sufficiently effected a transfer of the note and rendered any issues concerning the allonges and physical delivery of the note irrelevant (*US Bank Natl. Assn. v Ezugwu*, 162 AD3d 613 [1st Dept 2018]; *see also Broome Lender LLC v Empire Broome LLC*, 220 AD3d 611 [1st Dept 2023]; *Chase Home Fin., LLC v Miciotta*, 101 AD3d 1307 [3d Dept 2012]; *GRP Loan, LLC v Taylor*, 95 AD3d 1172 [2d Dept 2012]). The decision of the Appellate Division in *5AIF Sycamore 2, LLC v 201 EB Dev. III*, 223 AD3d 550 [1st Dept 2024] is not to the contrary. Further, since none of the salient facts on the other issues 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]).

All the affirmative defenses and counterclaims 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]). Further, 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 (*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 (*see generally CPLR §3025; JP Morgan Chase Bank, N.A. v Laszio*, 169 AD3d 885, 887 [2d Dept 2019]).

Accordingly, it is

ORDERED that Plaintiff’s motion for summary judgment against the appearing parties and for a default judgment against the non-appearing parties is granted; and it is further

ORDERED that the affirmative defenses pled by all the appearing Defendants are dismissed; and it is further

ORDERED that **Jeffrey R. Miller, Esq, 32 Broadway, 13th Floor, New York, New York 10004, 212-227-4200** is hereby appointed Referee in accordance with RPAPL § 1321 to compute the amount due to Plaintiff and to examine whether the property identified in the notice of pendency can be sold in parcels; and it is further

ORDERED that in the discretion of the Referee, a hearing may be held, and testimony taken; and it is further

ORDERED that by accepting this appointment the Referee certifies that he is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2 (c) (“Disqualifications from appointment”), and §36.2 (d) (“Limitations on appointments based upon

compensation”), and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall immediately notify the Appointing Judge; and it is further

ORDERED that, pursuant to CPLR 8003(a), and in the discretion of the court, a fee of \$350 shall be paid to the Referee for the computation of the amount due and upon the filing of his report and the Referee shall not request or accept additional compensation for the computation unless it has been fixed by the court in accordance with CPLR 8003(b); and it is further

ORDERED that the Referee is prohibited from accepting or retaining any funds for himself or paying funds to himself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED that if the Referee holds a hearing, the Referee may seek additional compensation at the Referee’s usual and customary hourly rate; and it is further

ORDERED that Plaintiff shall forward all necessary documents to the Referee and to Defendants who have appeared in this case within 30 days of the date of this order and shall *promptly* respond to every inquiry made by the referee (promptly means within two business days); and it is further

ORDERED that if Defendant(s) have objections, they must submit them to the referee within 14 days of the mailing of plaintiff’s submissions; and include these objections to the Court if opposing the motion for a judgment of foreclosure and sale; and it is further

ORDERED that failure to submit objections to the referee may be deemed a waiver of objections before the Court on an application for a judgment of foreclosure and sale; and it is further

ORDERED, that that all the “Doe” Defendants are stricken as the New York County Clerk will not accept a judgment for filing with a “Doe” or “Name Refused” defendant in the caption; and it is further

ORDERED the caption is amended as follows:

SUPREME COURT STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE
FOR VELOCITY COMMERCIAL CAPITAL LOAN TRUST
2021-2,

Plaintiff,

-against-

RAYMOND BOUDERAU as Trustee of the RAYMOND
BOUDERAU REVOCABLE TRUST dated May 27, 2015;
RAYMOND BOUDERAU; FOXTRAIL INVESTMENTS,
LLC; MARY CRIPPON; VICTORIA JOHNSON,

Defendants.

-----X

and it is further,

ORDERED that Plaintiff must bring a motion for a judgment of foreclosure and sale within 45 days of receipt of the referee’s report; and it is further

ORDERED that if Plaintiff fails to meet these deadlines, then the Court may *sua sponte* vacate this order and direct Plaintiff to move again for an order of reference and the Court may *sua sponte* toll interest depending on whether the delays are due to Plaintiff’s failure to move this litigation forward; and it further

ORDERED that counsel for Plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the parties being removed pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address (www.nycourts.gov/suptctmanh)); and it is further

ORDERED that Plaintiff shall serve a copy of this Order with notice of entry on all parties and persons entitled to notice, including the Referee appointed herein.

All parties are to appear for a virtual conference via Microsoft Teams on **October 8, 2025, at 10:40 a.m.** If a motion for judgment of foreclosure and sale has been filed Plaintiff may contact the Part Clerk (SFC-Part32-Clerk@nycourts.gov) in writing to request that the conference be cancelled. If a motion has not been made, then a conference is required to explore the reasons for the delay.

6/9/2025
DATE


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

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input checked="" type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	