

**Bronx Community Guardianship Network v 1809-15
7th Ave. Hous. Dev. Fund Corp.**

2025 NY Slip Op 32231(U)

June 20, 2025

Supreme Court, New York County

Docket Number: Index No. 653800/2015

Judge: Paul A. Goetz

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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. PAUL A. GOETZ **PART 47**

Justice

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BRONX COMMUNITY GUARDIANSHIP NETWORK, as
Guardian of NORA ARTHUR pursuant to Article 81 of the
Mental hygiene Law,

INDEX NO. 653800/2015

Plaintiff,

- v -

1809-15 7TH AVENUE HOUSING DEVELOPMENT FUND
CORPORATION, MICHAEL MASCHCIO, CARVER
FEDERAL SAVINGS BANK, WATERFALL VICTORIA
MASTER FUND LTD., WATERFALL VICTORIA REO 2013-
01, LLC, JOHN DOE, JANE DOE, XYZ CORPORATION I,
XYZ CORPORATION II,

Defendants.

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In this action involving the foreclosure and nonjudicial sale¹ of Nora Arthur’s² residential apartment located at 1809-15 7th Avenue, New York, NY, a bench trial was held on October 1st and 2nd, 2024³ on plaintiff’s remaining two causes of action against defendants Carver Federal Savings Bank (“Carver”), Statebridge Company, LLC (“Statebridge”), Waterfall Victoria Master Fund Ltd. (“Waterfall Master Fund”), and Waterfall Victoria REO 2013-01, LLC (“Waterfall Victoria”) (collectively, the “Lender Defendants”). The two causes of action are: failure to serve the 90 day pre-foreclosure notice required pursuant to Uniform Commercial Code (UCC) §

¹ By decision and order dated April 9, 2021, plaintiff’s unlawful eviction claims against defendants 1809-15 7th Avenue Housing Development Fund Corporation (the “HDFC”) and Michael Maschio (the “Coop Defendants”) were dismissed (NYSCEF Dc No 453). The Coop Defendants were granted summary judgment on liability on their counter claim for attorneys’ fees (*id.*).

² By decision and order dated March 22, 2024, Bronx Community Guardianship Network, Inc. as guardian pursuant to Article 81 of the Mental Hygiene Law was substituted in place and stead of plaintiff Nora Arthur.

³ On September 30, 2024, a competency hearing was held to determine whether Nora Arthur was competent to testify. At the conclusion of the hearing, the court determined Arthur was competent to testify. Direct testimony of Lender Defendants’ witnesses, Adriana Glover, Brian LeBoeuf and Alan F. Kaufman was submitted by affidavit pursuant to NY Trial Court Rule 202.20-I (Lender Defendants’ Exs A1 and A).

OTHER ORDER – NON-MOTION

9-611(f) upon Arthur (Twelfth Cause of Action For A Declaratory Judgment [and an award of money damages]); and failure to provide a notice of the sale pursuant to UCC § 9-613 prior to the auction of the shares of stock appurtenant to Arthur's apartment on June 4, 2014 (Thirteenth Cause of Action [seeking an award of money damages]).

FINDINGS OF FACT

The credible evidence at trial establishes the following:

On or about September 13, 2004, Arthur acquired 250 shares of capital stock in the HDFC and entered into a proprietary lease for apartment 4F with the HDFC as lessor and Arthur as lessee (Lender Defendants' Ex A). Then on or about September 24, 2007, Arthur obtained a loan from Carver in the amount of \$231,000 which was secured by her shares and lease appurtenant to apartment 4F ["loan"] (Lender Defendants' Exs B & C). Arthur stopped making payments on the loan in late 2012 and her last payment on the loan was made on or about March 27, 2013, which was applied to the overdue payments for November and December 2012 and January 2013 (Glover affd ¶¶ 28-30; Ex E thereto). By correspondence dated August 30, 2013, Carver's loan servicer, Dovenmuehle Mortgage, Inc. (DMI) notified Arthur that her "loan was 210 days in default and that she [could] cure the default by making" a payment in the amount of \$9,506.30 by November 28, 2013 (*id.* ¶ 31). By correspondence dated October 10, 2023, DMI informed Arthur that her file had been referred to outside counsel McCabe, Weisberg & Conway, LLC [McCabe] (*id.* ¶ 33).

DMI subsequently sent Arthur a notice dated December 20, 2013, warning her again that she was in default of her obligations under the loan secured by her apartment and at risk of losing it in foreclosure (Glover affd ¶ 20; Exs B & C thereto).

On or about December 18, 2013, Arthur contacted McCabe requesting loan reinstatement information and by correspondence dated December 23, 2013, McCabe sent Arthur the reinstatement information and figures (LeBoeuf affd ¶16; Ex B).

On or about March 7, 2014 Carver sold and transferred the loan (including the security agreement, note and related loan documents) to Waterfall Victoria Master Fund Ltd. (plaintiff's Ex 7, Raborn affd ¶¶ 9 & 10). By correspondence mailed to Arthur dated that same day Carver informed Arthur that the ownership and servicing of her loan had been assigned and transferred from Carver the loan would now be serviced by Statebridge Company LLC effective April 7, 2014 (*id.* ¶ 11; plaintiff's Ex 1, Carver's March 7, 2014 correspondence). But the March 7, 2014 correspondence from Carver did not inform Arthur that Waterfall Victoria Master Fund Ltd. was the new owner of her loan (*see* plaintiff's Ex 1).

McCabe then sent Arthur a "Default of Security Agreement/Note with Caver [sic] Federal Savings Bank" dated April 8, 2014, notifying her that her apartment would be sold at auction in the Rotunda of the New York County Supreme Court building located at 60 Centre Street on June 4, 2014 (LeBoeuf affd ¶¶ 20-22; Ex C). Arthur did not contact McCabe about the April 8, 2014 correspondence (*id.* ¶ 25). McCabe then sent Arthur a notice of sale of her apartment on or about May 5, 2014, again informing her that her apartment would be sold at auction on June 4, 2014 and that the principal amount due was \$215,570.65 plus interest from February 1, 2013 subject to any "common charges" due and identifying "Caver [sic] Federal Savings Bank" as the secured creditor (*id.* ¶ 26; Exs D&E). Notice of the sale of Arthur's apartment was published in the Daily News on May 5, 12 & 19, 2014 (*id.* ¶ 34; Ex F). Arthur's apartment was sold at the June 4, 2014, auction to Carver who then assigned its bid to defendant Waterfall Victoria REO 2013-01, LLC on September 26, 2014 (*id.* ¶ 35-36; Exs G&H).

CONCLUSIONS OF LAW

UCC § 9-611[f] (Twelfth Cause of Action)

UCC § 9-611 (f)(1) addresses pre-disposition notices for cooperative interests and states in pertinent part:

a secured party whose collateral consists of a residential cooperative interest used by the debtor and whose security interest in such collateral secures an obligation incurred in connection with *financing or refinancing of the acquisition of such cooperative interest* and who proposes to dispose of such collateral after a default with respect to such obligation, shall send to the debtor, not less than ninety days prior to the date of the disposition of the cooperative interest, an additional predisposition notice as provided herein.

While plaintiff established that section 9-611 (f)(1)'s requirement that her pledged collateral to secure her loan with Carver was her cooperative interest in apartment 4F, she failed to establish that the pledged interest in apartment 4F was to acquire apartment 4F (plaintiff already owned the interest in apartment 4F when she signed the loan documents [Lender Defendants' Ex A]). Nor did plaintiff establish that the loan was a refinance of a loan used to the acquire apartment 4F. Consequently, section 9-611 (f)(1) is inapplicable to the Arthur loan.⁴ In any event, even if section 9-611 were applicable here, Carver provided Arthur with the requisite pre-foreclosure notice in accordance with the requirements of section 9-611 [3] (Glover affd ¶ 20; Exs B & C thereto). Consequently, plaintiff has failed to establish by a preponderance of the

⁴ While the First Department held citing UCC 9-611 (f)(1) that this "court improperly dismissed plaintiff's 12th cause of action because defendants' proof was insufficient to establish that they sent a notice to plaintiff 90 days prior to the sale of her cooperative shares held as collateral" [*Arthur v Carver Fed Sav Bank*, 150 AD3d 447, 448 (1st dept 2017)], the Lender Defendants did not argue in their motion to dismiss as they do here after trial [Lender Defendants' Proposed Findings of Fact and Conclusions of Law NYSCEF Doc No 718] that UCC 9-611 (f) is inapplicable to borrows who do not use the borrowed funds to purchase or refinance their cooperative (Lender Defendants' Memorandum of Law in Support of Their Motion to Dismiss NYSEF Doc No 82 pgs 8 – 10). Nor did the Lender Defendants make this argument in their motion for summary judgment (Lender Defendants' Memorandum of Law in Support of Their Motion for Summary Judgment NYSCEF Doc No 391 pgs 11 - 12).

evidence that the Lender Defendants failed to comply with the predisposition notice requirements set forth in UCC 9-611 (f).

Accordingly, plaintiff's Twelfth Cause of Action will be dismissed.

Uniform Commercial Code § 9-613 (Thirteenth Cause of Action)

UCC 9-613 (a) addresses the content and form of a notification of disposition of collateral in non-consumer goods transactions and states, in relevant part, that:

The contents of a notification of disposition are sufficient if the notification:

- (1) describes the debtor and the secured party;
- (2) describes the collateral that is the subject of the intended disposition;
- (3) states the method of intended disposition;
- (4) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and
- (5) states the time and place of a public disposition or the time after which any other disposition is to be made.

Plaintiff established that the Lender Defendants May 5, 2014 notice of sale failed to satisfy UCC 9-613 (a) (1) and (4).

While “[] particular phrasing of the notification is not required” (UCC 9-613[d]) plaintiff established that the May 5, 2014 notice of sale does not substantially comply with the statute for two reasons. First, the notice misidentifies the secured party. The notice names “Caver [sic] Federal Savings Bank” as the holder of the security, however, Carver, had sold the loan (note and security agreement) to Waterfall Fund two months earlier, and Carver had notified plaintiff of the change in ownership although the notice failed to disclose the name of new note holder. While UCC 9-613 (c) (2) provides that the contents of the notice may be sufficient even if it contains “minor errors that are not seriously misleading,” the misidentification of the secured party is not a minor error. Second, the notice of sale does not state that plaintiff is entitled to an

accounting of the unpaid indebtedness or reference the availability of an accounting. Again, the failure to provide this statutorily required information is not a minor error. Consequently, plaintiff established by a preponderance of the evidence that the May 5, 2014 notice of sale did not substantially comply with the notice requirements of UCC 9-613 (a).

While plaintiff's post-trial submission seeks a declaratory judgment that Arthur is the owner of the 250 shares of stock appurtenant to apartment 4F (plaintiff's post-trial submission, NYSCEF Doc No 719 ¶ 14), plaintiff's amended complaint seeks an award of monetary damages "to be established and/or determined at trial" on plaintiff's thirteenth cause of action (amended verified complaint ¶ 205). In any event even if plaintiff had sought injunctive relief on its thirteenth cause of action in the amended complaint, injunctive relief is not available where, as here, the disposition of the collateral has already occurred (UCC 9-625 [a]; *Atlas MF Mezzanine Borrower, LLC v Macquarie Texas Loan Holder LLC*, 174 AD3d 150, 162-163 [1st Dept 2019]). Consequently, plaintiff's sole remedy for the Lender Defendant's failure to comply with the UCC 9-613 (a) notice of sale requirements is recovery of monetary damages pursuant to UCC 9-625 [b] (*Atlas MF Mezzanine*, 174 AD3d at 162; *Walsh v Ocwen Loan Servicing, LLC*, 217 AD3d 802, 804 [2nd Dept 2023]).⁵ However, plaintiff did not provide any evidence to establish her entitlement to monetary damages caused by the Lender Defendants noncompliance with UCC 9-613 (a). Accordingly, plaintiff's thirteenth cause of action will be dismissed.

1809-15 7th Avenue Housing Development Fund Corporation's Second Counterclaim for Legal Fees

1809-15 7th Avenue Housing Development Fund Corporation (HDFC defendant) was afforded an opportunity to support its second counter claim for legal fees in writing at the close

⁵ UCC 9-625 entitled "Remedies for Secured Party's Failure to Comply with Article" section (b) provides in relevant part that "a person is liable for damages in the amount of any loss caused by a failure to comply with this article."

of the bench trial. After consideration of the HDFC defendant’s submissions in support of its legal fees counter claim and receiving no opposition to same from plaintiff (NYSCEF Doc Nos 721 – 723) the HDFC defendant will be awarded its reasonable legal fees in the amount of thirty thousand four-hundred ninety-nine dollars and forty-three cents (\$30,499.43).

Based on the foregoing, it is

ORDERED that plaintiff’s remaining causes of action, twelfth and thirteenth are dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of the Lender Defendants on plaintiff’s twelfth and thirteenth causes of action with costs and disbursements as taxed by the Clerk to the Lender Defendants; and it is further

ORDERED that the HDFC defendant on its second counterclaim shall recover from plaintiff thirty thousand, four-hundred ninety-nine dollars and forty-three cents (\$30,499.43) and the Clerk is directed to enter accordingly with costs and disbursements as taxed by the Clerk; and it is further

ORDERED that the parties are directed to retrieve their exhibits from Part 47 (111 Centre St., Rm. 1021) within 30 days of this decision and order or the exhibits will be discarded.


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DATE: 6/20/2025

PAUL A. GOETZ, JSC

Check One: Case Disposed

Non-Final Disposition

Check if Appropriate: Other (Specify _____)