

Aurora Loan Servs., LLC v Czin

2025 NY Slip Op 32620(U)

July 7, 2025

Supreme Court, Kings County

Docket Number: Index No. 7061/2009

Judge: Cenceria P. Edwards

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FRP1, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 7 day of July 2025.

P R E S E N T:

HON. CENCERIA P. EDWARDS, CPA,

Justice.

-----X
AURORA LOAN SERVICES, LLC,

Plaintiff(s),

-against-

EUGENE CZIN, JUDITH CZIN, et. al),

Defendant(s).
-----X

ORDER

Motion Calendar: 12/4/2024

Motion Cal. #(s): 2

Index #: 7061/2009

Mot. Seq. #(s): 6

The following e-filed papers read herein:

NYSCEF Doc. Nos.:

Order to Show Cause, Affidavits (Affirmations) and Exhibits _____

30-40_____

Opposing Affidavits (Affirmations) and Exhibits _____

48-58_____

Reply Affidavits (Affirmations) and Exhibits _____

N/A_____

Upon the foregoing papers in this action to foreclose a mortgage encumbering the residential property located at 1151 45th Street in Brooklyn (Block 5609, Lot 65), defendant JUDITH CZIN (“Defendant”) moves for an order “[s]taying the Order of Reference, Foreclosure and Sale of Defendant’s home.” Nationstar Mortgage, LLC (“Nationstar”), purported successor to named plaintiff AURORA LOAN SERVICES, LLC (“Aurora”), opposes the requested relief.

Background Facts and Procedural History

Aurora Loan Services commenced the instant foreclosure action against defendants EUGENE CZIN¹ and JUDITH CZIN (collectively, “Defendants” or “the Czins”) on March 24, 2009.

¹ Eugene Czin passed away on August 6, 2015. It is undisputed that the Czins owned the property as husband and wife and that his interest, thus, passed to Mrs. Czin. The Appellate Division dropped him as a respondent to the appeal and Plaintiff’s motion for an order of reference seeks to drop him from this action.

The Czins timely answered through counsel, advancing sixteen affirmative defenses and seven counterclaims. Plaintiff then replied to the counterclaims. The matter was released from settlement conferences in 2011.

On December 9, 2014, Plaintiff moved for summary judgment and an order of reference, to strike Defendants' affirmative defenses and counterclaims, and to substitute Nationstar as the named plaintiff. Defendants opposed and cross-moved for dismissal, alleging that they were not properly served with the summons and complaint. The cross-motion was marked off on March 24, 2015. By order dated May 17, 2016, the Honorable Laura Lee Jacobson, J., denied Plaintiff's motion, finding that Plaintiff's papers were defective because Aurora no longer owned the loan and its affiant, thus, could not testify and as "the papers [were] inartfully put together." Justice Jacobson also noted a lack of evidence "that reveals that Nationstar is now the mortgagee" (*see* NYSCEF Doc. #1, pp. 189-191)

Plaintiff appealed. By decision and order dated December 28, 2022, the Appellate Division, Second Department, modified, determining that Plaintiff's motion for summary judgment should be granted but declining to substitute Nationstar as plaintiff. In doing so, the panel explicitly found that "the plaintiff established its standing by ... establish[ing] that the plaintiff had possession of the note prior to commencing the instant action" and that Mrs. Czin's jurisdictional defense was waived as she did not move for dismissal within sixty days following the service of her answer. The counterclaims were stricken as abandoned. As the movant relied upon unproduced business records to support its contention that Nationstar should be substituted as the named plaintiff, the denial of that relief was upheld. (*See* NYSCEF Doc. #33.)

On June 14, 2024, Plaintiff moved for an order of reference (*see* NYSCEF Doc. #s 7-27).² Three months later, the instant order to show cause was signed (*see* NYSCEF Doc. #40). Therein, Mrs. Czin argues that neither she, nor her attorney, received any of the documents filed between when this matter was converted to e-filing in February 2023 and the date of her motion. She further noted that the Second Circuit Court of Appeals ruled that Aurora has no interest in the loan and that the Appellate Division affirmed the denial of substitution of Nationstar as plaintiff – and suggested that, accordingly, neither has standing to proceed with this action.

² Plaintiff later withdrew the motion by letter dated and e-filed on November 25, 2024 (*see* NYSCEF Doc. #46).

In opposition, Plaintiff argues that the Appellate Division has already ruled that summary judgment should be granted in its favor and explicitly found that it had standing to commence this action. To the extent that substitution was denied, that was on a technical ground, and it can either move for that relief upon proper papers or proceed under CPLR 1018 without doing so. Plaintiff further notes that Defendant's counsel was notified of the conversion to e-filing and did not opt out. Additionally, affidavits of service reflect that the e-filed documents were also mailed to Defendant.

Analysis

Preliminarily, none of Defendant's arguments – even if taken as true – would warrant a stay. Lack of notice of past filings would be grounds to vacate intervening orders, and her challenges to Plaintiff's standing would, if found meritorious, lead to dismissal.

Though Defendant's counsel was notified of the conversion of this case to e-filing, he did not sign up to receive documents on this case until filing the instant OSC. Indeed, the confirmation notices of the e-filed document numbers 1-29 reflect that only Plaintiff's counsel was sent the e-mail notifications. Additionally, while Plaintiff is correct that it also mailed the documents to Defendant, she was represented by counsel at that time and, thus, doing so was insufficient (*see* CPLR 2103 [b]). However, the only substantive papers that were e-filed were those comprising Plaintiff's motion for an Order of Reference, which has been withdrawn. As such, no orders or other potential prejudice resulted from the failure to properly serve the e-filed documents.

Additionally, the Appellate Division held that Plaintiff met its burden to strike Defendant's affirmative defenses and counterclaims. In so finding, it determined that Aurora had standing to bring this action. The Second Circuit (not inconsistently) subsequently found that “while the foreclosure action was pending, [Aurora and its parent company] entered into an asset-purchase agreement by which they sold all rights to and interest in [the Czins'] mortgage, note, and property to Nationstar Mortgage LLC [Aurora and its parent company] also executed a limited power of attorney that gave Nationstar authority ‘as may be necessary or desirable to effectuate’ various transactions regarding the mortgage, including completing the pending foreclosure” (NYSCEF Doc. #35, p.3). Due to said prior findings by each of these Courts, the standing challenge raised by Defendant is unavailing.

That Nationstar has not been substituted as the named plaintiff is irrelevant. Although Justice Jacobson, as affirmed the Appellate Division, found that Plaintiff's prior motion failed to include sufficient evidence that Nationstar had acquired the loan, no dispositive ruling was made on that basis, nor did either Court award any affirmative relief to Defendant.

Conclusion

Accordingly, the above-referenced motion by defendant JUDITH CZIN, brought by order to show cause, to stay proceedings in this action (mot. seq. #6) is DENIED in its entirety.

The foregoing constitutes the Decision and Order of this Court.

E N T E R,

Dated: July 7, 2025



Hon. Cenceria P. Edwards, JSC, CPA