

**MMG Invs. III, LLC v Maruru Holdings, LLC**

2025 NY Slip Op 32637(U)

June 27, 2025

Supreme Court, New York County

Docket Number: Index No. 850460/2023

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

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INDEX NO. 850460/2023

MMG INVESTMENTS III, LLC,

MOTION DATE

Plaintiff,

MOTION SEQ. NO. 002

- v -

MARURU HOLDINGS, LLC, DAVID SIROIS
COMPREHENSIVE DENTISTRY, PLLC, DAVID SIROIS,
ROBIN SCHLENGER, NEW YORK CITY BUREAU OF
HIGHWAY OPERATIONS, JOHN DOES 1 TO 10, XYZ
CORPORATION 1 TO 10

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 77, 78, 79, 80, 81, 82, 83, 84, 88

were read on this motion to/for REARGUMENT/RECONSIDERATION

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

This is an action to foreclose on a consolidated, extended and modified mortgage encumbering a parcel of real property located 131 East 38th Street, New York, New York. The mortgage, dated December 8, 2016, was given by Defendant Maruru Holdings LLC ("Maruru") to non-party Santander Bank, NA ("Santander"). The mortgage secures a loan with an original principal amount of \$3,580,000.00 which is evidenced by a consolidated note of the same date as the mortgage. Defendant David Sirois ("Sirois") executed the note and mortgage as the Managing Member of Maruru. Concomitantly with these documents, Sirois and Defendant Robin Schlenger ("Schlenger") executed a guaranty of the indebtedness. On June 9, 2022, Maruru, Sirois and CIO MW Loan 1 LLC ("CIO"), the alleged assignee of the note and mortgage at the time, executed a forbearance agreement. In paragraph 14 of that agreement, Maruru and Sirois admitted their default under the loan documents, acknowledged the indebtedness, and admitted they had "no claim, defense, offset or counterclaim" to their default.

Plaintiff commenced this action and alleged that Defendants defaulted in repayment of the indebtedness under the terms of the loan documents and forbearance agreement. Defendants Maruru and Sirois answered jointly and pled twenty-eight [28] affirmative defenses, including lack of standing. By order of this Court dated June 21, 2024, Plaintiff's motion for summary judgment was denied on the basis that Plaintiff failed to proffer evidentiary documents to support its motion. Now, Plaintiff moves to renew and reargue this decision, as well as for summary judgment against the Defendants Maruru and Sirois, for an order of reference and to amend the caption. Defendants Maruru and Sirois oppose the motion.

The branch of Plaintiff's motion to reargue the court's decision and order dated June 21, 2024, is denied as movant has not established the court overlooked or misapprehended the relevant facts or misapplied any controlling principle of law (*see* CPLR 2221; *Foley v Roche*, 68 AD2d 558 [1<sup>st</sup> Dept 1979]). The underlying moving papers fail to establish an evidentiary foundation for admission into evidence, as business records under CPLR §4518, any of the documents necessary for a *prima facie* case of foreclosure.

The branch of the motion to renew the above decision is based on a newly submitted affidavit from Timothy P. Sheehan ("Sheehan"). Contrary to Defendants' arguments, Plaintiff provided a reasonable justification for the failure to present said new facts in the prior motion (*see generally* CPLR 2221[e][2]; *Arena v Shaw*, 179 AD3d 415 [1<sup>st</sup> Dept 2020]). In any event, the Court may treat this motion as a successive motion for summary judgment since this motion clearly enhances judicial efficiency in this case (*see MTGLQ Invs. v Collado*, 183 AD3d 414 [1<sup>st</sup> Dept 2020]).

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, evidence of mortgagors' default and its standing in repayment (*see U.S. Bank, N.A., v James*, 180 AD3d 594 [1<sup>st</sup> Dept 2020]; *Bank of NY v Knowles*, 151 AD3d 596 [1<sup>st</sup> Dept 2017]; *Fortress Credit Corp. v Hudson Yards, LLC*, 78 AD3d 577 [1<sup>st</sup> 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 [1<sup>st</sup> Dept 2019]). 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 Sheehan, an Authorized Representative of Midwest Servicing 4, LLC ("Midwest"), the attorney-in-fact for the Plaintiff. Sheehan also avers that Midwest the attorney-in-fact for non-party CIO MW Loan 1, LLC ("CIO"), Plaintiff's assignor of the note and mortgage. The affidavit established the mortgage, note, evidence of mortgagor's default as well as its standing and was sufficiently supported by appropriate documentary evidence (*see eg Bank of NY v Knowles*, *supra*; *Fortress Credit Corp. v Hudson Yards, LLC*, *supra*). Also, unlike the prior motion, annexed to Sheehan's affidavit are the powers of attorney referenced which expressly include the authority to initiate this action (*see Deutsche Bank Natl. Trust Co. v Silverman*, 178 AD3d 898 [2d Dept 2019]; *Deutsche Bank Natl. Trust Co. v Rudman*, 170 AD3d 950 [2d Dept 2019]).

In opposition, Defendants' argument that the within motion is an inappropriate successive motion for summary judgment is unavailing. Multiple disputed issues are not presented here (*cf. Wells Fargo Bank v Gittens*, 217 AD3d 901, 903 [2d Dept 2023]) and entertaining a second summary judgment motion furthers the ends of justice by allowing the Court to eliminate the need for a trial on issues that Defendants have not contested, to wit the existence of the note, mortgage or the default thereunder (*see MTGLQ Invs, LP v Collado*, 183 AD3d 414 [1<sup>st</sup> Dept 2020]; *Bank of Am NA v Brannon*, 156 AD3d, 1, 6 [1<sup>st</sup> Dept 2017])[Uncontradicted facts on a motion for summary judgment are "deemed to be admitted"]).

Defendants' assertion the motion must be denied because no discovery has been conducted is unavailing as they have offered nothing more than speculation to support that Plaintiff is in exclusive possession of facts to support its claims regarding liability under the guaranty (*see Island Fed. Credit Union v I&D Hacking Corp.*, 194 AD3d 482 [1<sup>st</sup> Dept 2021]).

Defendants' arguments concerning Plaintiff's status as a foreign limited liability company presents an issue of capacity, not standing. Defendants waived any reliance on the defense of lack of capacity by not including it in their answer or in a pre-answer motion to dismiss (*see* CPLR §3211[e]; *Security Pac. Natl. Bank v Evans*, 31 AD3d 278, 280 [1<sup>st</sup> Dept 2006]). In any event, this type of deficiency is curable as Limited Liability Company Law §808[a] only effects a suspension of the ability to prosecute an action "unless and until such limited liability company shall have received a certificate of authority in this state" (*cf. 1700 First Ave. LLC v Parsons-Novak*, 46 Misc. 3d 30, 32 [App Term 1<sup>st</sup> Dept 2014]; *Acquisition Am. VI, LLC v Lamadore*, 5 Misc. 3d 461, 462 [Sup Ct NY Cty 2004]).

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 seventh affirmative defense of standing pled by the appearing Defendants is dismissed; and it is further

ORDERED that **Paul Sklar, Esq., 551 5th Avenue, Ste 2200, New York, New York 10176-0001- (212) 972-8845** 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 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

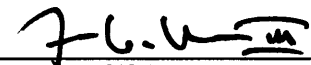
ORDERED that if Plaintiff fails to meet these deadlines, then the Court may sua sponte vacate this order and direct Plaintiff to move again for an order of reference and the Court may sua sponte toll interest depending on whether the delays are due to Plaintiff's failure to move this litigation forward; 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/suptmanh)); 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 30, 2025, at 11:20 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.

6/27/2025 DATE	 FRANCIS KAHN, III, A.J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input checked="" type="checkbox"/>	FIDUCIARY APPOINTMENT
				REFERENCE