

U.S. Bank Trust Co., N.A. v NYLOFLAT LLC

2025 NY Slip Op 33061(U)

July 8, 2025

Supreme Court, New York County

Docket Number: Index No. 850652/2023

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

-----X
 U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
 AS TRUSTEE FOR VELOCITY COMMERCIAL CAPITAL
 LOAN TRUST 2023-2,
 INDEX NO. 850652/2023
 MOTION DATE _____
 MOTION SEQ. NO. 003

Plaintiff,

- v -

NYLOFLAT LLC, FERNANDO MIGUEL LAURIA,
 FERNANDO ANTONIO LAURIA, BOARD OF MANAGERS
 OF THE MANHATTAN HOUSE CONDOMINIUM, MRS.
 KAHAN, NODUS INTERNATIONAL BANK, INC.

**DECISION + ORDER ON
MOTION**

Defendant.

-----X
 The following e-filed documents, listed by NYSCEF document number (Motion 003) 101, 102, 103, 104,
 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 120, 121, 122, 123, 126, 127, 128
 were read on this motion to/for JUDGMENT - SUMMARY.

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

This is an action to foreclose on a commercial mortgage encumbering a parcel of real property located at 200 East 66th Street, Unit B1503, New York, New York. The mortgage was given by Defendant NYLOFLAT LLC (“Owner”) to non-party Velocity Commercial Capital, LLC (“Velocity”). The mortgage secures an indebtedness, memorialized by a term note, with an original principal amount of \$1,567,500.00. The note and mortgage, both dated February 24, 2023, were executed by Defendant Fernando Antonio Lauria (“Antonio”) as Manager of Owner. Concomitantly therewith, Defendants Antonio and Fernando Miguel Lauria (“Miguel”) executed unlimited guarantees.

Plaintiff commenced this action and pled in the amended complaint that Defendant Owner defaulted in making monthly installment payments beginning on April 1, 2023. Plaintiff also seeks to discharge a mortgage, pursuant to RPAPL Article 15, given to Defendant Nodus International Bank, Inc. (“Nodus”) and recorded prior to Plaintiff’s encumbrance. Owner, Guarantors and Nodus defaulted in appearing. Defendant Board of Managers of The Manhattan House Condominium (“Board”) served an answer to the amended complaint, dated November 4, 2024, and initially pled twenty-four affirmative defenses. More than five months later, and after this motion was made, Board filed another amended answer without consent of Plaintiff or leave of court. Therein Board claimed, for the first time, that its common charge lien had priority over Plaintiff’s mortgage because of the existence of the Nodus mortgage relying on RPL §339-z. Plaintiff rejected the answer.

Now, Plaintiff moves for summary judgment against Board, to strike its answer and affirmative defenses, for a default judgment against the non-appearing parties, for an order of reference and to amend the caption. Defendant Board opposes the motion. 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 mortgagors' 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]).

As to the cause of action for foreclosure, Plaintiff's motion was supported with an affidavit from Sandie Lawrence ("Lawrence"), a Department Manager for Special Servicing for Velocity, Plaintiff's loan servicer, as well as supporting documentation. The affidavit, supported by the appropriate business records, established the mortgage, note, and evidence of mortgagor's default and was sufficiently supported by appropriate documentary evidence (*see eg Bank of NY v Knowles*, *supra*; *Fortress Credit Corp. v Hudson Yards, LLC*, *supra*; *see also Bank of N.Y. Mellon v Gordon*, 171 AD3d 197, 206 [2d Dept 2019]). In opposition, Board's claim that an issue of fact as to the priority of its lien under RPL §339-z fails. The second amended answer, dated April 11, 2025, is a nullity as it was served long after its time to amend expired and without leave of this Court (CPLR §3025). Board's only viable pleading, its first amended answer, does not raise the issue of priority under RPL §339-z. To the extent the twenty-second affirmative defense may be cited a basis for Board's claim of priority is unavailing as it is based upon failure to join Board in a prior foreclosure action, which appears entirely irrelevant.

All Board's 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]). 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]).

As such, the branch of Plaintiff's motion for summary judgment on its foreclosure cause of action against Board, as well as for a default judgment against the Owner and Guarantors, is granted (*see* CPLR §3215; *SRMOF II 2012-1 Trust v Tella*, 139 AD3d 599, 600 [1st Dept 2016]).

The cause of action to extinguish the Nodus mortgage is pled as a claim for declaratory relief under Article 15 of the Real Property Actions and Proceedings Law.¹ A claimant seeking declaratory relief must establish, akin to any other cause of action, *prima facie* entitlement to the relief sought (*see Public Serv. Mut. Ins. Co. v AYFAS Realty Corp.*, 234 AD2d 226, 228 [1st Dept 1996]). However, unlike other claims, "[a] default judgment in a declaratory judgment action will not be granted on the default and pleadings alone for it is necessary against that plaintiff establish a right to a declaration against * * * a defendant" (*Levy v Blue Cross & Blue Shield of Greater N.Y.*, 124 AD2d 900, 902 [3d Dept 1986], *citing National Sur. Corp. v Peccichio*, 48 Misc 2d 77, 78 [Sup Ct Albany Cty 1965]; *see also Mount Vernon Fire Ins Co. v NIBA Constr. Inc.*, 195 AD2d 425, 427 [1st Dept 1993])[concurring

¹ Curiously, Plaintiff does not rely on RPAPL §1921[2] which concerns "canceling and discharging" mortgages of record (*see Guccione v Estate of Guccione*, 84 AD3d 867 [2d Dept 2011]).

opinion]; *Merchs. Ins. Co. v Long Island Pet Cemetery*, 206 AD2d 827 [4th Dept 1994]). Plaintiff failed to substantively address this issue in the moving papers, much less proffer any evidence demonstrating that the Nodus mortgage is subject to discharge.

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 the branch of Plaintiff's motion for summary judgment against the appearing Defendants, for a default judgment against the non-appearing parties, as well as the other relief is granted; and it is further

ORDERED that the branch of the motion for a default judgment against Defendant Nodus International Bank, Inc. on the declaratory judgment cause of action is denied; and it is further

ORDERED that **Elaine Shay, Esq., 800 3rd Avenue, Ste. 2800, New York, New York - (212) 520-2690** 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/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 **November 6, 2024, at 10:00 a.m.** If a motion for judgment of foreclosure and sale has been filed Plaintiff may contact the Part Clerk Tamika Wright (tswright@nycourt.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.

7/8/2025			
DATE			FRANCIS A. KAHN, III, A.J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
APPLICATION:	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input checked="" type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE
	<input type="checkbox"/> DENIED		