

1900 Capital Trust II v Berquin

2025 NY Slip Op 33088(U)

June 16, 2025

Supreme Court, Kings County

Docket Number: Index No. 517179/2020

Judge: Derefim B. Neckles

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FSMP 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, 11201 on the 16th day of June, 2025.

PRESENT:

HON. DEREKIM B. NECKLES,
Acting Justice.

-----X
1900 CAPITAL TRUST II, BY US BANK TRUST
NATIONAL ASSOCIATION, NOT IN ITS
INDIVIDUAL CAPACITY BUT SOLELY AS
CERTIFICATE TRUSTEE,

Plaintiff,

- against -

JUDE BERQUIN; AMERICAN EXPRESS BANK
FSB; AMERICAN EXPRESS CENTURION BANK;
STELLAR RECOVERY INC.; ELIZABETH PEREZ;
JANICE BERQUIN,

Defendants.
-----X

MS#2

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The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Affidavits (Affirmations) Annexed
Opposition Affirmation to Motion
Reply Affirmation to Opposition

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84
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Upon the foregoing papers in this proceeding, defendant Jude Berquin moves (under mot. seq. 2) for an order (1) pursuant to CPLR§ 2221(e), renewing the prior motion of plaintiff, or in the alternative, (2) pursuant to CPLR§ 2221(d), rearguing the prior motion of plaintiff, and upon renewal or reargument, (3) vacating the action in the interest of justice and (4) dismissing this action pursuant to CPLR§ 3212.

Background

Plaintiff commenced this action on September 15, 2020, to foreclose on the mortgage encumbering the subject property located at 5105 Avenue K, Brooklyn, New York. The parties participated in settlement conferences on November 1, 2022, November 16, 2022, November 23, 2022, January 12, 2023 and March 16, 2023, but the action was ultimately released from the settlement part because the parties could not reach an agreement.

Plaintiff moved for summary judgment and an order of reference on July 26, 2023. Defendant opposed through prior counsel, largely arguing that the loan was predatory, high-cost, and/or sub-prime and that Plaintiff failed to prove its standing. Counsel's affirmation also included a recitation of other defenses without any actual argument – including “7. Plaintiff failed to serve notices required by NYPR L §1303 and §1304.” By order dated September 26, 2023, this Court granted Plaintiff's motion finding, among other things, that it had demonstrated its standing by “attach[ing] a copy of the note (endorsed to blank) to the complaint. The Court also stated:

Plaintiff has also demonstrated compliance with RPAPL 1303 and RPAPL 1304 via the affidavit of service and Hubner Affidavit, respectively. Defendant merely states that Plaintiff failed to comply but offers no actual argument as to the deficiency of Plaintiff's proffer.

Defendant now moves for renewal and/or reargument of the prior motion. More specifically, he argues that intervening case law would have led to a different result and that the Court erred in finding that Plaintiff complied with RPAPL 1303 and 1304. Plaintiff opposes.

Discussion

I. Renewal

A motion for leave to renew “shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination” (CPLR 2221 [e] [2]; see *Dinallo v DAL Elec.*, 60 AD3d 620, 621 [2d Dept 2009]). Here, renewal is unwarranted because there was no relevant change in law. The Second Department held that an unendorsed note appended to a complaint is insufficient to demonstrate standing at least as early as 2019 (see *BNY Mellon v Ettinger*, 176 AD3d 1152, 1155 [2d Dept 2019]). Further, here the note was endorsed to blank, rather than unendorsed. While defendant argues that the loan modification agreement also needed to be endorsed or separately assigned, none of the cases he cites to, stand for that proposition.

II. Reargument

Pursuant to CPLR §2221(d)(2), a motion for leave to reargue shall be based on matters of fact or law allegedly overlooked or misapprehended by the Court in determining the prior motion. Here, defendant asserts that the court misapprehended defendant’s prior argument that plaintiff failed to comply with RPAPL §1303 and §1304.

Although defendant offered no arguments as to why he believed that plaintiff failed to comply with RPAPL §1303 and §1304, the burden was on plaintiff to demonstrate its compliance. Having considered the contentions of new counsel, the court agrees that plaintiff has failed to demonstrate its compliance. While the process server attests to having delivered a “SECTION 1303 NOTICE PRINTED ON COLORED PAPER THAT

IS OTHER THAN THE COLOR OF THE SUMMONS AND COMPLAINT,” he neither proffers a copy thereof nor addresses the font size and type. Likewise, while plaintiff’s servicer, Hubner, attests to plaintiff’s mailing procedures and that the RPAPL §1304 notice was mailed, there is no power of attorney in the record such to authorize New Rez to send the notices.

Accordingly, it is

ORDERED that defendant’s motion to reargue (mot. seq. 2) is granted, and upon reargument, plaintiff’s motion for summary judgment is granted to the extent that defendant’s first through fifteenth affirmative defenses and first and second counterclaims are stricken. Default judgment is granted against the non-appearing defendants. The previously granted amendment of the caption is again granted. The order of reference is vacated, and the referee is discharged. Parties are to complete discovery and proceed to trial.

This constitutes the decision and order of the court.

E N T E R,



HON. DEREKIM B. NECKLES
A. J. S. C.