

Planet Home Lending, LLC v Secure One Capital Corp.

2025 NY Slip Op 33617(U)

September 30, 2025

Supreme Court, New York County

Docket Number: Index No. 153190/2023

Judge: Kathleen Waterman-Marshall

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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. KATHLEEN WATERMAN-MARSHALL PART 09M

Justice

-----X

PLANET HOME LENDING, LLC

Plaintiff,

- v -

SECURE ONE CAPITAL CORPORATION,

Defendant.

-----X

INDEX NO. 153190/2023

MOTION DATE 05/14/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, the motion by plaintiff Planet Home Lending, LLC ("Planet") for an order, pursuant to CPLR § 3212, awarding it summary judgment on its first cause of action for breach of contract against defendant Secure One Capital Corporation ("Secure One"), is granted without opposition and on the merits.

Factual Background

Effective October 23, 2020, Planet and Secure One entered into a Correspondent Program Loan Purchase Agreement ("Agreement"), pursuant to which Secure One sold, and Planet purchased, certain residential mortgage loans (the "Loan" or "Loans"). The Agreement incorporates the terms and conditions of Planet's Seller Guide (the "Guide"), which contains numerous representations, warranties, and terms applicable to each Loan purchased by Planet (NYSCEF Doc. No. 3). Among other things, the Guide sets out the various conditions under which a Loan Defect occurs (more on that below) and requires Secure One to cure the Defect or, if cure is not possible, repurchase the Loan at the Repurchase Price (NYSCEF Doc. No. 3).

Following the sale of Loan xxxxxx5041 ("Loan 5041"), the Federal National Mortgage Association ("FNMA" or "Fannie Mae") notified Planet of a defect in the underwriting of the said loan (NYSCEF Doc. No. 51), which required Planet to repurchase it from Fannie Mae. This triggered Secure One's obligation to repurchase Loan 5041 from Planet at the repurchase price. Planet made multiple good faith demands that Secure One repurchase Loan 5041 (NYSCEF Doc. Nos. 52, 53). To date, however, Secure One has yet to repurchase Loan 5041 from Planet at the repurchase price of \$430,584.22.

The Guide also provides that if a Premium Loan ("PL") originated by Secure One is the subject of a payoff event, defined as a Mortgagor's (a) request for or receipt of a payoff statement, or (b) payment in full of the principal balance, within one-hundred eighty (180) days of Planet's purchase of the Loan, Planet is entitled to receive a Purchase Premium (NYSCEF

Doc. No. 3). Secure One sold Planet three PLs (xxxxxx8897, xxxxxx0770, xxxxxx7713) (collectively, “Early Payoff Loans”) that were paid in full within one hundred eighty (180) days of Planet’s purchase thereof. Planet requested payment of Purchase Premium due, totaling \$19,320.47 (NYSCEF Doc. No. 54), in accordance with the Agreement. To date, Secure One has yet to repay Planet the amounts due and owing for the Early Payoff Loans.

Secure One also sold Planet two additional Loans (xxxxxx9578, xxxxxx4939) that became delinquent, subject to a ninety (90) day delinquency period, with the defect titled “Early Payment Default” (the “Delinquency Loans”) (NYSCEF Doc. No. 55). Under the Agreement, Secure One must repurchase or indemnify Planet for all losses it incurs as a result of these Delinquency Loans and Planet alleges that it suffered damages in the amount of \$11,782.87 as a result of said loans.

Pursuant to Section A-4.04 of the Guide, entitled “Delayed Remittance” (NYSCEF Doc. No. 3), when Secure One fails to remit any payments owed to Planet within five (5) business days from the payment due date, Planet is entitled to interest calculated as follows :

. . . the entire amount of such Planet Receivables shall accrue interest at an annual rate (compounded daily, based upon a 360-day year, from the Due Date until the entire amount of such Planet Receivables are paid in full) equal to the sum of (i) the prime lending rate published in the Wall Street Journal on the Due Date, plus (ii) five and 00/100 percent (5.00%). (NYSCEF Doc. Do. 3).

Further, the Guide requires Secure One indemnify and hold Planet harmless in connection with Secure One’s breaches, including but not limited to attorney’s fees that Planet incurs in connection with an action to enforce the Agreement, including the instant action for breach of contract (NYSCEF Doc. No. 3).

Secure One has failed to repurchase or settle the unresolved and defective Loans, notwithstanding the fact that Planet extended Secure One’s time to pay to August 2, 2022, and then November 28, 2022. This lawsuit ensued, followed by the instant motion for summary judgment which is unopposed (NYSCEF Doc. No. 57).

Discussion

On a motion for summary judgment, the burden rests with the moving party to make a prima facie showing that they are entitled to judgment as a matter of law and demonstrate the absence of any material issues of fact (*Friends of Thayer Lake, LLC v Brown*, 27 NY3d 1039 [2016]). The movant must establish its claim(s) via evidentiary proof, in admissible form, sufficient for the Court to direct judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). Once met, the burden shifts to the opposing party to submit admissible evidence sufficient to create a question of fact requiring trial (*Kershaw v Hospital for Special Surgery*, 114 AD3d 75 [1st Dept 2013] [“court’s function is issue finding rather than issue determination”]). “When a plaintiff moves for summary judgment, it is proper for the court to . . . deny summary judgment if facts are alleged in opposition to the motion which, if true, constitute

a meritorious defense” (*Nassau Trust Co. v Montrose Concrete Products Corp.*, 56 NY2d 175, 182 [1982]).

A failure to make a prima facie showing requires the Court to deny the motion, regardless of the sufficiency of opposing papers (*Alvarez*, 68 NY2d at 324; see also *JMD Holding Corp. v Congress Financial Corp.*, 4 NY3d 373 [2005]). Indeed, a party’s “failure to oppose a motion for summary judgment alone does not justify the granting of summary judgment” (*Vermont Teddy Bear Co. v 1-800 Beargram Co.*, 373 F3d 241, 244 [2d Cir 2004]). When a motion for summary judgment is unopposed, the motion can only be granted if the movant has established prima facie entitlement to summary judgment and the evidence submitted does not create a triable issue of fact (*Yonkers Ave. Dodge, Inc. v BZ Results, LLC*, 95 AD3d 774, 774-775 [1st Dep’t 2012]).

In order to prevail on a breach of contract claim, a plaintiff must establish the existence of a valid contract, plaintiff’s performance and defendant’s breach (*Alloy Advisory, LLC v 503 West 33rd Street Associates, Inc.* 195 AD3d 436 [1st Dept 2021]; *Morris v 702 E. Fifth St. HDFC*, 46 AD3d 478, 479 [1st Dept 2007]).

Planet met its burden of establishing entitlement to judgment on its breach of contract claim by submitting, *inter alia*, the Agreement, which incorporates the terms and conditions of the Guide and its Appendices; the loan defect and demand letters; the affidavit of merit of Mary Darter, Senior Vice President of Planet’s Correspondent Operations; and the affirmation of its attorney’s setting forth, *inter alia*, the fees incurred in bringing this action, as substantiated by its the firm legal invoices. These documents conclusively show that the Agreement is a contract; that Planet performed its obligations under the Agreement; that Loan 5041, the Early Payoff Loans, and Delinquency Loans are “Defective Mortgage Loans” as defined by Subsection A-4.01(c) of the Agreement; and that Planet exercised, in good faith, the remedies available to it for the subject Loan Defects.

Planet further established that Secure One breached its contractual obligations by failing to cure the Loan Defects or repurchase the Loans within the time period following the elapsed opportunity to cure. Specifically, Secure One had thirty (30) days to cure the Defect(s) from receipt of notice thereof from Planet; following their failure to cure, Secure One had an additional thirty (30) days to repurchase such Loans and remit payment (NYSCEF Doc. No. 3). Secure One neither cured any of the Loan Defects or repurchased any of the Loans as required by the Agreement.

The record also substantiates the amount due to Planet from Secure One for the Defective Mortgage Loans (NYSCEF Doc. Nos. 1, 40), to wit: \$430,584.22 as and for the repurchase price of Loan 5041; \$19,320.47 due for the Early Payout Loans; and \$11,782.87 as and for damages as a result of the Delinquency Loans, totaling in all the sum of \$461,687.56. Planet is entitled to recover interest on said sum, at the rate of 9% per annum calculated from April 6, 2023 (CPLR 5004), plus attorney’s fees incurred in bringing this action in the sum of \$11,825.90.

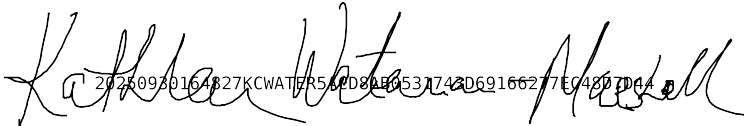
Accordingly, it is hereby

ORDERED that Planet’s motion for summary judgment on its first cause of action for breach of contract against Secure One is granted; and it is further

ORDERED, DECLARED, and ADJUDGED that plaintiff PLANET HOME LENDING, LLC shall have judgment and does recover as against defendant SECURE ONE CAPITAL CORPORATION the amount of \$461,687.56, plus pre-judgment interest at the rate of 9% per annum commencing April 6, 2023, together with costs as calculated by the Clerk of the Court, plus attorney’s fees in the sum of \$11,825.90; and it is further

ORDERED that plaintiff shall submit a judgment to the Clerk of the Court, and not to chambers or the Part, unless directed otherwise by the Clerk of the Court; and it is further

ORDERED that the remaining causes of action are severed and resolved and this case is disposed.



9/30/2025
DATE

KATHLEEN WATERMAN-MARSHALL,
J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
		<input type="checkbox"/>	DENIED
		<input type="checkbox"/>	SUBMIT ORDER
		<input type="checkbox"/>	FIDUCIARY APPOINTMENT

APPLICATION:

CHECK IF APPROPRIATE: