SIG CRE 2023 Venture LLC v Elizabeth Blue NYC, LLC
2025 NY Slip Op 33994(U)
October 3, 2025
Supreme Court, New York County
Docket Number: Index No. 850255/2024
Judge: Francis A. Kahn III

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. FRANCIS A. KAHN, III **PART** 32

Justice

----------X

INDEX NO. 850255/2024

SIG CRE 2023 VENTURE LLC,

MOTION DATE

Plaintiff,

MOTION SEQ. NO. 003

- v -

ELIZABETH BLUE NYC, LLC,AMARJIT BHALLA, BOARD OF MANAGERS OF 131 GREENE STREET CONDOMINIUM, JOHN DOE NO. I THROUGH JOHN DOE NO. XXX, INCLUSIVE, THE LAST THIRTY NAMES BEING FICTITIOUS AND UNKNOWN TO PLAINTIFF, THE PERSONS OR PARTIES INTENDED BEING THE TENANTS, OCCUPANTS, PERSONS OR CORPORATIONS, IF ANY, HAVING OR CLAIMING AN INTEREST IN OR LIEN,

DECISION + ORDER ON MOTION

Defendant.

----------X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109

were read on this motion to/for JUDGMENT - DEFAULT.

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

This is an action to foreclose on a mortgage, extension, modification and security agreement encumbering two parcels of real property located at 131 Greene Street, Units 1 and 2, New York, New York. The mortgage secures a loan in the original principal amount of $21,500,000.00 given by Defendant Elizabeth Blue NYC LLC ("Blue") to non-party Signature Bank ("Signature") and memorialized by a restated note the same date as the mortgage. The loan documents are dated December 13, 2018, and were executed by Defendant Amarjit S. Bhalla ("Bhalla") as President of Blue. Concomitantly with these documents, Defendant Bhalla executed a guaranty of recourse obligations. One of the purposes of this transaction was, as stated in the precatory language in the mortgage, to "coordinate and modify the liens of the Existing Mortgages and to modify and extend the terms thereof so that hereafter they shall constitute in law one mortgage which shall be a single first lien". The two prior mortgages were dated December 12, 2011, and October 24, 2014, and secured two loans of $4,795,000.00 and $18,223,760.41, respectively.

Plaintiff commenced this action and pled in its amended complaint, *inter alia*, that Defendants defaulted in repayment of the loan. Defendants Blue and Bhalla answered and pled ten affirmative defenses, including lack of standing. Now, Plaintiff moves for *inter alia* summary judgment against Blue and Bhalla, for a default judgment against the non-appearing parties, striking the appearing Defendants' affirmative defenses, appointing a referee to compute and to amend the caption. Defendants oppose 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 Defendants' 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]). Also, based on the affirmative defenses pled, Plaintiff was required to demonstrate its standing (*see eg Wells Fargo Bank, N.A. v Tricario*, 180 AD3d 848 [2nd Dept 2020]). 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]). A plaintiff may rely on evidence from persons with personal knowledge of the facts, documents in admissible form and/or persons with knowledge derived from produced admissible records (*see eg U.S. Bank N.A. v Moulton*, 179 AD3d 734, 738 [2d Dept 2020]). No specific business records must be proffered, provided 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 with an affirmation from Neil Minott, ("Minott"), Asset Manager for Rialto Capital Advisors, LLC ("Rialto"), the servicer for Plaintiff. Minott avers that his submission was based upon a review of the records of Plaintiff and Rialto, as well as knowledge of its record keeping practices. Minott's affidavit laid a proper foundation for the admission of the records of Plaintiff and Rialto into evidence under CPLR §4518 by sufficiently showing that the records relied upon "reflect[ed] a routine, regularly conducted business activity, and that it be needed and relied on in the performance of functions of the business", "that the record [was] made pursuant to established procedures for the routine, habitual, systematic making of such a record" and "that the record [was] made at or about the time of the event being recorded" (*Bank of N.Y. Mellon v Gordon*, 171 AD3d 197, 204 [2d Dept 2019]; *see also Bank of Am v Brannon*, 156 AD3d 1 [1st Dept 2017]). The records of prior servicers, like Signature, were also admissible since Minott established that those records were received from the makers and incorporated into the records Rialto kept and that it routinely relied upon such documents in its business (*see eg U.S. Bank N.A. v Kropp-Somoza,* 191 AD3d 918 [2d Dept 2021]). Further, the records referenced by Minott were annexed to the moving papers (*cf. Deutsche Bank Natl. Trust Co. v Kirschenbaum*, 187 AD3d 569 [1st Dept 2020]). Rialto's authority to act on Plaintiff's behalf was established with submission of a power of attorney dated November 5, 2024 (*see U.S. Bank N.A. v Tesoriero*, 204 AD3d 1066 [2d Dept 2022]; *Deutsche Bank Natl. Trust Co. v Silverman*, 178 AD3d 898 [2d Dept 2019]; *US Bank N.A. v Louis*, 148 AD3d 758 [2d Dept 2017]).

Proof of the loan documents, including the note and mortgage, was established in the first instance through the affirmation of Minott and the annexed documents (*cf. 938 St. Nicholas Ave. Lender LLC v 936-938 Cliffcrest Hous. Dev. Fund Corp.,* 218 AD3d 417 [1st Dept 2023]). A defendant's default, "is established by (1) an admission made in response to a notice to admit, (2) an affidavit from a person having personal knowledge of the facts, or (3) other evidence in admissible form" (*Deutsche Bank Natl. Trust Co. v McGann*, 183 AD3d 700, 702 [2d Dept 2020]). Minott's affidavit and the loan history demonstrated the mortgagor's default in repayment under the note (*see eg ING Real Estate Fin. (USA) LLC v Park Ave. Hotel Acquisition, LLC*, 89 AD3d 506 [1st Dept 2011]; *see also Bank of NY v Knowles*, supra; *Fortress Credit Corp. v Hudson Yards, LLC*, supra).

As to standing in a foreclosure action, it is established in one of three ways: [1] direct privity between mortgagor and mortgagee, [2] physical possession of the note prior to commencement of the action that contains an indorsement in blank or bears a special indorsement payable to the order of the

plaintiff either on its face or by allonge, and [3] assignment of the note to Plaintiff prior to commencement of the action (*see eg Wells Fargo Bank, N.A. v Tricario*, 180 AD3d 848 [2d Dept 2020]; *Wells Fargo Bank, NA v Ostiguy*, 127 AD3d 1375 [3d Dept 2015]). Standing is evaluated when an action is commenced, not thereafter (*see eg 1S REO Opportunity 1, LLC v Harlem Premier Residence, LLC,* 234 AD3d 401 [1st Dept 2025]) and may not be cured retroactively (*see U.S. Bank N.A. v Dellarmo*, 94 AD3d 746 [2d Dept 2012]).

It is undisputed that Plaintiff is not the originator of any of the loans or the named obligee on the notes. Standing via possession of the note, referred to as holder status "is established where the plaintiff possesses a note that, on its face or by allonge, contains an indorsement in blank or bears a special indorsement payable to the order of the plaintiff" (*Wells Fargo Bank, NA v Ostiguy*, 127 AD3d 1375, 1376 [2d Dept 2015] [citations omitted]). The indorsement must be made either on the face of the note or on an allonge "so firmly affixed thereto as to become a part thereof" (UCC §3-202[2]). "The attachment of a properly endorsed note to the complaint may be sufficient to establish, prima facie, that the plaintiff is the holder of the note at the time of commencement" (*Deutsche Bank Natl. Trust Co. v Webster,* 142 AD3d 636, 638 [2d Dept 2016]; *cf. JPMorgan Chase Bank, N.A. v Grennan*, 175 AD3d 1513 [2d Dept 2019]). However, "mere physical possession of a note at the commencement of a foreclosure action is insufficient to confer standing or to make a plaintiff the lawful holder of a negotiable instrument for the purposes of enforcing the note" (*U.S. Bank N.A. v Moulton*, 179 AD3d 734, 737 [2d Dept 2020]).

Here, the two indorsements of the note given to Signature are contained on an allonges on separate pages. The copy of the note attached to the complaint did not reveal any indicia of firm annexation of the allonges upon visual inspection (*cf. US Bank v Hunte*, 215 AD3d 887 [2d Dept 2023]). Resultantly, Plaintiff was required, but failed, to establish that each allonge was "firmly affixed" to the note (*see 1S REO Opportunity 1, LLC v Harlem Premier Residence, LLC*, 234 AD3d 401, 403 [1st Dept 2025]; *938 St. Nicholas Ave. Lender LLC v 936-938 Cliffcrest Hous. Dev. Fund Corp.,* 218 AD3d 417 [1st Dept 2023]). Not every attachment can satisfy UCC §3-202[2] and Minott offered no description of the nature of the attachment (*see 1S REO Opportunity 1, LLC v Harlem Premier Residence, LLC,* supra at 402; *HSBC Bank, USA, N.A. v Roumiantseva,* 130 AD3d 983 [2d Dept 2015]; *cf. U.S. Bank N.A. v Mave Hotel Invs. LLC,* 231 AD3d 607 [1st Dept 2024]), nor did he indicate "*when* [he, if ever,] reviewed the copy of the note and allonge" (*Wells Fargo Bank, N.A. v Mitselmakher*, 216 AD3d 1056, 1058 [2d Dept 2023]).

To the extent Plaintiff is claiming standing via acquisition of Signature's assets, absent is necessary "evidence establishing" that after Signature entered receivership with the Federal Deposit Insurance Corporation ("FDIC"), Plaintiff executed a purchase and assumption agreement of Signature's assets with FDIC before this action was commenced (*see Bayview Loan Servicing v Ashkenazi*, 233 AD3d 955, 957 [2d Dept 2024]; *see also Citimortgage, Inc. v Goldberg*, 134 AD3d 880, 881 [2d Dept 2015][sufficient evidence of merger with prior note holder shown]). At most, Minott makes a conclusory reference to this occurrence, but no actual evidence of same is shown. Reliance on the written assignments of the mortgages proffered is unavailing for the same reason. Where, as here, there are a series of transfers, proof of the validity of each assignment in the chain is obligatory to demonstrate standing (*see eg Aurora Loan Servs., LLC v Mercius*, 138 AD3d 650, 652 [2d Dept 2016]; *Citibank, N.A. v Herman*, 125 AD3d 587 [2d Dept 2015]). Here, the assignments were both executed by FDIC, but again no evidence of its takeover of Signature was proffered.

Accordingly, Plaintiff failed to establish, *prima facie*, it had standing when this action was commenced.

On the issue of lack of capacity, Plaintiff, a foreign limited liability company, admits in the reply that it lacked a certificate of authority to transact business in this state when the action was commenced. However, this 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 1st Dept 2014]; *Acquisition Am. VI, LLC v Lamadore*, 5 Misc. 3d 461, 462 [Sup Ct NY Cty 2004]). Plaintiff submitted the necessary information on this issue in reply.

As to the branch of the motion to dismiss Defendants' affirmative defenses, CPLR §3211[b] provides that "[a] party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit". For example, affirmative defenses that are without factual foundation, conclusory or duplicative cannot stand (*see Countrywide Home Loans Servicing, L.P. v Vorobyov,* 188 AD3d 803, 805 [2d Dept 2020]; *Emigrant Bank v Myers*, 147 AD3d 1027, 1028 [2d Dept 2017]). When evaluating such a motion, a "defendant is entitled to the benefit of every reasonable intendment of its pleading, which is to be liberally construed. If there is any doubt as to the availability of a defense, it should not be dismissed" (*Federici v Metropolis Night Club, Inc.*, 48 AD3d 741, 743 [2d Dept 2008]).

As pled, all the affirmative defenses, except the first as it relates to standing, are entirely conclusory and unsupported by any facts in the answer. As such, these affirmative defenses are nothing more than unsubstantiated legal conclusions which are 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 specific legal arguments were not proffered in support of any affirmative defense, other than standing, those defenses 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]).

The branch of Plaintiff's motion for a default judgment against the non-appearing parties is granted without opposition (*see* CPLR §3215; *SRMOF II 2012-I Trust v Tella*, 139 AD3d 599, 600 [1st Dept 2016]).

The branch of Plaintiff's motion to amend the caption is granted without opposition (*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 branches of Plaintiff's motion for summary judgment on its causes of action for foreclosure and appointment of a referee are denied, and it is

ORDERED that all the affirmative defenses in Defendants' answer, except the ninth as it relates to standing, are stricken, and it is

ORDERED that the JOHN DOE defendants are excised as parties and the caption is amended as follows:

SUPREME COURT STATE OF NEW YORK
COUNTY OF NEW YORK
----------X
SIG CRE 2023 VENTURE LLC,
Plaintiff,

-against-

ELIZABETH BLUE NYC, LLC; AMARJIT S. BHALLA; BOARD OF MANAGERS OF 131 GREENE STREET CONDOMINIUM,

Defendants.
----------X

and it is

ORDERED that this matter is set down for a status conference on **November 25, 2025 @ 11:00 am** via Microsoft Teams.

10/3/2025
DATE

FRANCIS KAHN, III, A.J.S.C.
HON. FRANCIS A. KAHN III
J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE