

SIG CRE 2023 Venture LLC v 126 Retail, LLC

2025 NY Slip Op 33995(U)

October 7, 2025

Supreme Court, New York County

Docket Number: Index No. 850257/2024

Judge: Francis A. Kahn III

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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. 850257/2024

SIG CRE 2023 VENTURE LLC,

MOTION DATE

Plaintiff,

MOTION SEQ. NO. 003

- v -

126 RETAIL, LLC, AMARJIT S. BHALLA, BOARD OF MANAGERS OF 126 UNIVERSITY PLACE CONDOMINIUM, JOHN DOE NO. 1 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.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 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, 110, 111, 112

were read on this motion to/for JUDGMENT - SUMMARY

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

This is an action to foreclose on a mortgage, consolidation, extension, modification and security agreement encumbering a parcel of real property located at 126 University Place, Unit 1, New York, New York. The mortgage secures a loan in the original principal amount of \$2,700,000.00 given by Defendant 126 Retail LLC ("Retail") to non-party Signature Bank ("Signature") and is memorialized by a restated note the same date as the mortgage. The loan documents are dated December 19, 2017, and were executed by Defendant Amarjit S. Bhalla ("Bhalla") as Managing Member of Retail. 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, was to "consolidate, 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". Two of the prior mortgages are dated October 7, 2003, and the third is dated March 19, 2013.

By agreement dated October 10, 2020, Signature and Retail executed a modification agreement wherein all the unmodified terms of the loan documents were affirmed. One of the modified terms included that the outstanding principal balance of the note was changed to \$2,593,644.77 and it was agreed that "all interest has been paid up to April 10, 2020". As an inducement for Signature to assent to this modification, Retail admitted "[t]here are no defenses or offsets to its obligations under the Note, the Mortgage or the other Loan Documents executed in connection therewith, and if any such defenses or offsets exist without the knowledge of the Mortgagor, the same are hereby waived".

Plaintiff commenced this action and pled in its amended complaint, *inter alia*, that Defendants defaulted in repayment of the loan. Defendants Retail and Bhalla answered and pled twelve affirmative defenses, including lack of standing. Now, Plaintiff moves for *inter alia* summary judgment against Retail 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]). 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]).

Preliminarily, any failure to annex all the pleadings to the moving papers is properly overlooked, as "those papers were filed electronically and readily available to the court and both parties" (*see 225 ADC Realty Corp. v Popular Jewelry Corp.*, 222 AD3d 510 [1st Dept 2023]). 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 Clifferest 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*).

Accordingly, Plaintiff established, *prima facie*, its entitlement to summary judgment on its foreclosure claim and for the appointment of a referee to compute.

In opposition, Defendants' reliance on standing, as well as all the other affirmative defenses, were expressly waived under section 3[a] of the modification agreement (*see Weiss v Phillips*, 157 AD3d 1 [1st Dept 2017]; *Parasram v DeCambre*, 247 AD2d 283 [1st Dept 1998]; *Chemical Bank New York Trust Co. v Batter*, 31 AD2d 802 [1st Dept 1969]; *see also U.S. Bank N.A. v Kahn Prop. Owner, LLC*, 206 AD3d 855, 858 [2d Dept 2022]; *Bernstein v Dubrovsky*, 169 AD3d 410 [1st Dept 2019]). "Courts have held that the waiver of the right to assert defenses, counterclaims or setoffs is enforceable and thus not violative as against public policy" (*Weiss v Phillips, supra* at 10). Defendants' reliance on *Lance Intl., Inc. v First Natl. City Bank*, 86 AD3d 479 [1st Dept 2011] for authority is entirely misplaced. In that case the waiver occurred pursuant CPLR §3211[g], not an express contract, and dealt with a defense of capacity that arose after joinder of issue. Defendants' citation to *PAF-PAR LLC v Silberberg*, 118 AD3d 446 [1st Dept 2014] is also inapposite. Unlike that case, Plaintiff here has established its *prima facie* case for foreclosure.

Contrary to Defendants' argument, Plaintiff was not obliged to prove its standing as part of its *prima facie* case. Lack of standing is an affirmative defense, not an element of plaintiff's claim for foreclosure, and only becomes part of the *prima facie* case on summary judgment if raised in the defendant's answer (*see Wells Fargo Bank, NA v Tricario*, 180 AD3d 848, 849 [2d Dept 2020]). This is because "a party's lack of standing does not constitute a jurisdictional defect" (*HSBC Bank USA, N.A. v Taher*, 104 AD3d 815, 817 [2d Dept 2013] and is, therefore, waivable. In this case, Retail specifically forfeited the right to assert any "defenses or offsets to its obligations under the Note, the Mortgage or the other Loan Documents". As such, "waived defenses 'may not be maintained'" (*Weiss v Phillips, supra, quoting Bank of New York v Cariello*, 69 AD2d 805, 805 [2d Dept 1979]).

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, 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 Bellafore*, 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 (*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 (*see generally CPLR §3025; JP Morgan Chase Bank, N.A. v Laszio*, 169 AD3d 885, 887 [2d Dept 2019]).

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 affirmative defenses pled by all the appearing Defendants are dismissed; 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 the mortgage and any necessary loan documents related to such Mortgage be, and the same hereby are, reformed by substituting therein the intended Legal Description of the mortgaged premises, which is the correct description, in place of the mortgage premises description which is erroneous (a copy of the Intended Mortgaged premises is attached); 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 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

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SIG CRE 2023 VENTURE LLC,

Plaintiff,

-against-

126 RETAIL, LLC; AMARJIT S. BHALLA; BOARD
OF MANAGERS OF 126 UNIVERSITY PLACE
CONDOMINIUM,

Defendants.

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and it is

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/supctmanh)); 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 **February 19, 2026, 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.

10/7/2025

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

Francis Kahn, III

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

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