

**SIG CRE 2023 Venture LLC v Area Columbus LLC**

2025 NY Slip Op 34030(U)

October 7, 2025

Supreme Court, New York County

Docket Number: Index No. 850432/2024

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

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INDEX NO. 850432/2024

MOTION DATE

MOTION SEQ. NO. 003

SIG CRE 2023 VENTURE LLC,

Plaintiff,

- v -

DECISION + ORDER ON MOTION

AREA COLUMBUS LLC, WRS ADVISORS IV LLC, BOARD OF MANAGERS OF TIME WARNER CENTER CONDOMINIUM (F/K/A AOL TIME WARNER CENTER CONDOMINIUM), NYC DEPARTMENT OF FINANCE, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, JOHN DOE NO. I THROUGH JOHN DOE NO. XXX INCLUSIVE, THE LAST THIRTY NAMES BEING FICTITIOUS AND UNKNOWN TO PLAINTIFF,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 100, 101, 102, 103, 104, 105, 106, 107, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 123, 124

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing papers, the motion and cross-motions are determined as follows:

This is an action to foreclose on a mortgage, consolidation, modification and security agreement encumbering a parcel of real property located at 60 Columbus Circle, Unit-A2, New York, New York. The mortgage secures a loan in the original principal amount of \$24,000,000.00 given by Defendant Area Columbus LLC ("Area") to non-party Signature Bank ("Signature") and memorialized by an amended, consolidated and restated note the same date as the mortgage. The loan documents are dated April 2, 2018, and were executed by non-party Richard Mack ("Mack") as an officer of Area. Concomitantly with these documents, Defendant WRS Advisors IV LLC ("WRS") executed a limited guaranty of the indebtedness. On January 30, 2024, Rialto Capital Advisors, LLC ("Rialto"), the servicer for Plaintiff, issued a "Pre-Negotiation Letter Agreement" as a condition of Rialto discussing Defendants' requests concerning modification of the loan. The agreement purports to have been acknowledged and agreed to by WRS on April 1, 2024, and Area on May 1, 2024. As part of that agreement, Area and WRS acknowledged that Plaintiff "is the current holder of the Loan and Loan Documents" and that "neither of them has any claims against Lender or Servicer solely with respect to the Loan".

Plaintiff commenced this action and pled in its complaint, inter alia, that Defendants defaulted in repayment of the loan. Defendants Area and WRS answered but pled no affirmative defenses. Now, Plaintiff moves for inter alia summary judgment against Area and WRS, for a default judgment against the non-appearing parties, appointing a referee to compute and to amend the caption. Defendants Area and WRS oppose the motion and cross-move pursuant CPLR §3025[b] for leave to amend her answer to assert, inter alia, an affirmative defense of standing as well as to plead certain corrections. Plaintiff opposes the cross-motion and submits its own cross-motion for sanctions. Defendants oppose Plaintiff's cross-motion.

As the proposed affirmative defenses directly impact what Plaintiff must proffer as a *prima facie* case for summary judgment (*see generally Wells Fargo Bank, N.A. v Tricario*, 180 AD3d 848 [2<sup>nd</sup> Dept 2020]; *U.S. Bank, NA v Nathan*, 173 AD3d 1112 [2d Dept 2019]; *HSBC Bank USA, N.A. v Bermudez*, 175 AD3d 667, 669 [2d Dept 2019]), the Court will address that branch of Defendants' cross-motion first. Leave to amend a pleading under CPLR §3025[b] is to be freely given "absent prejudice or surprise resulting directly from the delay" (*see e.g. O'Halloran v Metropolitan Transp. Auth.*, 154 AD3d 83 [1st Dept 2017]; *Anoun v City of New York*, 85 AD3d 694 [1st Dept 2011]; *see also Fahey v County of Ontario*, 44 NY2d 934, 935 [1978]). All that need be shown is that "the proffered amendment is not palpably insufficient or clearly devoid of merit" (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499 [1st Dept 2010]). To justify denial of such a motion, the opposing party "must overcome a heavy presumption of validity in favor of [allowing amendment]" (*McGhee v Odell*, 96 AD3d 449, 450 [1st Dept 2012]).

All affirmative defenses were expressly waived under section 2.2[k] of the mortgage (*see Weiss v Phillips*, 157 AD3d 1 [1<sup>st</sup> Dept 2017]; *Parasram v DeCambre*, 247 AD2d 283 [1<sup>st</sup> Dept 1998]; *Chemical Bank New York Trust Co. v Batter*, 31 AD2d 802 [1<sup>st</sup> 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 [1<sup>st</sup> 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' assertion that Plaintiff has not demonstrated it is the assignee of the loan documents is belied by their express admission of same in the pre-negotiation letter agreement. As such, all the proffered affirmative defenses are clearly devoid of merit and their cross-motion to amend is denied.

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 [1<sup>st</sup> Dept 2020]; *Bank of NY v Knowles*, 151 AD3d 596 [1<sup>st</sup> Dept 2017]; *Fortress Credit Corp. v Hudson Yards, LLC*, 78 AD3d 577 [1<sup>st</sup> 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 [1<sup>st</sup> 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 [1<sup>st</sup> Dept 2020]). Rialto's authority to act on Plaintiff's behalf was

established with submission of a power of attorney dated December 6, 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 [1<sup>st</sup> 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 [1<sup>st</sup> 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 posit that sufficient facts exist that Plaintiff stymied their attempts to refinance the indebtedness to raise factual issues concerning unclean hands, unconscionable conduct and/or bad faith. "A mortgagor may be relieved from his default under a mortgage upon a showing of waiver, estoppel, bad faith, fraud, or oppressive or unconscionable conduct by the mortgagee" (*see Ebc Amro Asset Mgmt. v Kaiser*, 256 AD2d 161 [1<sup>st</sup> Dept 1998]). The doctrine of unclean hands "is used only to bar the grant of equitable relief to a party who is 'guilty of immoral, unconscionable conduct and even then only when the conduct relied on is directly related to the subject matter in litigation and the party seeking to invoke the doctrine was injured by such conduct'" (*Wells Fargo Bank v Hodge*, 92 AD3d 775 [2d Dept 2012]). However, "conclusory, self-serving, facially unpersuasive evidence" which is not supported by documentary proof is insufficient to defeat summary judgment where evidence of Defendants' acceptance of the disputed funds and failure to make repayment is proffered (*see Connecticut Nat'l Bank v Hack*, 186 AD2d 387, 388 [1<sup>st</sup> Dept 1992]; *see also Silver v Silver*, 17 AD3d 281 [1<sup>st</sup> Dept 2005]).

Here, Defendants' claims in this regard are uncorroborated, lacking sufficient specificity and do not constitute conduct to support their defenses (*see Wells Fargo Bank, N.A. v Dara*, 180 AD3d 844 [2d Dept 2020]; *see also Coutts Bank v Anatian*, 261 AD2d 307 [1<sup>st</sup> Dept 1999]). Plaintiff's decision to not offer a loan modification and its decision to proceed to foreclosure is not immoral or unconscionable conduct (*see Bank of Smithtown v 264 W. 124 LLC*, 105 AD3d 468 [1<sup>st</sup> Dept 2013]). Bare assertions of misrepresentations in a context of a post-default negotiation is not a defense to summary judgment (*see New York State Urban Dev. Corp. v Marcus Garvey Brownstone Houses, Inc.*, 98 AD2d 767, 771 [2d Dept 1983]). Any claimed breaches of the contract in modification negotiations are unavailing as it raises an issue outside the making of the note and mortgage (*see Cerman Am Capital Corp v Oxley Dev Co LLC*, 102 AD3d 408 [1<sup>st</sup> Dept 2013]). In other words, a party cannot be coerced into doing what they are legally obligated to perform under a contract (*see NYCTL 1997-1 Trust v Vila*, 19 AD3d 382 [2d Dept 2005]).

Plaintiff was not obliged to prove its standing in this 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 pled 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]).

Defendants' assertion the motion must be denied because no discovery has been conducted is unavailing as they have offered nothing to demonstrate Plaintiff is in exclusive possession of facts which would establish a viable defense to foreclosure of the lien (*see Island Fed. Credit Union v. I&D Hacking Corp.*, 194 AD3d 482 [1<sup>st</sup> Dept 2021]). Moreover, as "the affirmative defenses are precluded, no discovery could lead to facts that would warrant denial of plaintiff's summary judgment motion" (*Bernstein v Dubrovsky*, 169 AD3d 410 [1<sup>st</sup> Dept 2019]).

As to the guarantor, "[o]n a motion for summary judgment to enforce a written guaranty all that the creditor need prove is an absolute and unconditional guaranty, the underlying debt, and the guarantor's failure to perform under the guaranty" (*see 4 USS LLC v DSW MS LLC*, 120 AD3d 1049, 1051 [1<sup>st</sup> Dept 2014], quoting *City of New York v Clarose Cinema Corp.*, 256 AD2d 69, 71 [1<sup>st</sup> Dept 1998]). However, in the present case, the guaranty is limited and creates liability upon the occurrence of certain specified events (*see Nexbank, SSB v Soffer*, 129 AD3d 485 [1<sup>st</sup> Dept 2015]). Here, the affidavit submitted by Plaintiff and the supporting documents demonstrated a *prima facie* case for summary judgment against the guarantor. Notably, a guarantor cannot rely on any defenses personal to the borrower, except failure of consideration, which was not demonstrated here (*see I Bldg, Inc. v Hong Mei Cheung*, 137 AD3d 478 [1<sup>st</sup> Dept 2017]).

Plaintiff's cross-motion for sanctions is denied as procedurally and substantively defective.

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 [1<sup>st</sup> 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 Laszlo*, 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 Defendants' and Plaintiff's cross-motions are denied in their entirety; and it is further

ORDERED that **Jeffrey R. Miller, Esq, 32 Broadway, 13th Floor, New York, New York 10004, 212-227-4200** 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

-----X  
SIG CRE 2023 VENTURE LLC,

Plaintiff,

-against-

AREA COLUMBUS LLC; WRS ADVISORS IV LLC;  
BOARD OF MANAGERS OF TIME WARNER CENTER  
CONDOMINIUM (f/k/a AOL TIME WARNER CENTER

CONDOMINIUM); NYC DEPARTMENT OF FINANCE;  
NEW YORK STATE DEPARTMENT OF TAXATION  
AND FINANCE,

Defendants.

-----X  
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 10:40 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](mailto: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



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

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

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE