

Deutsche Bank Natl. Trust Co. v Gardner

2025 NY Slip Op 34197(U)

August 28, 2025

Supreme Court, Kings County

Docket Number: Index No. 536004/23

Judge: Derefim B. Neckles

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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 Civic Center, Brooklyn, New York, on the 28th day of August, 2025.

P R E S E N T:

HON. DEREKIM B. NECKLES,

Acting Justice.

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DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR HOME EQUITY MORTGAGE LOAN ASSET-BACKED TRUST SERIES INABS 2006-D, HOME EQUITY MORTGAGE LOAN ASSET-BACKED CERTIFICATES SERIES INABS 2006-D,

Plaintiff,

- against -

Index No. 536004/23

GLENN GARDNER; THE BOARD OF MANAGERS OF VANDERBILT – WALLABOUT CONDOMINIUM; WILMINGTON SAVINGS FUND SOCIETY, FSB; NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS OWNER TRUSTEE OF THE ASPEN G. TRUST; NEW YORK CITY PARKING VIOLATIONS BUREAU; NEW YORK CITY ENVIRONMENTAL CONTROL BOARD; NEW YORK CITY TRANSIT ADJUDICATION BUREAU,

MS # 1 + MS # 2

“JOHN DOE #1” through “John Doe #12”, the last twelve 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 upon the premises, described in the complaint,

Defendants.

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The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and Affidavits (Affirmations) _____
Opposing Affidavits (Affirmations) _____
Reply Affidavits (Affirmations) _____

26-42 46-62
48-62 66-69
66-69

Upon the foregoing papers in this action to foreclose a mortgage encumbering the residential property, condominium unit 113B at 95-115 Vanderbilt Avenue in Brooklyn

(Block 1887, Lot 1122) (Property), plaintiff Deutsche Bank National Trust Company, As Trustee For Home Equity Mortgage Loan Asset-Backed Trust Series INABS 2006-D, Home Equity Mortgage Loan Asset-Backed Certificates Series INABS 2006-D (Deutsche Bank or Plaintiff) moves (in motion sequence [mot. seq.] one) for an order: (1) appointing a referee to compute the amount due to Plaintiff, examine whether the Property may be sold in parcels and make his/her computation and report with all convenient speed, pursuant to RPAPL § 1321; (2) amending the caption to add the names of tenant(s) residing at the Property as named defendants, pursuant to RPAPL § 1311, substituting “JOHN JOE” for “JOHN DOE #1” and substituting “JANE DOE” for “JOHN DOE #2” and deleting the remaining John Doe defendants; (3) granting it a default judgment against all non-appearing and non-answering defendants, pursuant to CPLR 3215; (4) declaring that the July 28, 2006 Consolidation, Extension and Modification Agreement (CEMA) has been lost through no fault of the Plaintiff; (5) declaring that the July 28, 2006 CEMA annexed to the Complaint is a true and accurate copy of the CEMA; (6) declaring that the judgments and liens accruing after July 28, 2006, are subordinate to Plaintiff’s CEMA encumbering the Property; and (7) “[d]irecting the County Clerk to accept as an original, a copy of the CEMA . . . in substitution and in lieu of the original CEMA . . .” (NYSCEF Doc No. 26).

Defendant Glenn Gardner (Gardner or Defendant) cross-moves (in mot. seq. two) for an order: (1) vacating his default, pursuant to CPLR 317, 5015 (a) (1) and the “inherent authority” of the court to vacate an order or judgment in the interest of justice, and (2) granting him leave to interpose an answer to the complaint (NYSCEF Doc No. 46).

Background

On December 8, 2023, Deutsche Bank commenced this foreclosure action by filing a summons, an unverified complaint and a notice of pendency against the Property (NYSCEF Doc Nos. 1-5). The complaint alleges that on or about July 28, 2006, Gardner executed a promissory note in the principal amount of \$450,000 which was secured by the CEMA encumbering his residential Property (Complaint at ¶¶ 7 and 9). The complaint alleges that the loan was subsequently modified four times, on or about February 18, 2015, July 13, 2016, March 7, 2020, and on May 8, 2022 (*id.* at ¶¶ 12-15).

The complaint alleges that Gardner “defaulted on his obligation having failed to comply with the conditions of the Subject Note by withholding the payment amount that became due on October 1, 2022, and plaintiff is entitled to enforce its security interest against GLENN GARDNER pursuant to the terms of the Subject CEMA” (*id.* at ¶ 18). The complaint further alleges “upon information and belief,” that “Plaintiff has duly notified the Mortgagor(s) to the extent required by the underlying loan documents . . .” and “Plaintiff has complied with those provisions of Real Property and Proceedings Law §§ 1304 and 1306, to the extent applicable” (*id.* at ¶¶ 19-20).

The complaint alleges that the July 28, 2006, original CEMA has been lost, and consequently, Deutsche Bank seeks a declaration that the copy of the CEMA annexed to the complaint¹ is a true and accurate copy of the CEMA executed by Gardner in favor of

¹ See NYSCEF Doc No. 2 at 5-11.

Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for Indymac Bank, F.S.B. (Indymac) (*id.* at ¶ 30). Notably, the complaint also annexes a copy of the July 28, 2006 consolidated note, the third page of which has a blank indorsement from Indymac (NYSCEF Doc No. 2 at 1-3).

Deutsche Bank e-filed a January 4, 2024, affidavit of service upon Gardner attesting that he was served with process on December 28, 2023, at 11:51 a.m. at the Property by affixing the documents to the front door of the Property, Gardner's residence, since the process server "was unable, with due diligence to find defendant or a person of suitable age and discretion, having gone to [the Property on]: 12/15/2023 at 9:39 AM, 12/22/2023 at 7:15 PM, 12/23/2023 at 2:14 PM" (NYSCEF Doc No. 12). The affidavit of service states that on January 4, 2024, the process server mailed the summons, complaint and the RPAPL § 1303 notice to Gardner at the Property by first-class mail (*id.*). The affidavit of service also states that "AFTER DILIGENT ATTEMPTS, DEPONENTS OFFICE RAN A SEARCH TO LOCATE A POSSIBLE PLACE OF BUSINESS FOR SAID DEFENDANT, SAID FINDINGS DID NOT PRODUCE ANY RESULTS" (*id.*).

Defendants Gardner, the Board of Managers of Vanderbilt Wallabout Condominium (the Condominium), Wilmington Savings Fund Society, FSB, not in its individual capacity but solely as Owner Trustee of the Aspen G. Trust (Wilmington), New York City Parking Violations Bureau (NYCPVB), New York City Environmental Control Board (NYCECB) and New York City Transit Adjudication Bureau (NYCTAB) failed to answer or otherwise respond to the complaint.

Deutsche Bank's Motion

On November 4, 2024, Deutsche Bank moved for an order of reference, a default judgment against all non-appearing and non-answering defendants, including Gardner, to amend the caption and for declarations regarding the lost CEMA (NYSCEF Doc No. 26).

Deutsche Bank submits an "Affirmation of Indebtedness" from Claribel Lopez (Lopez), a Vice President of PHH Mortgage Corporation (PHH), Deutsche Bank's mortgage loan servicer and attorney-in-fact, pursuant to a July 12, 2019, Limited Power of Attorney (NYSCEF Doc Nos. 40 at ¶ 1 and 42). Lopez affirms that "[i]n the regular performance of my job functions, I have access to, have acquired personal knowledge of, and am fully familiar with the facts and circumstances hereinafter set forth within this Affirmation based upon my review of the business records . . ." of PHH, which include prior servicer records, account ledgers, data compilations, and electronically imaged documents" (*id.* at ¶¶ 2-3).

Lopez reiterates the allegations in the complaint regarding Gardner's July 28, 2006, execution of the note secured by a mortgage encumbering the Property (*id.* at ¶¶ 4 and 6). Lopez affirms that "Plaintiff confirmed physical possession of the original Note on March 09, 2016 and Plaintiff remained in physical possession of the Note up to and through the date upon which this action was commenced" (*id.* at ¶ 5). Lopez affirms that there were a number of loan modifications, including "[o]n or about May 08, 2022, the borrower executed a loan modification agreement making the new principal balance \$690,883.85" and Gardner "failed to make the payment pursuant to the terms of the Note and Mortgage

commencing with the October 01, 2022 payment, which default remains uncured” (*id.* at ¶¶ 7 and 11).

Lopez affirms that “[o]n November 21, 2022, pursuant to the Mortgage terms, the Notice of Default was mailed to the Borrower . . .” and “[t]he reference number for the first-class mailing is 2374830693” (*id.* at ¶ 14). Lopez also affirms that PHH followed its standard mailing practice when it mailed a 90-day pre-foreclosure notice to Gardner at the Property on October 13, 2022, and that “[t]he reference and United States Postal Service Tracking Numbers for the first class and certified mailings are 2373725761 and 9314 8100 1170 1108 0614 46” (*id.* at ¶ 17).

Lopez affirms that “[a]ccording to the Records . . .” a total of \$735,530.98 is due as of September 20, 2024 (*id.* at ¶ 19). Lopez’s affirmation annexes copies of the following documents: (1) the original and consolidated notes; (2) the CEMA; (3) the loan modification agreements; (4) the mortgage assignments; (5) PHH’s November 18, 2022, Notice of Default sent via first class mail with a Letter Log History File; (6) PHH’s October 12, 2022, 90-day pre-foreclosure notice sent via first class and certified mail with a Letter Log History File; (7) Plaintiff’s proof of compliance with RPAPL § 1306; (8) the July 12, 2019 Limited Power of Attorney from Deutsche Bank appointing PHH as attorney-in-fact; (9) the May 30, 2019, Certificate of Merger of PHH and Ocwen Loan Servicing, LLC (Ocwen); (10) a computerized summary of the amounts due as of September 20, 2024; (11) a computerized chart reflecting the “Fee History” of the loan from July 1, 2006 through September 20, 2024; (12) a computerized chart reflecting the “Escrow Information” for the

Property's real estate taxes and hazard insurance; (13) a computerized chart reflecting the "Corporate Advance History" for the loan from July 1, 2006 through September 20, 2024; and (14) an "Account History" and a "Detail Transaction History" regarding the loan.

Deutsche Bank's counsel also submits an affirmation explaining that the original CEMA executed by Gardner was misplaced after the July 28, 2006 closing:

"[a]fter the closing on or about July 28, 2006, the CEMA was entrusted to a representative of the title and abstract company, for the purpose of recording said instrument with the KINGS County Clerk's Office.

"For reasons unknown, *the CEMA was never recorded* in the KINGS County Clerk's Office and the records maintained by the KINGS County Clerk's Office do not reflect said recording.

"The original signed and notarized CEMA cannot be located and is not in the possession of DEUTSCHE BANK . . ." (NYSCEF Doc No. 28 at ¶¶ 33-35 [emphasis added]).

Counsel asserts that Deutsche Bank's Second Cause of Action seeks a judgment, pursuant to CPLR 3001 and RPAPL Article 15, declaring that: "the . . . CEMA has been lost through no fault of the Plaintiff; that the CEMA annexed to this Complaint is a true and accurate copy of the CEMA; and the judgments and liens accruing after July 28, 2006 are subordinate to the lien of Plaintiff's Mortgage encumbering the Premises" (*id.* at ¶ 24). Counsel asserts that Deutsche Bank's Third Cause of Action seeks a judgment "directing the Clerk of KINGS County to accept for recording, and then record in its real property records, a copy of the [CEMA] in the form annexed hereto, in substitution and in lieu of the original CEMA . . ." (*id.* at ¶ 44).

Defendant Gardner's Cross-Motion

On March 4, 2025, Gardner opposed Deutsche Bank's motion and cross-moved to vacate his appearance default and for leave to submit an answer (NYSCEF Doc No. 46). Gardner submits a proposed answer to the complaint (NYSCEF Doc No. 61).

Gardner submits an affirmation asserting, in the most conclusory way, that "I did not receive a Summons and Complaint filed in this matter in either December of 2023 or January of 2024, and have never been served personally by plaintiff with such papers" (NYSCEF Doc No. 53 at ¶ 4). Gardner affirms that "I first learned about this action when I received plaintiff's motion for an Order of Reference, by regular mail, in or about the early to middle portion of November of 2024" and "[a]t no time prior to my receipt of plaintiff's motion papers had I received any papers concerning this matter, either from plaintiff, plaintiff's counsel, or otherwise" (*id.* at ¶ 5).

Without submitting any documentary proof, Gardner merely affirms that in late December "I was away visiting family for the Christmas holiday" (*id.*). Gardner asserts that the "reasonable explanation" for his appearance default is Plaintiff's failure to properly effectuate service of process upon him (*id.* at ¶ 8). Gardner fails to submit any details regarding his alleged holiday trip, including his destination.

Gardner claims that he has multiple meritorious defenses, including Plaintiff's failure to mail him a 90-day pre-foreclosure notice, pursuant to RPAPL § 1304. Gardner affirms that "*I have no recollection of ever having received correspondence to this effect relating to any foreclosure action specifically addressed to me, at any time prior to the date*

of plaintiff's filing of the subject action . . ." (*id.* at ¶ 9 [emphasis added]). Gardner similarly argues that "*I have no recollection of ever having received . . .*" a notice of default, as required by paragraph 22 of the mortgage (*id.* at ¶ 11 [emphasis added]).

Gardner asserts that "[i]t stands to reason . . . that if plaintiff failed to comply with the dictates imposed by RPAPL § 1304 for service of a 90-day notice, plaintiff could not have complied with RPAPL § 1306" (*id.* at ¶ 10). However, Gardner acknowledges that Plaintiff provided a proof of filing statement to the State Department of Financial Services (DFS), pursuant to RPAPL § 1306, but argues that the filing was inaccurate because it did not state that the May 8, 2022 loan modification included a balloon payment (*id.*).

Finally, Gardner argues that there are questions of fact regarding Deutsche Bank's standing to foreclose since "there is a recorded [October 29, 2018] 'Assignment of Mortgage' which identifies an assignee to the Mortgage which is different from the plaintiff . . ." and Lopez of PHH affirmed that "plaintiff took possession of the promissory note [on March 9, 2016] more than two years prior to the date of said assignment" (*id.* at ¶ 13).

Defense counsel submits an affirmation arguing that service of process upon Gardner was insufficient because "the 'due diligence' requirement imposed by CPLR § 308 (4), was not satisfied . . ." (NYSCEF Doc No. 48 at ¶ 10). Defense counsel contends that Plaintiff's process server's attempts of service upon Gardner were insufficient because he did not question Gardner's neighbors at the Condominium and the affidavit of service contains no details about the search for Gardner's place of employment (*id.* at ¶ 16). Defense counsel further asserts that the process server's three attempts at personal service

were “around the immediate time of the holidays (December 22, December 23 and December 28), a time whereupon people frequently travel” (*id.* at ¶ 17).

Defense counsel argues that Gardner’s appearance default should be vacated, pursuant to CPLR 5015 (a) (1), because Gardner has a reasonable excuse for his default, since he affirms that he did not receive the summons and complaint, and he has potentially meritorious defenses (*id.* at ¶¶ 20-22). Counsel also argues that there is a strong policy in favor of resolving cases on their merits (*id.* at ¶ 24). Counsel asserts that Gardner’s default should be vacated under CPLR 317, which “allows for vacatur . . . in the instance where a defendant has not been personally served with plaintiff’s process, and where said defendant is able to set forth a meritorious defense to those claims raised in a plaintiff’s Complaint” (*id.* at ¶ 28).

Deutsche Bank’s Opposition and Reply

Deutsche Bank, in opposition to Gardner’s cross-motion and in reply, submits an attorney affirmation arguing that Gardner is “not credible” because Gardner’s claim that he first learned about this foreclosure action in mid-November of 2024 when he received Deutsche Bank’s motion for an order of reference is “*demonstrably false*, insofar as Defendant listed the instant action, in his chapter 7 Bankruptcy Petition filed on February 28, 2024[,]” less than two months after Plaintiff purportedly served Gardner with process (NYSCEF Doc No. 66 at ¶ 7).

Deutsche Bank submits a copy of Gardner’s February 28, 2024 Chapter 7 Bankruptcy Petition, including Form 107, the “Statement of Financial Affairs for

Individuals Filing for Bankruptcy,” in which Gardner identifies this foreclosure action, the index number of this foreclosure action and that it is “pending” in Kings Supreme Court (NYSCEF Doc No. 69 at 43). Plaintiff’s counsel asserts that “this filing directly contradicts Defendant’s sworn testimony offered in support of his cross-motion” and “Defendant is plainly not credible, and as such, the testimony offered on his affirmation in support of his cross-motion should be disregarded” (NYSCEF Doc No. 66 at ¶¶ 9-10).

Plaintiff’s counsel further argues that “Defendant asserts a conclusory and self-serving denial of receipt of the pleadings” and “alleges in [a] vague and conclusory fashion . . .” that in late December of 2023 he was “away visiting family for the Christmas holiday” but “offers no detail regarding where he purportedly traveled, the dates when Defendant was purportedly traveling, or any documentary evidence – such as travel tickets or hotel reservations – corroborating his testimony” (*id.* at ¶¶ 15 and 17-18). Counsel asserts that “Defendant does not dispute that he resides at the Mortgaged Property, nor has he submitted any documentary evidence to support his vague and self-serving claim that he was not present at the Property when in-hand service was attempted” (*id.* at ¶ 25). Counsel argues that Gardner’s conclusory denial of receipt “is insufficient to rebut the presumption of service created by the process server’s sworn affidavit” (*id.* at ¶¶ 26-27).

Plaintiff’s counsel asserts that Gardner is not entitled to relief, pursuant to CPLR 5015 (a) (1), because he failed to establish a reasonable excuse for his failure to answer the complaint (*id.* at ¶ 28). Counsel further argues that Gardner is not entitled to relief under CPLR 317 because Gardner “failed to establish that he did not receive actual notice of the

Summons and Complaint in time to defend the action” (*id.* at ¶¶ 29-30). Counsel asserts that “[b]ecause Defendant has failed to offer any evidence, or *credible* testimony establishing that Defendant did not have knowledge of the action in time to defend it, that portion of Defendant’s cross-motion which seeks relief pursuant to CPLR 317 must be denied” (*id.* at ¶ 32).

Regarding the merits, Plaintiff’s counsel asserts that Gardner specifically agreed to waive any defenses to his obligations under the consolidated note and CEMA (*id.* at ¶ 35). Plaintiff’s counsel relies on Section V of the July 28, 2006, CEMA entitled “NO SET-OFF, DEFENSES,” which specifically provides that “I agree that I have no right of set-off or counterclaim, or any defense to the obligations of the Consolidated Note or the Consolidated Mortgage”² (NYSCEF Doc No. 32 at 44).

Discussion

(I)

“Ordinarily, a process server’s affidavit of service establishes a prima facie case as to the method of service and, therefore, gives rise to a presumption of proper service” (*Wells Fargo Bank, NA v Chaplin*, 65 AD3d 588, 589 [2d Dept 2009]). “However, where there is a sworn denial that a defendant was served with process, the affidavit of service is rebutted, and the plaintiff must establish jurisdiction at a hearing by a preponderance of the evidence” (*id.*). However, the Second Department has held that “bare and unsubstantiated

² The Second Department has upheld identical waivers of defenses in mortgages (*see Mishal v Fiduciary Holdings, LLC*, 109 AD3d 885, 885-886 [2d Dept 2013]).

denials of service are insufficient to rebut the presumption of proper service created by a duly executed affidavit of service . . . where ‘the defendant fails to swear to specific facts rebutting the statements in the process server’s affidavit’” (*Tuttner USA Co. v Russo*, 216 AD3d 846, 847 [2d Dept 2023], quoting *US Natl. Bank Assn. v Melton*, 90 AD3d 742, 743 [2d Dept 2011]).

Here, Gardner submits a cross-moving affirmation with nothing but general and conclusory denials that he was served with process at the Property without providing any specific facts to rebut Deutsche Bank’s affidavit of service. Gardner fails to submit any documentary evidence or provide any detailed information regarding his alleged absence from the Property in late December 2023 when he was purportedly visiting family for the Christmas holiday, including the dates he travelled and his destination. Equally unavailing are Gardner’s conclusory claims that “*I have no recollection of ever having received . . .*” a 90-day pre-foreclosure notice or a notice of default (NYSCEF Doc No. 53 at ¶¶ 9 and 11 [emphasis added]). Tellingly, Gardner does not unequivocally affirm that he never received the notices, but merely affirms that *he does not remember* having received them.

Furthermore, Gardner provided demonstrably false information in his affirmation, which gives this court reason to question Gardner’s credibility. Gardner falsely affirms that he was unaware of this foreclosure action until he received Deutsche Bank’s instant motion for an order of reference in November 2024. However, Gardner’s February 28, 2024, Chapter 7 Bankruptcy Petition specifically identifies Deutsche Bank’s foreclosure action and represents to the Bankruptcy Court that this foreclosure action is still “pending”

(NYSCEF Doc No. 69 at 43). Thus, contrary to Gardner's affirmation testimony, he was fully aware of this action the month after Plaintiff served him with process.

For the foregoing reasons, denial of Gardner's motion to vacate his default, pursuant to CPLR 5015 (a) (1) and 317, is warranted because Gardner failed to establish a reasonable excuse for his failure to timely answer the complaint and his own Bankruptcy filing proves that he received notice of the summons and complaint.

(2)

“When seeking an order of reference to determine the amount that is due on an encumbered property, a plaintiff must show its entitlement to a judgment [which] may be shown . . . by the plaintiff showing entitlement to summary judgment . . .” (*U.S. Bank N.A. v Miller*, 49 Misc 3d 1205 (A), * 5 [Sup Ct, Kings County 2015] [citing RPAPL § 1321; 1-2 Bruce J. Bergman, Bergman on New York Mortgage Foreclosures § 2.01 (4) (k) (note: online edition)]).

Summary judgment is a drastic remedy that deprives a litigant of his or her day in court and should, thus, only be employed when there is no doubt as to the absence of triable issues of material fact (*Kolivas v Kirchoff*, 14 AD3d 493 [2d Dept 2005]; see also *Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). “The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment, as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Manicone v City of New York*, 75 AD3d 535, 537 [2d Dept 2010], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; see also *Zuckerman v City of New York*, 49 NY2d 557, 562

[1980]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). If it is determined that the movant has made a prima facie showing of entitlement to summary judgment, “the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493 [2d Dept 1989]).

Generally, to establish prima facie entitlement to judgment as a matter of law in an action to foreclose a mortgage, a plaintiff must produce the mortgage, the unpaid note, and admissible evidence of the borrower’s payment default (*see Deutsche Bank Natl. Trust Co. v Karibandi*, 188 AD3d 650, 651 [2d Dept 2020]; *Christiana Trust v Moneta*, 186 AD3d 1604, 1605 [2d Dept 2020]; *Deutsche Bank Trust Co. Ams. v Garrison*, 147 AD3d 725, 726 [2d Dept 2017]). Here, Deutsche Bank satisfied its prima facie burden by producing the promissory note, the CEMA and admissible evidence of Gardner’s payment default based on Lopez’s affirmation and PHH’s business records regarding the subject loan. That branch of Deutsche Bank’s motion seeking declarations regarding the CEMA is granted, in part,³ without opposition. Accordingly, it is hereby

ORDERED that Deutsche Bank’s motion (mot. seq. one) is only granted in its entirety; and it is further

³ Deutsche Bank has not demonstrated its entitlement to a declaration that “the judgments and liens accruing after July 28, 2006, are subordinate to the lien of Plaintiff’s Mortgage . . .” especially since Plaintiff admits that the July 28, 2006, CEMA was never recorded.

ORDERED, ADJUDGED AND DECLARED that the July 28, 2006 CEMA, which was lost, is replaced with a true and accurate copy of the CEMA annexed to the complaint as NYSCEF Doc No. 2 at 5-11, and shall be accepted by the Kings County Clerk in place of the original CEMA; and it is further

ORDERED that Gardner's cross-motion (mot. seq. two) is denied in its entirety.

This constitutes the decision and order of the court.

DATE: August 28, 2025

E N T E R,



A. J. S. C.