

Yakte Props., LLC v Milner

2025 NY Slip Op 34440(U)

November 19, 2025

Supreme Court, New York County

Docket Number: Index No. 850102/2021

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. 850102/2021

YAKTE PROPERTIES, LLC,

MOTION DATE _____

Plaintiff,

MOTION SEQ. NO. 006

- v -

TODD MILNER, CAPITAL ONE, N.A., FIA CARD
SERVICES, CITY OF NEW YORK ENVIRONMENTAL
CONTROL BOARD, NEW YORK COUNTY CLERK, JOHN
DOE # 1 THROUGH JOHN DOE # 12,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 130, 131, 132

were read on this motion to/for

JUDGMENT - SUMMARY

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

The within action is to foreclose on a mortgage encumbering a parcel of real property located at 109 West 131st Street, New York, New York. Now, Plaintiff moves for, *inter alia*, summary judgment against Defendant Todd A. Milner ("Milner"), a default judgment against the non-appearing parties, appointment of a referee to compute and to amend the caption. Defendant Milner answered the complaint and filed opposition to the motion.

On the branch of the motion for summary judgment, a default judgment and appointment of a referee, Plaintiff established the mortgage, note, and evidence of Mortgagor's default in repayment via the affidavit of David Rosas, the servicer and attorney-in-fact for Plaintiff, which was sufficiently supported by admissible business records annexed thereto (*see eg Bank of NY v Knowles*, 151 AD3d 596 [1st Dept 2017]; *Fortress Credit Corp. v Hudson Yards, LLC*, 78 AD3d 577 [1st Dept 2010]). Regarding standing, Plaintiff annexed a copy of the note, endorsed in blank on its face, to the complaint which is sufficient to demonstrate that Plaintiff was the holder of the note when the action was commenced (*see Ocwen Loan Servicing LLC v Siame*, 185 AD3d 408 [1st Dept 2020]; *Bank of NY v Knowles*, supra at 597). Likewise, the submissions proved that all the statutory and contractual pre-foreclosure requisites were fulfilled (*see generally United States Bank Trust, N.A. v Mehl*, 195 AD3d 1054 [2d Dept 2021]; *Citimortgage, Inc. v Ustick*, 188 AD3d 793, 794 [2d Dept 2020]).

Defendant Milner's opposition and cross-motion are rejected as untimely. The opposing papers were filed some three weeks after the deadline set by the Court in its order dated September 9, 2025 (NYSCEF Doc No 128). In any event, Milner's arguments failed to raise an issue of fact as to any defense to the action. All the affirmative defenses are entirely conclusory and unsupported by any facts in the answer or by the papers submitted in opposition. As such, these affirmative defenses are nothing more than an unsubstantiated legal conclusion which is 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 no specific legal argument was proffered in support of a particular affirmative defense or claim, they 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 (see CPLR §3215; *SRMOF II 2012-1 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 the motion for summary judgment against the appearing parties, a default judgment against the non-appearing parties and the appointment of a referee to compute is granted; and it is further

ORDERED that **Sofia Balile, Esq., 155 Water Street, Ste. 311, Brooklyn, New York 11201, 646-580-6116** is hereby appointed Referee in accordance with RPAPL § 1321 to compute the amount due to Plaintiff and examine whether the tax parcel 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 or is required to perform other significant services in issuing the report, 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 the failure by defendants to submit objections to the referee shall 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 plaintiff must bring a motion for a judgment of foreclosure and sale within 30 days of receipt of the referee’s report; and it is further

ORDERED, that “JOHN DOE #1” through “JOHN DOE #2” shall be deleted and removed from the caption of this action; and it is further

ORDERED, that the amended caption shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
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YAKTE PROPERTIES, LLC,
Plaintiff,
-against-

TODD A. MILNER A/K/A TODD MILNER, CAPITAL
ONE, N.A., FIA CARD SERVICES, CITY OF NEW
YORK ENVIRONMENTAL CONTROL OARD, NEW
YORK COUNTY CLERK,
Defendants.
-----X

and it is further

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/suptctmanh)); and it is further

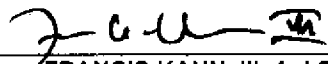
ORDERED that Plaintiff shall serve a copy of this Order with notice of entry on all parties and persons entitled to notice, including the Referee appointed herein.

All parties are to appear for a virtual conference via Microsoft Teams on **March 25, 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.

Servicer: Real Time Resolutions, Inc. – Phone: 1-888-895-0221

11/19/2025

DATE



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

HON. FRANCIS A. KAHN III

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

J.S.C.

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE