

U.S. Bank v Torati

2026 NY Slip Op 30166(U)

January 13, 2026

Supreme Court, New York County

Docket Number: Index No. 850048/2022

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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U.S. BANK, INDEX NO. 850048/2022
Plaintiff, MOTION DATE _____
MOTION SEQ. NO. 002

- v -

HEZI TORATI, SKYGATE 010 LLC, MIAMI INVESTMENT PARTNERS, LLC, PARK NATIONAL CAPITAL FUNDING LLC, 551 WEST 161ST STREET LENDER, LLC, 703 FUNDING A LLC, ADMIRAL AIR CONDITIONING CORP., NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, JOHN DOES

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 91, 92, 94

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents the motion is determined as follows:

This is an action to foreclose on a mortgage encumbering a parcel of real property located at 551 W 161st Street, New York, New York. The mortgage, dated December 19, 2019, was given by Defendant SkyGate 010 LLC ("SkyGate") to non-party 703 Funding A LLC, ("Funding"). The mortgage is a CEMA which purports to consolidate an earlier mortgage, dated July 22, 2016, given by SkyGate to non-party 551 West 161st Street Lender LLC ("551 West"). The 2016 mortgage secured a loan with an original principal amount of \$1,900,000.00 memorialized by a note the same date as that mortgage. In the 2019 mortgage transaction, \$655,000.00 in additional principal was extended by non-party Funding and a total indebtedness was documented by a note in the amount of \$2,555,000.00. All the notes and mortgages were executed by Defendant Hezi Torati ("Torati") as the Sole Member of SkyGate. As part of the 2019 transaction, Torati executed a commercial guaranty of the indebtedness.

Plaintiff commenced this action and pled in its amended complaint, *inter alia*, that Defendants defaulted in repayment of the loan. SkyGate and Torati answered and pled five affirmative defenses, including lack of standing. A prior motion for summary judgment was denied for failure to comply with this Court's part rules concerning submission of supporting documentation. Now, Plaintiff moves for *inter alia* summary judgment against SkyGate and Torati, for a default judgment against the non-appearing parties, striking the appearing Defendant's affirmative defenses, appointing a referee to compute and to amend the caption. SkyGate and Torati oppose the motion.

On the branches of the motion for summary judgment and a default judgment and appointment of a referee, Plaintiff established the mortgage, note, and evidence of Mortgagor's default in repayment via the affirmation of Anjali Mecklai ("Mecklai"), the COO of 1 Sharpe Opportunity Intermediate Trust ("1 Sharpe"), 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]).

Based on the affirmative defense pled, a *prima facie* case for foreclosure requires adequate proof of Plaintiff standing (*see eg Wells Fargo Bank, N.A. v Tricario*, 180 AD3d 848 [2nd Dept 2020]). Standing 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]).

In this case, it is undisputed that Plaintiff was not the original lender, and it submitted no proof of its status as a physical holder of an endorsed note. Instead, to demonstrate its standing when the action was commenced, Plaintiff relies on a series of written assignments. When relying on a series of paper transfers demonstrating the validity of each assignment in the chain is obligatory to prove standing (*see eg GRP Loan, LLC v Taylor*, 95 AD3d 1172 [2d Dept 2012]). Moreover, a written assignment of a mortgage is often a nullity in this context (*see eg U.S. Bank N.A. v Dellarmo*, 94 AD3d 746, 748 [2d Dept 2012]), unless that mortgage assignment includes transfer of the note, or similar language (eg. loan, indebtedness, the moneys due and owing, etc.), which can be sufficient to transmit the note (*see eg Broome Lender LLC v Empire Broome LLC*, 220 AD3d 611 [1st Dept 2023]; *Chase Home Fin., LLC v Miciotta*, 101 AD3d 1307 [3d Dept 2012]; *GRP Loan, LLC v Taylor*, *supra*). Here, an assignment of the mortgage from Funding, the originator of the 2019 note and CEMA, to 1 Sharpe states it is made "TOGETHER with the note". That document, along with the corrective assignment of the mortgage from 1 Sharpe to Plaintiff, the former's trustee, sufficiently demonstrates Plaintiff was the owner of these notes at commencement of the action (*see US Bank Natl. Assn. v Ezugwu*, 162 AD3d 613 [1st Dept 2018]; *see also Broome Lender LLC v Empire Broome LLC*, *supra*).

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, 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]).

In opposition, Defendants' arguments concerning possession of the note are unavailing given the evidence of written assignment of the 2019 note (*id.*). Any argument concerning the loss of the 2016 note, which predated the CEMA, is a red herring. In this case, a right to foreclose is established by submission of the mortgage and the CEMA, in which SkyGate acknowledges the existence and validity

of the unpaid note and mortgage (*see Weiss v Phillips*, 157 AD3d 1, 7 [1st Dept 2017]). Moreover, “[w]here, as here, balances of first mortgage loans are increased with second mortgage loans and CEMAs are executed to consolidate the mortgages into single liens, the first notes and mortgages still exist” (*Wells Fargo Bank, N.A. v Douglas*, 186 AD3d 532, 534 [2d Dept 2020], quoting *Benson v Deutsche Bank Natl. Trust, Inc.*, 109 AD3d 495, 498 [2d Dept 2013]). Defendants’ assertion that the motion must be denied because no discovery has been conducted is unavailing as they have offered nothing more than speculation to support that Plaintiff is in exclusive possession of facts to support its defenses (*see Island Fed. Credit Union v I&D Hacking Corp.*, 194 AD3d 482 [1st Dept 2021]).

The request for dismissal pursuant to CPLR §3215[c] is denied as Defendants failed to file a notice of cross-motion seeking that relief (CPLR §2215).

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 **Jerry Merola, Esq., 521 5th Avenue Suite 1700, New York, NY 10175 (212) 593-6111** 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 caption be amended by substituting the defendants James Wright, Sarah Henry, and Tyler Holmes, for JOHN DOES #1-3, respectively, and striking the remainder; and it is further

ORDERED the caption is amended as follows:

SUPREME COURT STATE OF NEW YORK
COUNTY OF NEW YORK
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U.S. BANK, AS TRUSTEE FOR 1 SHARPE
OPPORTUNITY INTERMEDIATE TRUST,

Plaintiff,

-against-

HEZI TORATI, SKYGATE 010 LLC,
MIAMI INVESTMENT PARTNERS, LLC,
PARK NATIONAL CAPITAL FUNDING LLC, 551
WEST 161ST STREET LENDER, LLC,
703 FUNDING A LLC, ADMIRAL AIR CONDITIONING CORP.,
NEW YORK CITY ENVIRONMENT CONTROL
BOARD, NEW YORK STATE DEPARTMENT OF
TAXATION AND FINANCE, JAMES WRIGHT,
SARAH HENRY, TYLER HOLMES;

Defendants.

-----X

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 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 May 20, 2026, at 10:00 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.

1/13/2026

DATE

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

Francis A. Kahn III

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

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