

Columbia Capital II Inc. v 514 W. 44th St., Inc.

2026 NY Slip Op 30169(U)

January 13, 2026

Supreme Court, New York County

Docket Number: Index No. 850540/2023

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. 850540/2023

COLUMBIA CAPITAL II INC.,

MOTION DATE

Plaintiff,

MOTION SEQ. NO. 004

- v -

514 WEST 44TH STREET, INC., ANDREW ROSENBERG, NEW YORK STATE DEPARTMENT OF TAXATION & FINANCE, CITY OF NEW YORK DEPARTMENT OF FINANCE, DEPALMA ACQUISITION I LLC, CAPITAL ONE EQUIPMENT FINANCE CORP. D/B/A CAPITAL ONE TAXI MEDALLION FINANCE, JOHN DOE NO. 1 THROUGH JOHN DOE NO. 20,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 75, 76, 77, 78, 79, 80, 81, 82, 83, 86, 87, 88, 89

were read on this motion to/for REARGUMENT/RECONSIDERATION

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

The within action is to foreclose on a consolidated mortgage encumbering a parcel of commercial real property known as 514 West 44th Street, New York, New York. The mortgage was given by 514 West 44th Street Inc., ("514 West") to non-party Columbia Capital Co. ("Columbia") to secure a consolidated and restated mortgage note with an original principal amount of \$2,750,000.00. The note and mortgage, both dated August 31, 2018, and were executed by Defendant Andrew Rosenberg ("Rosenberg") as President of Defendant 514 West. Concomitantly with these documents, Rosenberg executed a guarantee of the indebtedness. By contract dated April 1, 2020, Plaintiff and Defendant 514 West executed a loan modification agreement. Therein Defendant 514 West acknowledged that Plaintiff was the "equitable owner and holder of the note" and reaffirmed its promise to pay the indebtedness.

Plaintiff commenced this action alleging inter alia Defendants defaulted in repayment under the note. Defendants 514 West and Rosenberg answered jointly and pled eleven [11] affirmative defenses, including lack of standing. By order of this Court dated October 15, 2024, Plaintiff's motion for summary judgment was denied on the basis that Plaintiff failed to proffer evidentiary documents to support its motion. Now, Plaintiff moves to reargue this decision, as well as for summary judgment against the Defendants 514 West and Rosenberg, for an order of reference and to amend the caption. Defendants 514 West and Rosenberg oppose the motion.

The branch of Plaintiff's motion to reargue the court's decision and order dated October 15, 2024, is denied as movant has not established the court overlooked or misapprehended the relevant facts

or misapplied any controlling principle of law (*see* CPLR 2221; *Foley v Roche*, 68 AD2d 558 [1st Dept 1979]). The underlying moving papers fail to establish an evidentiary foundation for admission into evidence, as business records under CPLR §4518, any of the documents necessary for a *prima facie* case of foreclosure.

Nevertheless, the Court may treat this motion as a successive motion for summary judgment since as it clearly enhances judicial efficiency in this case (*see MTGLQ Invs. v Collado*, 183 AD3d 414 [1st Dept 2020]). 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, evidence of mortgagors' default and its standing 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]). No specific business records must be proffered, as long as 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 by a new affidavit from Rudolf Kats ("Kats"), President of Plaintiff and sole proprietor of Columbia, the original lender. Unlike the prior affidavit, Kats demonstrated personal knowledge of the transactions at issue, and he was qualified to provide a foundation for admission of the business records of these entities under CPLR §4518 (*see Wells Fargo Bank, N.A. v Jones*, 139 AD3d 520, 521 [1st Dept 2016]; *Bank of N.Y. Mellon v Gordon*, 171 AD3d 197 [2d Dept 2019]). The affidavit and supporting documents established the mortgage, note, evidence of mortgagor's default as well as its standing and was sufficiently supported by appropriate documentary evidence (*see eg Bank of NY v Knowles*, *supra*; *Fortress Credit Corp. v Hudson Yards, LLC*, *supra*).

Also, annexed to Kats' affidavit are written assignments of the mortgage that were omitted from the prior motion. Those assignments of the mortgage demonstrated each transference in the chain to Plaintiff (*see eg GRP Loan, LLC v Taylor*, 95 AD3d 1172 [2d Dept 2012]) and contained language that the mortgage was transferred "together with the note" which is sufficient to transmit the note (*see eg Broome Lender LLC v Empire Broome LLC*, 220 AD3d 611 [1st Dept 2023]; *US Bank Natl. Assn. v Ezugwu*, 162 AD3d 613 [1st Dept 2018]; *Chase Home Fin., LLC v Miciotta*, 101 AD3d 1307 [3d Dept 2012]; *GRP Loan, LLC v Taylor*, *supra*).

In opposition, Defendants' argument that the within motion is an inappropriate successive motion for summary judgment is unavailing. Multiple disputed issues are not presented here (*cf. Wells Fargo Bank v Gittens*, 217 AD3d 901, 903 [2d Dept 2023]) and entertaining a second summary judgment motion furthers the ends of justice by allowing the Court to eliminate the need for a trial on issues that Defendants have not contested, to wit the existence of the note, mortgage or the default thereunder (*see MTGLQ Invs, LP v Collado*, 183 AD3d 414 [1st Dept 2020]; *Bank of Am NA v Brannon*, 156 AD3d, 1, 6 [1st Dept 2017])[Uncontradicted facts on a motion for summary judgment are "deemed to be admitted"]. Defendants' argument concerning a discrepancy between what Plaintiff pled in the complaint regarding the assignments and the evidence produced does not raise an issue of fact. A pleading is a collection of statements which give the parties notice of the transactions and occurrences *intended* to be proved (CPLR §§3013 and 3014). That document, and the allegations therein, are subject to be conformed even after trial and/or entry of a final judgment (*see* CPLR §3025[c]; *DiSario v Rynston*, 138 AD3d 672 [2d Dept 2016]; *Commercial Trading Co. v Freidus*, 114 AD2d 292 [1st Dept 1986]).

Accordingly, it is

ORDERED that Plaintiff's motion is granted to the extent that summary judgment against the appearing parties is awarded; and it is further

ORDERED that the fourth affirmative defense of standing pled by the appearing Defendants is dismissed; and it is further

ORDERED that **Doron Leiby, 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 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/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 **May 13, 2025, 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


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

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input checked="" type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	