Old Republic Natl. Title Ins. Co. v Leibler
2026 NY Slip Op 31818(U)
April 27, 2026
Supreme Court, Kings County
Docket Number: Index No. 501037/2017
Judge: Reginald A. Boddie
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At an IAS Commercial Part 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 27th day of April 2026.

P R E S E N T:
Honorable Reginald A. Boddie
Justice, Supreme Court

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OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY,

Plaintiff,

-against-

TZIPPY LEIBLER,

Defendant.

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Index No. 501037/2017

Cal. No. 20 MS 4

Decision and Order

The following e-filed papers read herein: NYSCEF Doc Nos.
MS 4 50-65; 67-77

Upon the foregoing papers, plaintiff Old Republic National Title Insurance Company's motion seeking an order pursuant to CPLR 3212 granting it summary judgment against defendant Tzippy Leibler is decided as follows:

Background

This is an action for breach of contract seeking recovery of the "outstanding balance" due under a promissory note assigned to plaintiff, who is in the business of issuing title insurance. According to plaintiff, on or around August 12, 1998, defendant executed a promissory note and mortgage in the amount of $204,250.00 to secure a loan for the purchase of real property located

at 1259 37th Street, Brooklyn, New York (the "Property"). Plaintiff issued a lender's title insurance policy (the "Policy") to First Financial Equities, Inc. (the "Insured"), the original lender, and its successors and/or assignees at the time defendant purchased the Property. The Insured assigned the note to Chase Manhattan Mortgage Corporation, who then assigned it to LSF9 Master Participation Trust. LSF9 Master Participation Trust subsequently assigned it to U.S. Bank Trust, N.A., who thereafter assigned it to plaintiff.

Plaintiff represents that defendant sold the Property in or about November 2001, without satisfying the loan. Plaintiff states that "[n]otwithstanding the fact that the loan was not paid off in November 2001, monthly payments continued to be paid on the note until January 2010." Thereafter, defendant failed to make further payments, and the loan entered into default. Plaintiff asserts that the Insured could not foreclose on its mortgage because the mortgage document was never recorded, although the deed was recorded in July 2001.

Plaintiff further represents that in April 2016, pursuant to the Policy, plaintiff paid the Policy limit payment of $204,250.00 to the Insured in exchange for an assignment of the loan. On or about May 27, 2016, plaintiff sent a demand letter to defendant for payment, seeking "full payment in the amount of $210,951.20." Upon defendant's failure to pay, plaintiff commenced this action on January 18, 2017, to seek recovery of the $204,250.00 plus interest, reasonable attorneys' fees, and costs and disbursements based on breach of contract and "equity and good conscience."

Defendant filed an answer on June 8, 2017. On April 10, 2018, plaintiff filed its first motion for summary judgment. By decision dated September 7, 2018, Hon. Leon Ruchelsman granted defendant's counsel's motion to be relieved as counsel. A note of issue was filed on March 12, 2020. On November 14, 2022, plaintiff filed its second motion for summary judgment and/or

the striking of defendant's answer. Based on e-courts, the motion was heard by the Hon. Leon Ruchelsman on January 18, 2023 and was "granted," but no order was ever issued. According to plaintiff's counsel, he appeared in court for the hearing on January 18, 2023, and the Hon. Leon Ruchelsman granted plaintiff's motion and directed plaintiff to settle an order on notice to defendant. Based on the docket, plaintiff did not file its notice of settlement until June 27, 2025, at which point the Hon. Ruchelsman was no longer assigned to the Commercial Division. Although plaintiff endeavored to have the undersigned execute the proposed notice of settlement, based on the circumstances, the undersigned indicated to plaintiff's counsel that plaintiff would need to re-file its motion for summary judgment. Plaintiff now moves for summary judgment, contending that it fully performed its contractual obligations and that defendant breached the contract by failing to repay under the note as agreed.

In opposition, defendant argues that plaintiff failed to meet its prima facie burden. Defendant contends that the affidavit of Lisa Lee is inadmissible hearsay because it fails to lay a proper foundation under CPLR 4518, and that plaintiff failed to submit underlying business records establishing default and damages. Defendant further argues that the action is time-barred because the default occurred in January 2010 and this action commenced in 2017. Defendant also challenges standing based on Lisa Lee's failure to aver that the allonges containing the endorsements to plaintiff were firmly affixed to the note. Additionally, defendant argues that plaintiff failed to prove compliance with the note's condition precedent requiring a 30-day notice of default before demanding immediate payment in full and that the present summary judgment motion was untimely after the filing of the note of issue in March 2020.

In reply, plaintiff contends that defendant's opposition consists largely of conclusory assertions, which are insufficient to raise a triable issue of fact. Plaintiff argues that the affidavit

of Lisa Lee satisfies CPLR 4518 and establishes defendant's default. Plaintiff further argues that its damages were incurred in April 2016 when it paid under the Policy in exchange for an assignment of the loan, and that this action is therefore timely.

Discussion

It is well established that summary judgment is warranted when "the proponent makes 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, and the opponent fails to rebut that showing" (*Brandy B. v Eden Cent. School Dist.*, 15 NY3d 297, 302 [2010] [citation omitted]). Once the proponent has made a prima facie showing, the burden then shifts to the motion's opponent to present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]). Upon a motion for summary judgment, the court's function is one of issue finding rather than issue determination (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). "It is not the function of a court . . . to make credibility determinations or findings of fact, but rather to identify material triable issues of fact (or point to the lack thereof)" (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505 [2012] [citation omitted]).

"To establish prima facie entitlement to judgment as a matter of law with respect to a promissory note, a plaintiff must show the existence of a promissory note, executed by the defendant, containing an unequivocal and unconditional obligation to pay, and the failure by the defendant to pay in accordance with the note's terms" (*Lugli v Johnston*, 78 AD3d 1133, 1135 [2d Dept 2010] [citations omitted]).

Here, plaintiff established the elements of its claim for breach of a promissory note. Plaintiff submitted the note, allonges to the note, the Policy, and the affidavit of Lisa Lee, demonstrating the existence of a note executed by defendant, the assignments of the note, and defendant's failure to make payments in accordance with the terms of the note.

The Court finds that the affidavit of Lisa Lee lays a proper foundation for the admission of business records pursuant to CPLR 4518(a). Lee avers that she is the custodian of plaintiff's records. She states that the records are made in the regular course of plaintiff's business at or near the time of the events recorded. Based upon her review of those records, Lee affirms the execution of the note, its assignment to plaintiff, defendant's default after January 2010, and the amount due. Accordingly, plaintiff's submissions are in admissible form.

However, notwithstanding plaintiff's showing, defendant raised a triable issue of fact as to whether the action is time-barred.

"An assignee stands in the shoes of an assignor and thus acquires no greater rights than its assignor" (*Long Island Radiology v Allstate Ins. Co.*, 36 AD3d 763, 765 [2d Dept 2007] [citations and internal quotations omitted]). Accordingly, plaintiff's claim is subject to the same statute of limitations applicable to the underlying obligation, and plaintiff's contention that its damages accrued in April 2016, upon its payment under the Policy in exchange for an assignment of the loan, is unavailing.

"As a general matter, an action to foreclose a mortgage may be brought to recover unpaid sums which were due within the six-year period immediately preceding the commencement of the action. With respect to a mortgage payable in installments, separate causes of action accrued for each installment that is not paid, and the statute of limitations begins to run, on the date each installment becomes due. However, even if a mortgage is payable in installments, once a mortgage

debt is accelerated, the entire amount is due and the Statute of Limitations begins to run on the entire debt. Where the acceleration of the maturity of a mortgage debt on default is made optional with the holder of the note and mortgage, some affirmative action must be taken evidencing the holder's election to take advantage of the accelerating provision, and until such action has been taken the provision has no operation" (*Wells Fargo Bank v Burke*, 94 AD3d 980, 982-983 [2d Dept 2012] [citations and internal quotations omitted]).

"Acceleration may occur, inter alia, when an acceleration notice that is clear and unequivocal is transmitted to the borrower by the creditor or the creditor's servicer, or when a creditor commences an action to foreclose a mortgage and seeks, in the complaint, payment of the full balance due on the underlying note" (*U.S. Bank N.A. v Gordon*, 176 AD3d 1006, 1008 [2d Dept 2019] [citations and internal quotations omitted]).

Here, plaintiff submits a demand letter dated May 2016, which appears to constitute a clear and unequivocal notice of acceleration. Defendant, however, contends that the loan went into default in January 2010. The record is devoid of evidence establishing whether the debt was accelerated at any time prior to May 2016. To the extent the debt was not accelerated prior to May 2016, installments that became due more than six years prior to the commencement of this action may be time-barred.

The Court further notes that, in addition to the discrepancy regarding the principal amount in plaintiff's submissions, the principal balance has remained unchanged despite plaintiff's representation that defendant made payments on the note through January 2010.

Under these circumstances, plaintiff has failed to eliminate triable issues of fact as to whether the action is time-barred. Accordingly, plaintiff has failed to demonstrate its entitlement to judgment as a matter of law.

Conclusion

Based on the foregoing, plaintiff's motion for summary judgment is denied in its entirety. Any argument not explicitly addressed herein was considered and deemed to be without merit or unnecessary to address given the Court's determination.

ENTER:

Honorable Reginald A. Boddie
Justice, Supreme Court

HON. REGINALD A. BODDIE
J.S.C.