

SIG CRE 2023 Venture LLC v UWS 83 Holdings LLC
2026 NY Slip Op 31853(U)
April 10, 2026
Supreme Court, New York County
Docket Number: Index No. 850476/2024
Judge: Francis A. Kahn III
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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. 850476/2024

SIG CRE 2023 VENTURE LLC,

MOTION DATE

Plaintiff,

MOTION SEQ. NO. 003

- v -

UWS 83 HOLDINGS LLC, 25 WEST 24TH STREET
REALTY CORP., OZ LEVY, NEW YORK CITY
DEPARTMENT OF FINANCE, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD, "JOHN DOE" NO.
1 THROUGH "JOHN DOE" NO. 10", INCLUSIVE, THE
LAST ONE HUNDRED NAMES BEING FICTITIOUS AND
UNKNOWN TO PLAINTIFF,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 107, 112, 113, 114, 115, 116, 117, 118, 119, 120

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 parcels of real property known as 23 West 24th Street and 25 West 24th Street, New York, New York 10010. The mortgage, dated June 19, 2015, was given by Defendant UWS 83 Holdings LLC ("UWS 83") to non-party Signature Bank ("Signature") and secures a loan with an original principal amount of \$10,000,000.00, which is memorialized by a note of the same date. The note and mortgage were executed by Defendant Oz Levy ("Levy") as the sole member of Borrower. Concomitantly with these documents, Levy executed a guaranty with respect to the indebtedness. Signature and UWS 83 executed modification agreements in 2021 and 2022 wherein Borrower acknowledged the indebtedness and its obligation to repay same. By agreement dated September 27, 2023, UWS 83 and Federal Deposit Insurance Corporation ("FDIC"), as Receiver for Signature, the loan was again modified with an admission of the indebtedness and the promise to repay. Like the two prior modification agreements, the third modification contained a waiver of all defenses and counterclaims.

Plaintiff commenced this action alleging inter alia Defendants defaulted in repayment under the note. Defendants answered and pled twelve affirmative defenses, including lack of standing. Now, Plaintiff moves for inter alia summary judgment against the appearing Defendants, for a default judgment against the non-appearing parties, to strike the appearing Defendants' affirmative defenses, to appoint a referee to compute, and to amend the caption. Defendants oppose the motion and cross-move for to dismiss the complaint pursuant to CPLR §3211[a][1], [3] and [7]. Plaintiff opposes the cross-motion.

In moving for summary judgment, Plaintiff was required to establish *prima facie* entitlement to judgment as a matter of law through proof of the mortgage, the note, and evidence of Defendants' default in repayment (*see eg 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]). Also, based on the affirmative defenses pled, Plaintiff was required to demonstrate, *prima facie*, its standing. 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]). A plaintiff may rely on evidence from persons with personal knowledge of the facts, documents in admissible form and/or persons with knowledge derived from produced admissible records (*see eg U.S. Bank N.A. v Moulton*, 179 AD3d 734, 738 [2d Dept 2020]). No particular set of 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 with an affidavit from C.H. Swan ("Swan"), an authorized signatory and asset manager of Rialto Capital Advisors ("Rialto"), the alleged sub-servicer for Plaintiff. Swan's authority to act on Plaintiff's behalf was established with submission of a limited power of attorney, dated December 6, 2024 (*see U.S. Bank N.A. v Tesoriero*, 204 AD3d 1066 [2d Dept 2022]; *Deutsche Bank Natl. Trust Co. v Silverman*, 178 AD3d 898 [2d Dept 2019]; *US Bank N.A. v Louis*, 148 AD3d 758 [2d Dept 2017]). Swan avers that his affidavit is based on personal review of the business records of Plaintiff and his affidavit laid a proper foundation for the admission of Plaintiff's records into evidence under CPLR § 4518 (*see Bank of N.Y. Mellon v Gordon*, 171 AD3d 197 [2d Dept 2019]). The records of prior servicers were also admissible in that Swan established that those records were derived from their makers and incorporated into the records that Rialto kept, and that Rialto routinely relied upon such documents in its business (*see eg U.S. Bank N.A. v Kropp-Somoza*, 191 AD3d 918 [2d Dept 2021]). The records referenced by Swan were annexed to the moving papers (*cf. Deutsche Bank Natl. Trust Co. v Kirschenbaum*, 187 AD3d 569 [1st Dept 2020]).

Accordingly, proof of the loan documents, including the note and mortgage, was established with the affirmation of Swan and the annexed documents (*cf. 938 St. Nicholas Ave. Lender LLC v 936-938 Cliffcrest Hous. Dev. Fund Corp.*, 218 AD3d 417 [1st Dept 2023]). A defendant's default "is established by (1) an admission made in response to a notice to admit, (2) an affidavit from a person having knowledge of the facts, or (3) other evidence in admissible form" (*Deutsche Bank Natl. Trust Co. v McGann*, 183 AD3d 700, 702 [2d Dept 2020]). Here, Swan's affidavit and the loan history demonstrated the mortgagor's default in repayment under the note (*see eg ING Real Estate Fin. (USA) LLC v Park Ave. Hotel Acquisition, LLC*, 89 AD3d 506 [1st Dept 2011]). The indebtedness was also established based on the terms of the modification agreements (*see Redrock Kings, LLC v Kings Hotel, Inc.*, 109 AD3d 602 [2d Dept 2013]; *EMC Mortg. Corp. v Stewart*, 2 AD3d 772 [2d Dept 2003]).

Standing in a foreclosure action is evaluated when an action is commenced, not thereafter (*see eg IS REO Opportunity 1, LLC v Harlem Premier Residence, LLC*, 234 AD3d 401 [1st Dept 2025]), and it may not be cured retroactively (*see U.S. Bank N.A. v Dellarmo*, 94 AD3d 746 [2d Dept 2012]). When the issue of standing is raised as a defense, a plaintiff must demonstrate it in one, or more, of three ways: [1] direct privity between mortgagor and mortgagee, [2] holder status through 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, supra; Wells Fargo Bank, NA v Ostiguy*, 127 AD3d 1375 [3d Dept 2015]).

“Holder status is established where the plaintiff possesses a note that, on its face or by allonge, contains an indorsement in blank or bears a special indorsement payable to the order of the plaintiff” (*Wells Fargo Bank, NA v Ostiguy*, 127 AD3d 1375, 1376 [2d Dept 2015] [citations omitted]). The indorsement must be made either on the face of the note or on an allonge “so firmly affixed thereto as to become a part thereof” (UCC §3-202[2]). “The attachment of a properly endorsed note to the complaint may be sufficient to establish, prima facie, that the plaintiff is the holder of the note at the time of commencement” (*Deutsche Bank Natl. Trust Co. v Webster*, 142 AD3d 636, 638 [2d Dept 2016]; cf. *JPMorgan Chase Bank, N.A. v Grennan*, 175 AD3d 1513 [2d Dept 2019]). However, “mere physical possession of a note at the commencement of a foreclosure action is insufficient to confer standing or to make a plaintiff the lawful holder of a negotiable instrument for the purposes of enforcing the note” (*U.S. Bank N.A. v Moulton*, 179 AD3d 734, 737 [2d Dept 2020]).

Here, Plaintiff established, with the affirmation Stacey Lara, Esq., that the note with indorsed allonges were in its possession before the action was commenced and that the allonges were firmly affixed to the note with staples (*see US Bank v Garcia*, 183 AD3d 506 [1st Dept 2020]). This evidence, along with annexation of the note and allonges to the complaint, was sufficient to meet Plaintiff’s burden with respect to its standing (*see US Bank, NA v Mave Hotel Investors, LLC*, 231 AD3d 607, 608 [1st Dept 2024]).

In opposition, Defendants’ reliance on standing, as well as all the other affirmative defenses, were expressly waived under the modification agreements (*see Weiss v Phillips*, 157 AD3d 1 [1st Dept 2017]; *Parasram v DeCambre*, 247 AD2d 283 [1st Dept 1998]; *Chemical Bank New York Trust Co. v Batter*, 31 AD2d 802 [1st Dept 1969]; *see also U.S. Bank N.A. v Kahn Prop. Owner, LLC*, 206 AD3d 855, 858 [2d Dept 2022]; *Bernstein v Dubrovsky*, 169 AD3d 410 [1st Dept 2019]). “Courts have held that the waiver of the right to assert defenses, counterclaims or setoffs is enforceable and thus not violative as against public policy” (*Weiss v Phillips*, *supra* at 10).

In any event, all of Defendants’ affirmative defenses and counterclaims 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-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 Defendants' cross-motion for summary judgment to dismiss the complaint is denied; and it is further

ORDERED that **Elaine Shay, Esq., 800 3rd Avenue, Ste. 2800, New York, New York - (212) 520-2690** 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 removing Defendants "John Doe #1" through "John Doe #100"; and it is further

ORDERED that the caption is amended as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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SIG CRE 2023 VENTURE LLC,
Plaintiff,

-against-

UWS 83 HOLDINGS LLC, 25 WEST 24TH STREET
REALTY CORP., OZ LEVY, NEW YORK CITY
DEPARTMENT OF FINANCE, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD,
Defendants.
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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

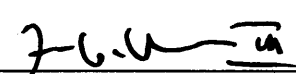
ORDERED that if Plaintiff fails to meet these deadlines, then the Court may *sua sponte* vacate this order and direct Plaintiff to move again for an order of reference and the Court may *sua sponte* toll interest depending on whether the delays are due to Plaintiff’s failure to move this litigation forward; and it 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 **August 19, 2026 @ 11:00am**. 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.

<u>4/10/2026</u> DATE			 FRANCIS A. KAHN III, J.S.C. HON. FRANCIS A. KAHN III J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input checked="" type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE