

U.S. Bank Trust, N.A. v Monsalve
2017 NY Slip Op 32935(U)
November 29, 2017
Supreme Court, Queens County
Docket Number: 713115/2016
Judge: Denis J. Butler
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ORIGINAL

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DENIS J. BUTLER IAS Part 12
Justice

U.S. BANK TRUST, N.A. AS TRUSTEE FOR LSF9 MASTER PARTICIPATION TRUST,

Index Number: 713115/2016

Plaintiff(s),

-against-

Motion Date: September 26, 2017

JORGE MONSALVE, GUILLERMO M. TOVAR; NEW YORK CITY ENVIRONMENTAL CONTROL BOARD; UNITED STATES OF AMERICA O/B/O INTERNAL REVENUE SERVICE; MIDLAND FUNDING LLC DBA IN NEW YORK AS MIDLAND FUNDING OF DELAWARE LLC; NEW YORK CITY PARKING VIOLATIONS BUREAU; NEW YORK CITY TRANSIT ADJUDICATION BUREAU; "JOHN DOES" and "JANE DOES" said names being fictitious, it being the intention of Plaintiff to designate any and all occupants tenant, persons or corporations, if any, having or claiming an interest in or lien upon the premises being foreclosed herein,

Motion Seq. No. 4

Defendant(s).

FILED DEC -7 2017 COUNTY CLERK QUEENS COUNTY

The following papers read on this motion by Plaintiff for an order granting summary judgment; striking the affirmative defenses and dismissing the counterclaims of Defendant Guillermo M. Tovar's verified answer with counterclaims; granting default judgment against all the non-answering Defendants; amending the caption; and appointing a referee to compute the amounts due to the plaintiff; and upon the notice of cross-claim by Defendant Guillermo M. Tovar for an order denying Plaintiff's motion and granting Defendant an order for summary judgment dismissing the foreclosure complaint and awarding Defendant actual and reasonable attorneys' fees, costs and disbursements.

PAPERS
NUMBERED

Notice of Motion, Affirmation, Affidavit,
 Memorandum of Law, and Exhibits E119-148
 Notice of Cross-Motion, Affirmation, Affidavit,
 Memorandum of Law and Exhibits.....E151-176
 Memorandum of Law In Opposition to
 Defendant's Cross-Motion.....E182

Upon the foregoing papers it is ordered that the motion and notice of cross-motion are decided as follows:

Plaintiff has established its *prima facie* entitlement to judgment as a matter of law, as it has produced the mortgage, possession of the unpaid note, and evidence of default. (See *RBS Citizens, N.A. v Galperin*, 35 AD3d 735, 736 [2d Dept 2016]). Plaintiff has further established that it has complied with the notice requirements of Article 13 of the RPAPL and settlement conference requirement of CPLR § 3408.

Defendant Guillermo M. Tovar opposes the motion, and cross-moves for an order granting summary judgment in Defendant's favor and dismissing Plaintiff's complaint, on the grounds that Plaintiff's action is barred by the applicable statute of limitations.

Defendant's argument fails. Contrary to Defendant's contention, the statute of limitations on Plaintiff's foreclosure action did not begin to run on March 6, 2009. Here, it is a judgment that triggers the acceleration in full of the entire mortgage debt, because "under the express wording of the mortgage document, Plaintiff has no right to reject the borrower's payment of arrears in order to reinstate the mortgage, until a judgment is entered." (*Nationstar Mortg., LLC v MacPherson*, 56 Misc 3d 339, 351 [Sup Ct Suffolk Co. 2017]; cf *Wells Fargo Bank, N.A. v. Cohen*, 80 AD3d 753, 754, 915 N.Y.S.2d 569 [2d Dept 2010].)

Based upon the foregoing, Plaintiff's motion for summary judgment against answering Defendant Guillermo M. Tovar is GRANTED, Defendant Tovar's cross-motion is DENIED, Defendant Tovar's counterclaims are dismissed, and a referee shall be appointed to compute the sums due and owing to Plaintiff.

The branch of Plaintiff's motion seeking to amend the caption is GRANTED, and the caption shall be amended to substitute "Alva

Doe" (last name refused) for "Jane Does" as named Defendants, and to delete John Does as named Defendants.

All other requested relief is DENIED.

Settle order on notice.

Dated: November 28, 2017



Denis J. Butler, J.S.C.

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QUEENS COUNTY