MEMORANDUM

NEW YORK SUPREME COURT : QUEENS COUNTY

P R E S E N T : **HON. ROBERT J. McDONALD** **IAS PART 34**
Justice

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FLUSHING SAVINGS BANK, FSB

Plaintiff,

- against -

BHANMATTI RAGUNANDAN, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, JOHN DOE NO. 1 to JOHN DOE NO. XXX, inclusive, the last thirty names being fictitious and unknown to plaintiff, the persons or parties intended being the tenants, occupants, persons or corporation, if any, having or claiming an interest in or lien upon the premises described in the complaint,

Defendants.

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Index No.: 30854/10

Motion Date: 10/12/11

Motion No.: 5

Motion Seq.: 4

Plaintiff commenced this action by filing a copy of the summons and complaint with the County Clerk on December 13, 2010. Plaintiff alleges that defendant Bhanmatti Ragunandan executed, acknowledged and delivered a consolidated mortgage dated July 15, 2008, in its favor, to secure repayment of a promissory note evidencing a loan in the principal amount of $485,500.00, with interest, with respect to the real property known as 116-04 Rockaway Boulevard, South Ozone Park, New York (the subject property). Plaintiff alleges that defendant Ragunandan defaulted under the terms of the subject mortgage and note by

failing to make the monthly installment payment of principal and interest due on September 1, 2010. It also alleges that as a consequence, it elects to accelerate the entire mortgage debt, and seeks foreclosure.

Defendant Ragunandan served an answer, denying certain material allegations of the complaint, and asserting an affirmative defense based upon plaintiff's alleged failure to take "all proper steps" required to prosecute and maintain a foreclosure action. Defendants New York City Environmental Control Board, and Kitchen and Bath Place, s/h/a "John Doe No. I" and Rookmin Hoosein, s/h/a "John Doe No. II," have not appeared or answered the complaint.

Plaintiff moves for summary judgment in its favor as against defendant Ragunandan, for leave to substitute Kitchen and Bath Place and Rookmin Hoosein for "John Doe No. I" and "John Doe No. II," respectively, for leave to amend the caption to reflect the substitution, for leave to amend the caption to delete the reference to "John Doe No. III" through "John Doe No. XXX," and for leave to appoint a referee to ascertain and compute the amount due and owing it.

Defendant Ragunandan opposes the motion and cross moves to join for trial this action (Action No. 1) with an action entitled *Ragunandan v Badoolah*, (Action No. 2) (Supreme Court, Queens County, Index No. 5530/2011), asserting the actions

involve the same facts and questions of law. Defendant Ragunandan contends that she resides in a one-family house located at 101-68 121^{s} Street, Queens, New York, and owned that property, the subject property, and a two-family house at 111-27 169th Street, Queens, New York. According to defendant Ragunandan, in 2009, as a result of financial difficulties, she entered into an arrangement with Imran Badoolah, whereby she executed deeds to the various properties, including a deed allegedly dated August 13, 2009, conveying title to the subject property to "John Harrison, LLC" (the Harrison deed). Defendant Ragunandan asserts that it was her understanding that Mr. Badoolah was not going to record the deeds, but later she learned he had done so, and intended to sell the properties. She commenced Action No. 2 against Imran Badoolah and John Harrison, LLC, among others, seeking a permanent injunction, rescission of the deeds, including the Harrison deed, and monetary relief. Bhanmatti Ragunandan moved, within the confines of Action No. 2, for, among other things, a preliminary injunction enjoining Badoolah and John Harrison LLC from selling, transferring, encumbering, or conveying the subject property pending a determination of that action. By memorandum decision dated June 6, 2011, that branch of the motion by Ragunandan for a preliminary injunction enjoining Badoolah and John Harrison LLC from selling, transferring, encumbering or conveying the subject

property was granted upon condition of a filing of an undertaking, to be fixed in the order to be entered. The memorandum decision directed the settlement of an order.

Those branches of the motion by plaintiff for leave to substitute Kitchen and Bath Place and Rookmin Hoosein for "John Doe No. I" and "John Doe No. II," respectively, and for leave amend the caption as proposed, are granted.

With respect to the motion by plaintiff pursuant to CPLR 3212 for summary judgment against defendant Ragunandan, it is well established that the proponent of a summary judgment motion "must make 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" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). On a motion for summary judgment in a foreclosure action, a plaintiff must make a prima facie showing by producing the mortgage, the unpaid note, bond or obligation and the evidence of default *(see EMC Mtge. Corp. v Riverdale Assoc.*, 291 AD2d 370 [2002]; *IMC Mtge. Co. v Griggs*, 289 AD2d 294 [2001]; *Paterson v Rodney*, 285 AD2d 453 [2001]). In support of the motion, plaintiff offers a copy of the pleadings, affidavits of service, an affirmation of its counsel, a copy of the subject mortgage and underlying note, and an affidavit of Joanne Orelli, a vice-president of plaintiff, attesting to the default by defendant Ragunandan under the

subject mortgage and note.

By these submissions, plaintiff has established a prima facie case of entitlement to judgment against defendant Ragunandan as a matter of law *(see EMC Mortgage Corp. v Riverdale Associates*, 291 AD2d 370 [2002]; *Republic Natl. Bank of N.Y. v Zito*, 280 AD2d 657, 658 [2001]). The burden shifts to defendant Ragunandan to raise a triable issue of fact regarding her defense (*see Barcov Holding Corp. v Bexin Realty Corp.*, 16 AD3d 282 [2005]; *EMC Mtge. Corp. v Riverdale Assoc.*, 291 AD2d 370 [2002]; *First Nationwide Bank, FSB v Goodman*, 272 AD2d 433 [2000]).

To the extent defendant Ragunandan asserts an affirmative defense in her answer based upon plaintiff's failure to "take all proper steps required" to prosecute and maintain this action, she has failed to identify with specificity those steps which plaintiff allegedly failed to take in the prosecution or maintenance of the action. To the extent defendant Ragunandan intended, by this affirmative defense, to assert plaintiff has failed to join John Harrison, LLC as a necessary party defendant to this action, necessary parties include persons with title to the premises (*see* RPAPL 1311; *Slattery v Schwannecke*, 118 NY 543 [1890]) and "[e]very person having any lien or incumbrance upon the real property which is claimed to be subject and subordinate to the lien of the plaintiff" (RPAPL 1311[3]).

Defendant Ragunandan, however, has failed to demonstrate John Harrison, LLC was the record owner of the property at the time of the commencement of the action, or had any other interest in the property, including one of occupancy or possession (*see generally Nationwide Associates, Inc. v Brunne*, 216 AD2d 547 [1995]; *Polish Nat. Alliance of Brooklyn v White Eagle Hall Co.*, 98 AD2d 400 [1983]; *Green Point Sav. Bank v Defour*, 162 Misc 2d 476 [1994]). According to defendant Ragunandan, the purported Harrison deed was not recorded until January 4, 2011 (after commencement of this action), and she makes no claim that plaintiff was aware of the unrecorded Harrison deed at the time of the institution of this action. In addition, to the extent the Harrison deed was recorded after the filing of the notice of pendency, John Harrison, LLC "is bound by all proceedings taken in the action after such filing to the same extent as a party" (CPLR 6501). Under such circumstances, defendant Ragunandan has failed to demonstrate John Harrison, LLC is a necessary party defendant to this action.

To the extent defendant Ragunandan asserts plaintiff may not prosecute this action in view of the memorandum decision granting her a preliminary injunction in Action No. 2, she has failed to demonstrate the resulting order enjoins plaintiff from prosecuting this action.

With respect to the cross motion by defendant Ragunandan for

joint trial of Action No. 1 and Action No. 2, she has failed to demonstrate there is a commonality of questions of law or fact sufficient to merit a joint trial (CPLR 602). Defendant Ragunandan makes no claim that her ownership interest in the property was no longer subject to plaintiff's mortgage interest at the time of the making of the Harrison deed, or that plaintiff committed any fraud or misconduct, or aided and abetted Badoolah, to cause her to execute the Harrison deed.

Defendant Ragunandan has failed to come forward with any evidence showing the existence of a triable issue of fact with respect to any defense. Plaintiff, therefore, is entitled to summary judgment in its favor against her *(see Fed. Home Loan Mtge. Corp. v Karastathis*, 237 AD2d 558 [1997]; *DiNardo v Patcam Serv. Station*, 228 AD2d 543 [1996]).

Those branches of the motion by plaintiff for summary judgment in its favor against defendant Ragunandan, and striking the affirmative defense raised by defendant Ragunandan in her answer, are granted. The cross motion by defendant Ragunandan for joint trial of Actions No. 1 and 2 is denied.

That branch of the motion for leave to appoint a referee is granted.

Settle order.

Dated: Long Island City, NY
December 7, 2011

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ROBERT J. McDONALD
J.S.C.