SHORT FORM ORDER **INDEX NO.: 30726/2013**

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 38 - SUFFOLK COUNTY

PRESENT:

HON. WILLIAM G. FORD
JUSTICE OF THE SUPREME COURT

Motions Submit Dates: 02/11/16 & 10/19/17
Mot Seq 002 MG; CASE DISP
Mot Seq 003 MD
Mot Seq 004 MG

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CITIBANK, N.A.,

Plaintiff,

-against-

AARON C. HARKIN a/k/a AARON HARKIN, CHARLES HARKIN, CITIFINANCIAL SERVICES, INC., NEW YORK STATE DEPARTMENT OF TAXATION & FINANCE, CAPITAL ONE BANK USA, N.A., MIDLAND FUNDING BANK LLC.,

Defendants.

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PLAINTIFF'S COUNSEL:
Bonchonsky & Zaino, LLP
By: Kevin M. Butler, Esq.
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Garden City, New York 11530

DEFENDANT'S COUNSEL:
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33 Davison Lane East
West Islip, New York 11795

DEFENDANT PRO SE:
AARON HARKIN
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Center Moriches, New York 11934

On the parties pending motions, the Court considered the following:

1. Notice of Motion & Affirmation in Support of Judgment of Foreclosure & Sale dated November 28, 2016 and supporting papers;
2. Notice of Cross-Motion to Vacate Order/Judgment & Affirmation in Support & in Opposition to Judgment of Foreclosure & Sale dated January 28, 2016 and other supporting papers;
3. Affirmation in Opposition to Cross-Motion dated February 1, 2016;
4. Notice of Motion for Partial Discontinuance & Affirmation in Support dated July 25, 2017 and supporting papers;
5. Affirmation in Opposition dated September 28, 2017; and upon due deliberation and full consideration; it is

ORDERED that plaintiff's motion for judgment of foreclosure and sale is **granted**, and it is further

ORDERED that plaintiff's accompanying proposed judgment of foreclosure and sale is hereby **signed** simultaneously with the rendering of this decision and order, and it is further

ORDERED that defendant's cross-motion pursuant to CPLR 3211(a)(8) to dismiss

plaintiff's complaint for lack of personal jurisdiction, or in the alternative to vacate his default in answering or opposing plaintiff's application for judgment of foreclosure and sale, or for leave to file and to compel acceptance of a late answer pursuant to CPLR 5015 (a)(1), CPLR 317(1) & CPLR 3012(d) is **denied** as follows; and it is further

ORDERED that plaintiff's counsel serve a copy of this decision and order with notice of entry on defendant's counsel by overnight mail and upon the defendant *pro se* personally.

This is an action to foreclose a mortgage on premises more commonly known and referred to as 26 Appel Drive, Shirley, Suffolk County, New York 11967. Defendants Charles and Aaron Harkin executed a promissory note dated June 18, 2007 in favor of First West Mortgage Bankers Ltd., borrowing in principal and agreeing to repay $ 246,600.00 at 6.75 % annual interest. The note was secured by a mortgage of the same date on the subject property which was recorded by the Suffolk County Clerk on June 27, 2007 at Liber 21559, page 243. The promissory note was first endorsed by First West to JP Morgan Chase Bank, N.A., and further bears an undated endorsement in blank by JP Morgan Chase Bank.

Premised upon defendant's default and failure to render a timely monthly payment on her mortgage due on or about July 1, 2009, plaintiff commenced this action filing of a summons and complaint and notice of pendency on November 18, 2013. Defendants did not answer the pleadings, although plaintiff contends that at least one Harkin defendant did appear at and participate in the mandatory settlement conference held pursuant to CPLR 3408 on June 13, 2014.

Plaintiff previously established its standing to litigate in this matter, having obtained default judgment against defendants and an order of reference from Supreme Court in a decision and order rendered March 9, 2015 by the retired Hon. Emily C. Pines, J.S.C. In that Order, the court found plaintiff had standing to sue upon proffer of the promissory note, mortgage, assignments and evidence of defendants' default. This determination was rendered on plaintiff's unopposed application, thus any affirmative defenses asserted by defendants were deemed abandoned on their default on the motion.

Presently, the parties have both made affirmative applications for varied relief. First, plaintiff now seeks judgment of foreclosure & sale and ratification of the appointed referee's computation of amounts due and owing under the promissory note against the defendants. Defendant Charles Harkin by counsel opposes that application, and cross-moves to vacate and reopen his default under CPLR 5015(a)(1) & 317(a) premised on excusable default. Relatedly, defendant further seeks dismissal of plaintiff's foreclosure complaint under CPLR 3211(a)(8) arguing that plaintiff lacks capacity to sue and has failed to plead or prove personal jurisdiction over him, warranting dismissal as a matter of law. In support of this application, defendant offers an affidavit by which he denies receipt of a copy of the pleadings and thus disputes proper service of process on him. Additionally, defendant seeks to relitigate plaintiff's standing to sue arguing plaintiff has failed to demonstrate compliance with the statutorily required notices called for in RPAPL 1303 & 1304, or to adequately inquire about defendant's active duty military status.

This Court having reviewed the above described applications referred them to oral argument and a *Traverse* hearing in Short-Form Decision & Order dated August 1, 2016. Thereafter, the parties scheduled that proceeding for September 2016, which was adjourned several times by the parties on consent to a firm date in March 2017. Before that appearance,

defendant's counsel advised the Court that defendant Charles Harkin expired and provided the court and plaintiff's counsel with a copy of his death certificate indicating defendant's demise on February 2017. To date, the parties have not substituted as a party the personal representative for decedent's estate. However, plaintiff has moved to discontinue its mortgage foreclosure action against the decedent Harkin. That application is opposed by counsel.1

Plaintiff opposes defendant's cross-motion principally arguing that it has previously established, as acknowledged by this Court, its standing and entitlement to foreclosure, evidence by fixing of defaults and appointment of the referee to compute in this Court's prior determination. Further, plaintiff acknowledges decedent's passing and now seeks to discontinue all foreclosure or deficiency judgment claims against him or his estate. On that basis, plaintiff additionally argues that since defendant Aaron Harkin has failed to answer, has been found in default, and further has not sought to reopen that default and answer the pleadings or otherwise appear and participate in this action, its claims should proceed on the merits. As a result, plaintiff therefore seeks to vacate, modify, or resettle this Court's prior order calling for a *Traverse* hearing on decedent Harkin's prior cross-motion to vacate default or dismiss for lack of personal jurisdiction, largely grounded on mootness of his passing and further buttressed by plaintiff's desire to discontinue with leave of court. This Court agrees.

The determination of a motion for leave to voluntarily discontinue an action without prejudice pursuant to CPLR 3217(b) rests within the sound discretion of the court. Thus, in the absence of special circumstances, such as prejudice to a substantial right of the defendant, or other improper consequences, a motion for a voluntary discontinuance should be granted (***Parraguirre v 27th St. Holding, LLC***, 37 AD3d 793, 793–94, 831 NYS2d 460, 461 [2d Dept 2007]).

Under analogous circumstances of death of a party in litigation, generally, where a cause of action survives the death of a party, such death divests the court of jurisdiction until a duly-appointed personal representative is substituted for the deceased party. However, the courts do acknowledge the exception providing that where a party's demise does not affect the merits of the case, there is no need for strict adherence to the requirement that the proceedings be stayed pending substitution (***Paterno v CYC, LLC***, 46 AD3d 788, 788, 850 NYS2d 131, 132 [2d Dept 2007]; *see also* CPLR 1015). Further, the death of a party terminates his or her attorney's authority to act on behalf of the deceased party (***Vapnersh v Tabak***, 131 AD3d 472, 474, 15 NYS3d 131, 133 [2d Dept 2015]). Thus, our courts routinely recognize that in most instances a personal representative appointed by the Surrogate's Court should be substituted in the action to represent the decedent's estate (***U.S. Bank Nat. Ass'n v Esses***, 132 AD3d 847, 848, 18 NYS3d 672, 673 [2d Dept 2015]).

Such procedure is outlined in CPLR 1021 which advises counsel in pertinent part, that a

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1 Parenthetically, this Court pauses to note that while counsel for Charles Harkin previously moved to vacate his client's default and sought to compel plaintiff's acceptance of a late answer, curiously, he has not indicated to the Court that he has substituted his client's estate or personal representative in decedent's stead. Further, the Court notes case law readily and clearly holds as more thoroughly explained below, that Harkin's death ordinarily would divest counsel of authority to appear on his behalf. Thus, it is unclear who counsel now represents, particularly given the defaulting status of co-defendant Aaron Harkin, combined with the fact that the only motion papers from defendants were on behalf of the decedent by counsel. Nevertheless, decedent's contentions as advanced by his counsel are addressed and disposed accordingly.

motion for substitution may be made by the successors or representatives of a party or by any other party within a reasonable time after the party's death. If "timely substitution has not been made, the court, before proceeding further, shall, on such notice as it may in its discretion direct, order the persons interested in the decedent's estate to show cause why the action or appeal should not be dismissed" (***Barnabas v Boodoo***, 134 AD3d 970, 972, 22 NYS3d 508, 510 [2d Dept 2015]).

Further, the Court possess inherent authority to assist in the matter to prevent undue delay and in the furtherance of substantial justice. Thus, in the event no such representative exists, an appropriate appointment may be made by the Supreme Court and that individual may be substituted in place of the decedent, since the Supreme Court is a court of general jurisdiction inherent authority to appoint a temporary administrator and may do so to avoid delay and prejudice in a pending action." That determination is committed to the sound discretion of the court (***Lambert v Estren***, 126 AD3d 942, 943, 7 NYS3d 169, 171 [2d Dept 2015]).

In instances where plaintiff seeks to discontinue its claims previously prosecuted against a deceased party, precedent provides that this may occur under instances similar to the matter at hand. The Second Department has previously permitted a foreclosing bank plaintiff to discontinue against a deceased borrower, determining that it is appropriate to permit the plaintiff to discontinue the action against the mortgagor, who died during the pendency of the action, musing that while generally speaking if a cause of action survives the death of a party, such death divests the court of jurisdiction until a duly appointed personal representative is substituted for the deceased party, but at the same time acknowledging that "where a party's demise does not affect the merits of a case ... there is no need for strict adherence to the requirement that the proceedings be stayed pending substitution" (***DLJ Mortg. Capital, Inc. v 44 Brushy Neck***, *Ltd.*, 51 AD3d 857, 858, 859 NYS2d 221, 223 [2d Dept 2008]). Plaintiff persuasively argues this very exception and its application to this very matter.

Plaintiff notes that the Harkins held title to the mortgaged premises as joint tenants with rights of survivorship as reflected by their deed to property dated January 7, 2014, recorded with the Suffolk County Clerk on January 14, 2014. Accordingly, plaintiff argues that by operation of law due to their co-tenancy status, on Charles Harkin's death, all of his right, title and interest to the mortgage premises passed to his co-tenant who held right of survivorship, co-defendant Aaron Harkin, his son. Common law holds that "[a] joint tenancy is an estate held by two or more persons jointly, with equal rights to share in its enjoyment during their lives, and creating in each joint tenant a right of survivorship." "The continuance of the joint tenancy depends on the maintenance of the unities of title, interest and possession; and the destruction of any of these unities leads to a severance of the tenancy, and to the creation either of a tenancy in common or of several tenancies." Thus, the Second Department has held that decedent does destroy the unity of possession or the unity of interest by relocating from the jointly held property, and therefore at the time of decedent's passing, each joint tenant or cotenant is entitled to common possession of the entire property (***Goetz v Slobey***, 76 AD3d 954, 956, 908 NYS2d 237, 239 [2d Dept 2010]).

More akin to the matter *sub judice*, the courts hold that within the context of a mortgage foreclosure action, where a deceased defendant made an absolute conveyance of all his or her interest in the mortgaged premises to another defendant, including his or her equity of redemption, and the plaintiff **either discontinued the action as against the deceased defendant**

or elected not to seek a deficiency judgment against the deceased defendant's estate,then the deceased defendant is no longer a necessary party to the action (***U.S. Bank Nat. Ass'n v Esses***, 132 AD3d 847, 848, 18 NYS3d 672, 673–74 [2d Dept 2015][emphasis added]; ***HSBC Bank USA v Ungar Family Realty Corp.***, 111 AD3d 673, 673–74, 974 NYS2d 583, 584 [2d Dept 2013]).

Applying well established precedent to these facts, the Court is convinced that plaintiff retains the right to control its litigation and may discontinue against decedent defendant Charles Harkin and/or his estate. Contrary to defense counsel's protestations otherwise, plaintiff's moving papers unequivocally state that by discontinuing its action the bank acknowledges and knowingly waives its foreclosure claims against Harkin and his estate, including the right to seek deficiency judgment should that arise post-judgment. Thus, the presented circumstances militate in plaintiff's favor. The record evidence supports the inference that the Harkin defendants held title as joint-tenants with rights of survivorship, and that on Charles Harkin's death, his son inherited all rights title and interest in the property. Thus, decedent, or more importantly, his estate whether by probate or intestate, no longer remains a necessary party to this matter. While it is true that despite acknowledging Harkin's passing neither party sought to substitute his estate or personal representative in his stead, this Court does not believe the parties' substantial rights would be prejudice by proceeding on the merits. Additionally, substantial justice, judicial economy and efficiency would not be served by allowing defendants additional delay by staying this matter further for such an unnecessary substitution.

Therefore, plaintiff's motion to discontinue the action as against decedent defendant Charles Harkin or his estate is **granted,** and the complaint is **dismissed** against the same.

Moving forward, all of the arguments previously raised by decedent do not inure to the benefit of his co-defendant presently in default status. Notably, the court's record keeping system indicates that counsel has filed motion papers on behalf of Charles Harkin and did not appear for defendant Aaron Harkin. Moreover, the affidavit supporting the motion to vacate default, compel acceptance of late answer and dismiss the pleadings was sworn by the decedent, and was not joined by Aaron Harkin. Here, case law is clear that Bachmann contends that the defense of lack of jurisdiction based on improper service " 'is personal in nature and may only be raised by the party improperly served ' " (***Wells Fargo Bank, N.A. v Bachmann***, 145 AD3d 712, 713–14, 43 NYS3d 107, 109 [2d Dept 2016]).

A defendant seeking to vacate a default in answering or appearing upon the ground of excusable default must demonstrate a reasonable excuse for the default and a potentially meritorious defense to the action (***LaSalle Bank Nat. Ass'n v Calle***, 153 AD3d 801, 802, 61 NYS3d 104, 105 [2d Dept 2017]). Whether or not service was properly effectuated is a threshold issue to be determined before consideration of discretionary relief pursuant to CPLR 5015(a)(1) (***Marable ex rel. Ralph v Williams***, 278 AD2d 459, 459–60, 718 NYS2d 400, 401 [2d Dept 2000]). "The plaintiff bears the ultimate burden of proving by a preponderance of the evidence that jurisdiction over the defendant was obtained by proper service of process" and New York's appellate courts have clearly cautioned that the absence of proper service of process, renders a resulting default judgment was a nullity (***Pearson v. 1296 Pac. St. Associates, Inc.***, 67 AD3d 659, 660, 886 NYS2d 898 [2d Dept. 2009]).

Separately, but relatedly, for defendant to vacate a default in opposing a motion pursuant

to CPLR 5015(a)(1), he must also to demonstrate a reasonable excuse for his default and a potentially meritorious opposition to the motion' " (***New Century Mortg. Corp. v Chimmiri***, 146 AD3d 893, 894, 45 NYS3d 209, 210 [2d Dept 2017]).

CPLR 317 permits a defendant who has been "served with a summons other than by personal delivery" to defend the action upon a finding by the court that the defendant "did not personally receive notice of the summons in time to defend and has a meritorious defense" (CPLR 317; *see* ***Eugene Di Lorenzo, Inc. v. A.C. Dutton Lbr. Co.***, 67 NY2d at 141; ***Taieb v. Hilton Hotels Corp.***, 60 NY2d 725, 728; ***Fleisher v. Kaba***, 78 AD3d 1118, 1119; ***Reyes v. DCH Mgt., Inc.***, 56 AD3d 644; ***Gershman v Midtown Moving & Storrage, Inc.***, 123 AD3d 974, 975 [2d Dept 2014]).

Either way, "[i]t is 'axiomatic that the failure to serve process in an action leaves the court without personal jurisdiction over the defendant, and all subsequent proceedings are thereby rendered null and void' " and thus on an application falling under CPLR 5015(a)(4), a default judgment must be vacated once a movant demonstrates lack of personal jurisdiction (***Hossain v. Fab Cab Corp.***, 57 AD3d 484, 485, 868 NYS2d 746, 746 [2d Dept. 2008][internal citations omitted]). Where the defendant's only participation in the action is the submission of a motion to vacate a default judgment for lack of personal jurisdiction, the defense of lack of personal jurisdiction is not waived (***Cadlerock Joint Venture, L.P. v. Kierstedt***, 119 AD3d 627, 628, 990 NYS2d 522, 524 [2d Dept. 2014]).

"Ordinarily, a process server's affidavit of service establishes a prima facie case as to the method of service and, therefore, gives rise to a presumption of proper service" (***Bank of Am., N.A. v Welga***, 157 AD3d 753, 753–54, 66 NYS3d 889, 890 [2d Dept 2018]; ***U.S. Bank, N.A. v. Peralta***, 142 AD3d 988, 988, 37 NYS3d 308; *see* ***Citibank, N.A. v. Balsamo***, 144 AD3d at 964, 41 NYS3d 744). "However, when a defendant submits a sworn denial of receipt of service containing specific facts to refute the statements in the affidavit of the process server, the *prima facie* showing is rebutted and the plaintiff must establish personal jurisdiction by a preponderance of the evidence at a hearing" (***Fuentes v Espinal***, 153 AD3d 500, 501, 60 NYS3d 81, 83 [2d Dept 2017]; (***Purzak v Long Is. Hous. Services, Inc.***, 149 AD3d 989, 991, 53 NYS3d 112, 114–15 [2d Dept 2017]). However, courts remain cautioned that mere conclusory denials of service are insufficient to rebut the presumption of proper service arising from the process server's affidavit. Thus, to warrant a hearing to determine the validity of service of process, the denial of service must be substantiated by specific, detailed facts that contradict the affidavit of service, shifting the burden of proof to the plaintiff to establish jurisdiction at a hearing by a preponderance of the evidence (***Wells Fargo Bank, N.A. v Decesare***, 154 AD3d 717, 717, 62 NYS3d 446, 448 [2d Dept 2017]; *accord* ***US Bank Nat. Ass'n v Ramos***, 153 AD3d 882, 884, 60 NYS3d 345, 347 [2d Dept 2017]). Thus, it remains settled that no hearing is required where the defendant fails to swear to specific facts to rebut the statements in the process server affidavits" (*see* ***Countrywide Home Loans Servicing, LP v. Albert***, 78 AD3d 983, 984–985, 912 NYS2d 96; ***Scarano v. Scarano***, 63 AD3d 716, 716, 880 NYS2d 682; ***Rosario v. NES Med. Servs. of N.Y., P.C.***, 105 AD3d 831, 832, 963 NYS2d 295, 296–97 [2d Dept 2013]).

As concerns excusable default, a defendant who has failed to appear or answer the complaint must provide a reasonable excuse for the default and demonstrate a meritorious defense to the action to avoid the entering of a default judgment or to extend the time to answer (***Cummings v Rosoff***, 101 AD3d 713, 714, 955 NYS2d 193, 194 [2d Dept 2012]; ***Ennis v.***

Lema, 305 A.D.2d 632, 633, 760 N.Y.S.2d 197, 198-99 [2d Dept. 2003]). The determination of what constitutes a reasonable excuse for a default lies within the sound discretion of the trial court (*see* ***McHenry v. San Miguel***, 54 AD3d 912, 864 NYS2d 541; ***Thompson v. Steuben Realty Corp.***, 18 AD3d 864, 795 NYS2d 470; ***Gambardella v. Ortov Lighting, Inc.***, 278 A.D.2d 494, 495, 717 N.Y.S.2d 923 [2d Dept. 2000]).

Here, defendant Aaron Harkin has made no efforts to appear, contest the pleadings or reopen his default. Thus, that determination remains undisturbed. Further, defendant's attempts to relitigate standing and other affirmative defenses are inapposite. The prevailing law in the Second Department makes clear generally that where defendant failed to answer the complaint in this action, defaulted in appearance, and was unsuccessful on a motion to dismiss the complaint on jurisdictional grounds including service of process and plaintiff's standing, further argument concerning plaintiff's standing will not be entertained as now waived (*see* ***Wells Fargo Bank, N.A. v Combs***, 128 AD3d 812, 813, 10 NYS3d 121, 122 [2d Dept 2015][defendants waived their argument that the plaintiff lacked standing to commence the foreclosure action because they never appeared or answered]; ***Wells Fargo Bank, Nat. Ass'n v Laviolette***, 128 AD3d 1054, 1055, 10 NYS3d 538, 538 [2d Dept 2015]; *see also* ***Deutsche Bank Nat. Tr. Co. v Hussain***, 78 AD3d 989, 990, 912 NYS2d 595, 596 [2d Dept 2010][under analogous circumstances, holding where defendant failed to demonstrate any other potentially meritorious defense to the foreclosure action or a reasonable excuse for the failure to answer, Supreme Court properly denied defendant's motion pursuant to CPLR 5015(a)(1) which was to vacate]; ***U.S. Bank Nat. Ass'n v Carey***, 137 AD3d 894, 896, 28 NYS3d 68, 70 [2d Dept 2016][holding that the affirmative defense asserting plaintiff's noncompliance with notice requirement of RPAPL 1304 is not jurisdictional, but rather a waivable defense]; ***HSBC Bank, USA v Dammond***, 59 AD3d 679, 680, 875 NYS2d 490, 491 [2d Dept 2009]).

Further, the law of standing is settled in this jurisdiction. Plaintiff need only demonstrate that it is both the holder or assignee of the subject mortgage and the holder or assignee of the underlying note at the time the action is commenced. "Either a written assignment of the underlying note or the physical delivery of the note prior to the commencement of the foreclosure action is sufficient to transfer the obligation, and the mortgage passes with the debt as an inseparable incident" (***DLJ Mortg. Capital, Inc. v Pittman***, 150 AD3d 818, 819, 56 NYS3d 120, 121–22 [2d Dept 2017]); *see also* ***Kondaur Capital Corp. v. McCary***, 115 AD3d 649, 650, 981 NYS2d 547; *see* ***HSBC Bank USA v. Hernandez***, 92 AD3d at 843, 939 NYS2d 120; ***Bank of N.Y. v. Silverberg***, 86 AD3d at 279, 926 NYS2d 532). Either a written assignment of the underlying note or the physical delivery of the note prior to the commencement of the foreclosure action is sufficient to transfer the obligation (*see* ***Aurora Loan Serv., LLC v. Taylor***, 114 AD3d 627, 980 NYS2d 475; ***HSBC Bank USA v. Hernandez***, 92 AD3d at 844, 939 NYS2d 120; ***U.S. Bank, N.A. v. Collymore***, 68 AD3d at 754, 890 NYS2d 578).

Once a promissory note is tendered to and accepted by an assignee, the mortgage passes as an incident to the note (*see* ***Bank of N.Y. v. Silverberg***, 86 AD3d at 280, 926 NYS2d 532). However, the transfer of the mortgage without the debt is a nullity, and no interest is acquired by it (*see* ***Bank of N.Y. Mellon v. Gales***, 116 AD3d 723, 982 NYS2d 911; ***Bank of N.Y. v. Silverberg***, 86 AD3d at 280, 926 NYS2d 532), because a mortgage is merely security for a debt or other obligation and cannot exist independently of the debt or obligation (*see* ***Deutsche Bank Natl. Trust Co. v. Spanos***, 102 AD3d 909, 911, 961 NYS2d 200); ***U.S. Bank Nat. Ass'n v.***

Faruque, 120 AD3d 575, 577, 991 NYS2d 630, 632–33 [2d Dept 2014]). It is settled that '[t]here is simply no requirement that an entity in possession of a negotiable instrument that has been endorsed in blank must establish how it came into possession of the instrument in order to be able to enforce it' " (***Wells Fargo Bank, NA v Thomas***, 150 AD3d 1312, 1313, 52 NYS3d 894, 895 [2d Dept 2017]).

Plaintiff proves *prima facie* entitlement to judgment as a matter of law by the production of copies of the mortgage, the unpaid note, and evidence of default (*see e.g.* ***Aurora Loan Servs., LLC v. Enaw***, 126 AD3d 830, 7 NYS3d 146; ***U.S. Bank N.A. v. Weinman***, 123 AD3d 1108, 2 NYS3d 128; ***Plaza Equities, LLC v. Lamberti***, 118 AD3d 688, 689, 986 NYS2d 843; ***Solomon v. Burden***, 104 AD3d 839, 961 NYS2d 535), and demonstrates its standing based both on its physical possession of the note, and on its status as an assignee of the note, as of the date that the action was commenced (*see* ***Wells Fargo Bank, N.A. v. Parker***, 125 AD3d 848, 5 NYS3d 130; ***Wells Fargo Bank, N.A. v. Ali***, 122 AD3d 726, 995 NYS2d 735); ***Emigrant Bank v. Larizza***, 129 AD3d 904, 905, 13 NYS3d 129, 131 [2d Dept 2015]). Here, plaintiff has previously established its standing demonstrating its possession of an endorsed copy of the note, valid assignment, the mortgage and evidence of defendants' defaults.

Additionally, black letter in the Second Department also clearly holds that "[t]he absence of a reasonable excuse renders it unnecessary to determine ... the existence of a potentially meritorious defense to the action" (***HSBC Bank USA, Nat. Ass'n v Smart***, 155 AD3d 843, 63 NYS3d 700 [2d Dept 2017]). The determination of what constitutes a reasonable excuse lies within the sound discretion of the Supreme Court" (***One W. Bank, FSB v Valdez***, 128 AD3d 655, 655, 8 NYS3d 419, 420 [2d Dept 2015]). Here, Aaron Harkin has made no appearance or any claim of any excusable default or anything approximating reasonable excuse. Thus, no grounds exist before this Court on which to disturb his default whatsoever.

Accordingly, in view of all of the above, plaintiff's motion for judgment of foreclosure and sale confirming the referee's report and recommendation of amounts due and owing is hereby **granted** as more thoroughly set forth in the accompanying long form order.

The foregoing constitutes the decision and order of this Court.

Dated: August 1, 2018
Riverhead, New York

WILLIAM G. FORD, J.S.C.

___X___ **FINAL DISPOSITION** _____ **NON-FINAL DISPOSITION**