

Citibank, N.A. v Yanling Wu

2018 NY Slip Op 34033(U)

January 12, 2018

Supreme Court, Queens County

Docket Number: 710351/2016

Judge: Denis J. Butler

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This opinion is uncorrected and not selected for official publication.

ORIGINAL

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DENIS J. BUTLER
Justice

IAS Part 12

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Citibank, N.A. as Successor Trustee to
US Bank National Association, as Trustee
for Mastr Adjustable Rate Mortgages
Trust 2007-HF1, Mortgage Pass-Through
Certificates, Series 2007-HF1,

Index
Number: 710351/2016

Motion Date:
November 9, 2017

Plaintiff(s),

-against-

Motion Seq. No.: 1

Yanling Wu a/k/a Cristal Wu a/k/a
Christal Sing, Perry Sing, CitiMortgage,
Inc., Hanam Capital Corporation,
Citibank, N.A., HSBC Bank USA, National
Association, City of New York
Environmental Control Board,

"JOHN DOE#1" through and including "JOHN
DOE#25", the defendants last named in
quotation marks being intended to
designate tenants or occupants in
possession of the herein described
premises or portions thereof, if any
there be, said names being fictitious,
their true name being unknown to
plaintiff,

Defendant(s).

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The following papers were read on this motion by plaintiff for an order granting summary judgment; striking the Answer of Defendant Yanling Wu a/k/a Cristal Wu a/k/a Christal Sing and Perry Sing; granting default judgment against all non-answering and non-appearing Defendants; amending the caption; and appointing a referee to compute the amounts due to Plaintiff; and upon the notice of cross-motion by Defendants Yanling Wu and Perry Sing, for an order granting a settlement conference and holding the

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COUNTY CLERK
QUEENS COUNTY

motion and the balance of the cross-motion in abeyance until Plaintiff evaluates Defendants' new loan modification application; granting summary judgment in favor of the Defendants; and permitting Defendants to continue conducting discovery of Plaintiff.

| | <u>Papers Numbered</u> |
|--|----------------------------|
| Notice of Motion, Affirmation, Affidavit | |
| Proposed Order and Exhibits..... | E17-35 |
| Notice of Cross-Motion, Affirmation | |
| Affidavit and Exhibits..... | E37-56 |
| Affirmation In Opposition, Affirmation | |
| and Exhibits..... | E57-66 |
| Affirmation In Reply, Affidavit..... | E67-68 |

Upon the foregoing papers, it is ordered that this motion and cross-motion are determined as follows:

In this residential foreclosure action, Plaintiff moves for an order of reference and other related relief. Defendants Wu and Sing cross-move for an order directing another settlement conference, and permitting further discovery. Defendants further move for summary judgment in their favor on the following grounds: Plaintiff's failure to demonstrate the agency authority of its purported loan servicer, who submitted the affidavit in support of Plaintiff's motion; Plaintiff's failure to demonstrate a default in payment; Plaintiff's failure to be licensed as a debt collector by the New York City Department of Consumer Affairs; Plaintiff's failure to demonstrate standing; and Plaintiff's failure to demonstrate compliance with RPAPL § 1303. Defendants oppose Plaintiff's motion for summary judgment on these same grounds.

Plaintiff has demonstrated its prima facie entitlement to the relief requested, having produced evidence of the mortgage, the unpaid note, and evidence of the borrowers' default. (*One West Bank FSB v DiPilato*, 124 AD3d 735 [2d Dept 2015].) Plaintiff has also demonstrated its standing, through the affidavit of its loan servicer, as well as its compliance with RPAPL § 1303, through the affidavits of its process server. In opposition, Defendant fails to raise a triable issue of fact to defeat summary judgment.

Defendant's contention that Plaintiff may not rely on the affidavit from its loan servicer to support its motion is without merit. Controlling authority makes clear that a loan servicer may testify on behalf of a foreclosing plaintiff. (*See Deutsche*

Bank Natl. Trust Co. v Abdan, 131 AD3d 1001 [2d Dept 2015]; *Wells Fargo Bank, N.A. v Arias*, 121 AD3d 73 [2d Dept 2014]; *HSBC Bank USA, Natl. Ass'n v Sage*, 112 AD3d 1126; *Ames Capital Corp. v Ford*, 294 AD2d 134 [2d Dept 2002]). Moreover, the loan servicer's affidavit conforms to the requirements for business records under CPLR 4518(a).

The branch of Defendants' cross-motion seeking summary judgment and dismissal based upon the grounds that Plaintiff is not a licensed debt collector is DENIED. Defendants cite no controlling authority for the proposition that a mortgage holder must register as a debt collection agency within the meaning of the New York City Administrative Code before attempting to enforce a mortgage contract. Courts addressing similar arguments under the similarly-worded Fair Debt Collection Practices Act have rejected such arguments. (See, e.g., *United Cos. Lending v Candela*, 292 AD2d 800, 801-802 [4th Dept 2002].)

The branch of Defendants' cross-motion seeking an order directing a settlement conference is DENIED, as Plaintiff has demonstrated it has already complied with the requirements of CPLR § 3408.


The branch of Defendants' cross-motion seeking additional discovery is DENIED. The mere hope that evidence sufficient to defeat a motion may be uncovered in subsequent discovery is not enough to defeat summary judgment (see *Drepaul v Allstate Ins. Co.*, 299 AD 2d 391 [2d Dept 2002]). Here, Defendants have "failed to offer an evidentiary basis to suggest that discovery may lead to relevant evidence or that facts essential to opposing the motion were exclusively within the knowledge and control of the plaintiffs." (*Kimyagarov v Nixon Taxi Corp.*, 45 AD3d 736 [2d Dept 2007]).

For the reasons set forth above, Plaintiff's motion for summary judgment is GRANTED, and Defendants' cross-motion is DENIED in its entirety.

The branches of Plaintiff's motion seeking to amend the caption and for a default judgment against the other Defendants is GRANTED, without opposition. A referee shall be appointed to compute the amount due to Plaintiff.

Submit order.

Dated: January 12, 2018



Denis J. Butler, J.S.C.

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