

US Bank N.A. v Gottesman

2019 NY Slip Op 32168(U)

July 8, 2019

Supreme Court, New York County

Docket Number: 850006/2018

Judge: Arlene P. Bluth

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 32

Justice

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INDEX NO. 850006/2018

US BANK NATIONAL ASSOCIATION AS TRUSTEE FOR
CMSI REMIC SERIES 2007-03 - REMIC PASS-THROUGH
CERTIFICATES SERIES 2007-03,

MOTION DATE N/A

MOTION SEQ. NO. 001

Plaintiff,

- v -

CHAYA GOTTESMAN A/K/A CHAYALA C GOTTESMAN
A/K/A CLARE C GOTTESMAN, BOARD OF MANAGERS
OF THE GREYSTONE CONDOMINIUM, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD, NEW YORK CITY
PARKING VIOLATIONS BUREAU, NEW YORK CITY
TRANSIT ADJUDICATION BUREAU, JOHN DOE #1
THROUGH JOHN DOE #10, THE LAST TEN NAMES
BEING FICTITIOUS AND UNKNOWN TO THE PLAINTIFF,
THE PERSON OR PARTIES INTENDED BEING THE
PERSONS OR PARTIES, IF ANY, HAVING OR CLAIMING
AN INTEREST IN OR LIEN UPON THE MORTGAGED
PREMISES DESCRIBED IN THE

**DECISION GRANTING
SUMMARY JUDGMENT and
ORDER OF REFERENCE**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 32, 33

were read on this motion to/for JUDGMENT - SUMMARY

The motion for summary judgment by plaintiff is granted.

In this foreclosure action, plaintiff claims that defendant Gottesman defaulted on a note worth \$721,850 executed in March 2007.

In opposition, Gottesman claims that the instant motion is premature because there has been no discovery, the RPAPL 90 day-notice was sent prematurely and plaintiff lacks standing.

The Court grants the motion. As an initial matter, plaintiff attached the note to the complaint and, therefore, establish its standing to prosecute this action (*see Bank of New York Mellon v Knowles*, 151 AD3d 596, 596-97, 57 NYS3d 473 [1st Dept 2017]). With respect to the

timeliness of the 90-day notice, plaintiff explained in reply that Gottesman initially defaulted in January 2017 and the 90-day notice was sent in February 2017. However, Gottesman continued to make some payments in 2017 (her last payment was made on September 6, 2017). These payments were credited, resulting in plaintiff moving the default date to July 1, 2017. However, crediting payments did not change the fact that Gottesman initially defaulted in January 2017 and plaintiff was entitled to send the RPAPL 1304 notice in February 2017. To find otherwise would allow a defaulting defendant to avoid a 90 day notice forever by making a single payment every 89 days.

The Court also finds that there is no reason for discovery because plaintiff has met its prima facie burden for summary judgment and Gottesman failed to raise an issue of fact in opposition. Also, it appears the claim for discovery is a red herring, as there is no evidence that Gottesman served any discovery demands on plaintiff despite the fact that she filed an answer in March 2018.

Accordingly, it is hereby

ORDERED that the motion by plaintiff for summary judgment is granted and the answer and the affirmative defenses of defendant Chaya Gottesman (NYSCEF Doc. No. 14) are severed and dismissed; and it is further

ORDERED that plaintiff is entitled to a default judgment against the non-answering defendants; and it is further

ORDERED that Joseph Buono, 804 Route 9, Suite 4, Fishkill, New York 12524 (845-765-1050), is hereby appointed Referee in accordance with RPAPL § 1321 to compute the amount due to Plaintiff for principal, interest and other disbursements advanced as provided for

in the note and mortgage upon which this action is brought, and to examine whether the mortgaged property can be sold in parcels; and it is further

ORDERED that the Referee may take testimony pursuant to RPAPL § 1321; and it is further

ORDERED that by accepting this appointment the Referee certifies that she/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 her/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 herself/himself or paying funds to him/herself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED that plaintiff shall forward all necessary documents to the Referee 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 plaintiff must bring a motion for a judgment of foreclosure and sale within 30 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 further

ORDERED that the caption be amended to remove the John Doe #1 through John Doe #10 defendants and it is further ORDERED that the caption shall read as follows:

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

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US BANK NATIONAL ASSOCIATION AS
TRUSTEE FOR CMSI REMIC SERIES 2007-03 -
REMIC PASS-THROUGH CERTIFICATES
SERIES 2007-03,

Plaintiff,

v.

CHAYA GOTTESMAN A/K/A CHAYALA C
GOTTESMAN A/K/A CLARE C GOTTESMAN,
BOARD OF MANAGERS OF THE GREYSTONE
CONDOMINIUM, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD, NEW
YORK CITY PARKING VIOLATIONS BUREAU,
NEW YORK CITY TRANSIT ADJUDICATION
BUREAU,

Defendant(s).

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and it is further

ORDERED that within 30 days 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; 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 (ww.nycourts.gov/supctmanh)); 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; and it is further

Next Conference: December 10, 2019 at 2:15 p.m. If plaintiff has moved for a judgment of foreclosure and sale before the conference, then plaintiff can seek an adjournment. Please consult the part's rules for information about how to obtain an adjournment. An appearance is required if a motion for a JFS has not been made; counsel appearing for plaintiff must come prepared to explain the delay or interest may be tolled.

July 8, 2019
DATE

ARLENE P. BLUTH, J.S.C.
HON. ARLENE P. BLUTH

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	OTHER