21st Mtge. Corp. v Broderick
2019 NY Slip Op 32230(U)
July 30, 2019
Supreme Court, Suffolk County
Docket Number: 19497/2013
Judge: Howard H. Heckman

Short Form Order

SUPREME COURT - STATE OF NEW YORK
IAS PART 18 - SUFFOLK COUNTY

PRESENT:
HON. HOWARD H. HECKMAN JR., J.S.C.

INDEX NO.: 19497/2013
MOTION DATE: 4/9/2019
MOTION SEQ. NO.: #008 MG

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21ST MORTGAGE CORPORATION,

Plaintiff,

-against-

NICOLE BRODERICK, et al.,

Defendants.

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PLAINTIFF'S ATTORNEY:
BRADSHAW LAW GROUP, P.C.
321 BROADWAY, 5TH FLR
NEW YORK, NY 10007

DEFENDANT'S ATTORNEY:
JEFFREY HERZBERG, ESQ.
300 RABRO DRIVE, STE 114
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Upon the following papers numbered 1 to 22 read on this motion 1-13 ; Notice of Motion/ Order to Show Cause and supporting papers__; Notice of Cross Motion and supporting papers___ ; Answering Affidavits and supporting papers 14-20 ; Replying Affidavits and supporting papers 21-22 ; Other___ ; (and after hearing counsel in support and opposed to the motion) it is,

ORDERED that this motion by plaintiff 21st Mortgage Corporation seeking an order: 1) granting summary judgment striking the answer asserted by defendant Nicole Broderick; 2) deeming all appearing and non-appearing defendants in default; 3) amending the caption; and 4) appointing a referee to compute the sums due and owing to the plaintiff in this mortgage foreclosure action is granted; and it is further

ORDERED that plaintiff is directed to serve a copy of this order amending the caption upon the Calendar Clerk of the Court; and it is further

ORDERED that plaintiff is directed to serve a copy of this order with notice of entry upon all parties who have appeared and not waived further notice pursuant to CPLR 2103(b)(1)(2) or (3) within thirty days of the date of this order and to promptly file the affidavits of service with the Clerk of the Court.

Plaintiff's action seeks to foreclose a mortgage in the original sum of $272,000.00 executed by defendant Nicole Broderick and Debra Ann Broderick on April 25, 2007 in favor of Wells Fargo Bank, N.A. On the same date mortgagor Nicole Broderick executed a promissory note promising to re-pay the entire amount of the indebtedness to the mortgage lender. The mortgagors defaulted in making timely monthly mortgage payments due pursuant to the terms of the loan beginning June 1, 2009 and continuing to date. Wells Fargo Bank, N.A. commenced this action by filing a summons, complaint and notice of pendency in the Suffolk County Clerk's Office on July 24, 2013. Defendant/mortgagor Broderick served an answer dated September 7, 2013 asserting eight (8) affirmative defenses. By Order (Farneti, J.) dated December 1, 2015 plaintiff's unopposed motion seeking an order granting summary judgment and for the appointment of a referee to compute the sums due and owing to the mortgage lender was granted. By assignment dated April 13, 2016 the mortgage loan was assigned from Wells Fargo Bank, N.A. to 21st Mortgage Corporation. By short form Order dated April 18, 2018 defendant's application seeking to vacate Acting Justice Farneti's

December 1, 2015 Order based upon plaintiff's counsel's failure to serve the original summary judgment motion to defense counsel's new law office address was granted. Plaintiff was granted permission to renew its summary judgment motion.

Court records indicate that plaintiff subsequently submitted two additional motions; the first seeking an order of reference granting summary judgment and the second seeking a judgment of foreclosure and sale. Both motions were granted without opposition by Orders dated June 12, 2018 and by Judgment of Foreclosure and Sale dated September 6, 2018. Defendant subsequently submitted an Order to Show Cause dated October 3, 2018 seeking to vacate both prior orders/judgment claiming that although defendant served timely opposition papers to plaintiff's summary judgment motion, those papers were never considered by the court prior to granting plaintiff's unopposed motion for the order of reference. All three applications were thereafter resolved by a so-Ordered stipulation signed by counsel representing the parties dated October 24, 2018. The so-Ordered stipulation vacated the June 12, 2018 Order granting summary judgment and the Judgment of Foreclosure and Sale dated September 6, 2018. Defendant agreed to withdraw the Order to Show Cause signed on October 3, 2018 and both parties stipulated to substitute 21st Mortgage Corporation as the named party plaintiff in place and stead of Wells Fargo Bank, N.A. (In paragraph three (3) of defense counsel's affirmation in opposition, counsel claims that neither Wells Fargo nor 21st Mortgage Corporation have moved to amend the caption– this contention is clearly without merit since defense counsel agreed in writing to such substitution in the October 24, 2018 so-Ordered stipulation).

Plaintiff's current motion seeks an order granting summary judgment striking defendant's answer and for the appointment of a referee. Defendant's opposition claims that plaintiff's motion must be denied based upon plaintiff's failure to submit sufficient evidence to prove that it has standing to maintain this foreclosure action and to prove that it complied with RPAPL 1304 service requirements. Defendant also claims that the true owner of the mortgage loan has not been identified and may not have capacity to maintain this action in New York and therefore discovery must be conducted.

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 eliminate any material question of fact from the case. The grant of summary judgment is appropriate only when it is clear that no material and triable issues of fact have been presented (*Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395 (1957)). The moving party bears the initial burden of proving entitlement to summary judgment (*Winegrad v. NYU Medical Center*, 64 NY2d 851 (1985)). Once such proof has been proffered, the burden shifts to the opposing party who, to defeat the motion, must offer evidence in admissible form, and must set forth facts sufficient to require a trial of any issue of fact (CPLR 3212(b); *Zuckerman v. City of New York*, 49 NY2d 557 (1980)). Summary judgment shall only be granted when there are no issues of material fact and the evidence requires the court to direct a judgment in favor of the movant as a matter of law (*Friends of Animals v. Associated Fur Manufacturers*, 46 NY2d 1065 (1979)).

Entitlement to summary judgment in favor of the foreclosing plaintiff is established, prima facie by the plaintiff's production of the mortgage and the unpaid note, and evidence of default in payment (*see Wells Fargo Bank N.A. v. Erobobo*, 127 AD3d 1176, 9 NYS3d 312 (2nd Dept., 2015); *Wells Fargo Bank, N.A. v. Ali*, 122 AD3d 726, 995 NYS2d 735 (2nd Dept., 2014)). Where the

plaintiff's standing is placed in issue by the defendant's answer, the plaintiff must also establish its standing as part of its prima facie showing (*Aurora Loan Services v. Taylor*, 25 NY3d 355, 12 NYS3d 612 (2015); *Loancare v. Firshing*, 130 AD3d 787, 14 NYS3d 410 (2nd Dept., 2015); *HSBC Bank USA, N.A. v. Baptiste*, 128 AD3d 77, 10 NYS3d 255 (2nd Dept., 2015)). In a foreclosure action, a plaintiff has standing if it is either the holder of, or the assignee of, the underlying note at the time that the action is commenced (*Aurora Loan Services v. Taylor, supra.; Emigrant Bank v. Larizza*, 129 AD3d 94, 13 NYS3d 129 (2nd Dept., 2015)). Either a written assignment of the note or the physical transfer of the note to the plaintiff prior to commencement of the action is sufficient to transfer the obligation and to provide standing (*Wells Fargo Bank, N.A. v. Parker*, 125 AD3d 848, 5 NYS3d 130 (2nd Dept., 2015); *U.S. Bank v. Guy*, 125 AD3d 845, 5 NYS3d 116 (2nd Dept., 2015)). A plaintiff's attachment of a duly indorsed note to its complaint or to the certificate of merit required pursuant to CPLR 3012-b has been held to constitute due proof of the plaintiff's possession of the note prior to the commencement of the action and thus its standing to prosecute its claim for foreclosure and sale (*Bank of New York Mellon v. Theobalds*, 161 AD3d 1137, 79 NYS3d 50 (2nd Dept., 2018); *Bank of New York Mellon v. Burke*, 155 AD3d 932, 64 NYS3d 114 (2nd Dept., 2017); *Wells Fargo Bank, N.A. v. Thomas*, 150 AD3d 1312, 52 NYS3d 894 (2nd Dept., 2017); *Deutsche Bank National Trust Co. v. Garrison*, 147 AD3d 725, 726, 46 NYS3d 185 (2nd Dept., 2017); *U.S. Bank , N.A. v. Saravanan*, 146 AD3d 1010, 1011, 45 NYS3d 547 (2nd Dept., 2017); *JPMorgan Chase Bank, N.A. v. Weinberger*, 142 AD3d 643, 37 NYS3d 286 (2nd Dept., 2016); *FNMA v. Yakaputz II, Inc.*, 141 AD3d 506, 35 NYS3d 236 (2nd Dept., 2016); *Deutsche Bank National Trust Co. v. Leigh*, 137 AD3d 841, 28 NYS3d 86 (2nd Dept., 2016); *Nationstar Mortgage LLC v. Catizone*, 127 AD3d 1151, 9 NYS3d 315 (2nd Dept., 2015)).

At issue is whether the evidence submitted by the plaintiff is sufficient to establish its right to foreclose. The defendant does not contest her failure to make timely payments due under the terms of the promissory note and mortgage agreement in more than a decade. Rather, the issues raised by the defendant concern whether the proof submitted by the mortgage lender provides sufficient admissible evidence to prove its entitlement to summary judgment based upon the mortgagor's continuing default, plaintiff's compliance with RPAPL 1304 notice requirements, plaintiff's standing and capacity to maintain this action and defendant's right to conduct discovery prior to judgment.

CPLR 4518 provides:

Business records.

(a) Generally. Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence or event, shall be admissible in evidence in proof of that act, transaction, occurrence or event, if the judge finds that it was made in the regular course of any business and that it was the regular course of such business to make it, at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter.

The Court of Appeals in *People v. Guidice*, 83 NY2d 630, 635, 612 NYS2d 350 (1994) explained that "the essence of the business records exception to the hearsay rule is that records systematically made for the conduct of business... are inherently highly trustworthy because they are routine reflections of day-to-day operations and because the entrant's obligation is to have them

truthful and accurate for purposes of the conduct of the enterprise." (quoting *People v. Kennedy*, 68 NY2d 569, 579, 510 NYS2d 853 (1986)). It is a unique hearsay exception since it represents hearsay deliberately created and differs from all other hearsay exceptions which assume that declarations which come within them were not made deliberately with litigation in mind. Since a business record keeping system may be designed to meet the hearsay exception, it is important to provide predictability in this area and discretion should not normally be exercised to exclude such evidence on grounds not foreseeable at the time the record was made (*see Trotti v. Estate of Buchanan*, 272 AD2d 660, 706 NYS2d 534 (3rd Dept., 2000)).

The three foundational requirements of CPLR 4518(a) are: 1) the record must be made in the regular course of business- reflecting a routine, regularly conducted business activity, needed and relied upon in the performance of business functions; 2) it must be the regular course of business to make the records– (i.e. the record is made in accordance with established procedures for the routine, systematic making of the record); and 3) the record must have been made at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter, assuring that the recollection is fairly accurate and the entries routinely made (*see People v. Kennedy, supra* @ pp. 579-580)). The "mere filing of papers received from other entities, even if such papers are retained in the regular course of business, is insufficient to qualify the documents as business records." (*People v. Cratsley*, 86 NY2d 81, 90, 629 NYS2d 992 (1995)). The records will be admissible "if the recipient can establish personal knowledge of the maker's business practices and procedures, or that the records provided by the maker were incorporated into the recipient's own records or routinely relied upon by the recipient in its business." (*State of New York v. 158th Street & Riverside Drive Housing Company, Inc.*, 100AD3d 1293, 1296, 956 NYS2d 196 (2012); *leave denied*, 20 NY3d 858 (2013); *see also Viviane Etienne Medical Care, P.C. v. Country-Wide Insurance Company*, 25 NY3d 498, 14 NYS3d 283 (2015); *Deutsche Bank National Trust Co. v. Monica*, 131 AD3d 737, 15 NYS3d (3rd Dept., 2015); *People v. DiSalvo*, 284 AD2d 547, 727 NYS2d 146 (2nd Dept., 2001); *Matter of Carothers v. GEICO*, 79 AD3d 864, 914 NYS2d 199 (2nd Dept., 2010)). In this regard, with respect to mortgage foreclosures, a loan servicer's employee may testify on behalf of the mortgage lender and a representative of an assignee of the original lender can rely upon business records of the original lender to establish its claims for recovery of amounts due from the borrowers provided the assignee/plaintiff establishes that it incorporated the original records into its own records and relied upon those records in the regular course of business (*Landmark Capital Inv. Inc. v. Li-Shan Wang*, 94 AD3d 418, 941 NYS2d 144 (1st Dept., 2012); *Portfolio Recovery Associates, LLC. v. Lall*, 127 AD3d 576, 8 NYS3d 101 (1st Dept., 2015); *Merrill Lynch Business Financial Services, Inc. v. Trataros Construction, Inc.*, 30 AD3d 336, 819 NYS2d 223 (1st Dept., 2006)).

The statute (CPLR 4518) clearly does not require a person to have personal knowledge of each and every entry contained in a business record, particularly in this case, where there is a business relationship between mortgage servicing entities responsible for entering and maintaining accurate records, and where the current servicer has incorporated and relied upon the business records it maintains in its regular course of business (*see Citibank N.A. v. Abrams*, 144 AD3d 1212, 40 NYS3d 653 (3rd Dept., 2016); *HSBC Bank USA, N.A. v. Sage*, 112 AD3d 1126, 977 NYS2d 446 (3rd Dept., 2013); *Landmark Capital Inv. Inc. v. LI-Shan Wang, supra.*)). As the Appellate Division, Second Department recently stated in *Citigroup v. Kopelowitz*, 147 AD3d 1014, 48 NYS3d 223 (2nd Dept., 2017): "There is no requirement that a plaintiff in a foreclosure action rely on a particular set of business records to establish a prima facie case, so long as the plaintiff satisfies the admissibility requirements of CPLR 4518(a) and the records themselves actually evince the facts for which they

are relied upon." Decisions interpreting CPLR 4518 are consistent to the extent that the three foundational requirements: 1) that the record be made in the regular course of business; 2) that it is in the regular course of business to make the record; and 3) that the record must be made at or near the time the transaction occurred. – if demonstrated, make the records admissible since such records are considered trustworthy and reliable. Moreover, the language contained in the statute specifically authorizes the court discretion to determine admissibility by stating "*if the judge finds*" that the three foundational requirements are satisfied the evidence shall be admissible.

The affidavit submitted from the mortgage lender/servicer (21st Mortgage Corporation's) legal affairs representative dated December 28, 2018 provides the evidentiary foundation for establishing the mortgage lender's right to foreclose. The affidavit sets forth the employee's review of the business records maintained by the mortgage lender/servicer; the fact that the books and records are made in the regular course of 21st Mortgage Corporation's business; that it was 21st Mortgage Corporation's regular course of business to maintain such records; that the records were contemporaneously created at the time the underlying transactions occurred; and that to the extent such records were compiled by a prior servicer those records were integrated into the business records maintained by 21st Mortgage Corporation and relied upon in the regular course of its business. Based upon the submission of this affidavit, plaintiff has provided an admissible evidentiary foundation which satisfies the business records exception to the hearsay rule with respect to the issues raised in this summary judgment application.

With respect to the issue of substitution, CPLR 1018 permits a party which obtains or receives a transfer of interest during the pendency of an action the right to continue to prosecute its claims by or against the original parties unless the court directs joinder or substitution. Based upon the October 24, 2018 so-Ordered stipulation and the evidence submitted by 21st Mortgage Corporation proving that it is the current owner of the mortgage loan based upon the assignment dated April 13, 2016 from the original mortgage lender Wells Fargo Bank, N.A. to 21st Mortgage Corporation and based upon the affidavit from 21st Mortgage Corporation's legal affairs representative dated December 28, 2018 attesting to the physical transfer of the indorsed in blank promissory note to 21st Mortgage Corporation's headquarters for storage on February 11, 2016-- 21st Mortgage Corporation retains the right to prosecute this foreclosure action against the defaulting mortgagor.

As to standing, a review of the County Clerk's file reveals that Wells Fargo Bank, N.A. had standing to maintain this foreclosure action based upon the fact that Wells Fargo attached a copy of the original indorsed in blank promissory to the summons and complaint, together with a Office of Court Administration attorney affirmation dated September 23, 2013 (which complies with the AOL requirements imposed at the time & the subsequent statutory requirement (CPLR 3012-b) which became effective August 30, 2013), provides sufficient evidence of possession of the underlying note to establish plaintiff's standing to prosecute this foreclosure action (*see Bank of New York Mellon v. Theobalds*, 161 AD3d 1137, 79 NYS3d 50 (2nd Dept., 2018); *Bank of New York Mellon v. Burke*, 155 AD3d 932, 64 NYS3d 114 (2nd Dept., 2017); *Wells Fargo Bank, N.A. v. Thomas*, 150 AD3d 1312, 52 NYS3d 894 (2nd Dept., 2017); *Deutsche Bank National Trust Company v. Garrison*, 147 AD3d 725, 46 NYS3d185 (2nd Dept., 2017); *U.S. Bank, N.A. v. Saravanan*, 146 AD3d 1010, 45 NYS3d 547 (2nd Dept., 2017)). Any alleged issues concerning the mortgage assignment is therefore irrelevant to the issue of standing since the original plaintiff has established possession of the promissory note with the indorsement in blank prior to commencement of this action (*FNMA v. Yakaputz II, Inc.*, 141

AD3d 506, 35 NYS3d 236 (2nd Dept., 2016); *Deutsche Bank National Trust Company v. Leigh*, 137 AD3d 841, 28 NYS3d 86 (2nd Dept., 2016)).

With respect to the issue of this mortgagor's default in making payments, in order to establish prima facie entitlement to judgment as a matter of law in a foreclosure action, the plaintiff must submit the mortgage, the unpaid note and admissible evidence to show default (*see PennyMac Holdings, Inc. V. Tomanelli*, 139 AD3d 688, 32 NYS3d 181 (2nd Dept., 2016); *North American Savings Bank v. Esposito-Como*, 141 AD3d 706, 35 NYS3d 491 (2nd Dept., 2016); *Washington Mutual Bank v. Schenk*, 112 AD3d 615, 975 NYS2d 902 (2nd Dept., 2013)). Plaintiff has provided admissible evidence in the form of a copy of the note and mortgage, and an affidavit attesting to the mortgagor's undisputed default in making timely mortgage payments, together with business records including copies of the notices of default which were mailed to the mortgagor confirming her continuing default in making timely payments, sufficient to sustain its burden to prove defendant has defaulted under the terms of the parties agreement by failing to make timely payments since June 1, 2009 (CPLR 4518; *see Wells Fargo Bank, N.A. v. Thomas, supra.; Citigroup v. Kopelowitz, supra.*)). Accordingly, and in the absence of any proof to raise an issue of fact concerning the mortgagor's continuing default, plaintiff's application for summary judgment against the defendant/mortgagor based upon his breach of the mortgage agreement and promissory note must be granted.

With respect to service of pre-foreclosure RPAPL 1304 90-day notices, the law provides that although this defense is non-jurisdictional, it is a special defense which must be proven by submission of proof by submission of an affidavit of service of the notices (*CitiMortgage, Inc. v. Pappas*, 147 AD3d 900, 47 NYS3d 415 (2nd Dept., 2017); *Deutsche Bank National Trust Company v. Spanos*, 102 AD3d 909, 961 NYS2d 200 (2nd Dept., 2013)); or by plaintiff's submission of sufficient proof to establish proof of mailing of the notices (*see Nationstar Mortgage LLC v. LaPorte*, 162 AD3d 784, 79 NYS3d 70 (2nd Dept., 2018); *HSBC Bank USA, N.A. v. Ozcan*, 154 AD3d 822, 64 NYS3d 38 (2nd Dept., 2017); *Wells Fargo Bank, N.A. v. Trupia*, 150 AD3d 1049, 55 NYS3d 134 (2nd Dept., 2017)). Once either method is established a presumption of receipt arises (*Viviane Ettienne Medical Care, P.C. v. Country-Wide Insurance Company, supra.; Flagstar Bank v. Mendoza*, 139 AD3d 898, 32 NYS3d 278 (2nd Dept., 2016)).

In this case the record shows that there is sufficient evidence to prove that mailing by certified and first class mail was done proving strict compliance pursuant to RPAPL 1304 mailing requirements. Plaintiff's proof consists of the affidavit from the mortgage lender/servicer's (21st Mortgage Corporation's) legal affairs representative attesting and confirming strict compliance with mailing requirements set forth in the statute. The affidavit attests to the testator's personal familiarity with 21st Mortgage Corporation's standard business mailing practices related to the mailing of 90-day notices and the incorporation of such records of mailing into 21st Mortgage Corporation's records upon which such records are relied upon in the regular course of its business. In addition, plaintiff submits a copy of the actual RPAPL 1304 90-day notices which were mailed by first class and certified mail to the defaulting mortgagor addressed to the mortgaged premises on March 20, 2013 which was more than ninety days prior to commencement of this action on July 24, 2013. In addition, plaintiff submits copies of the postal service return receipt request card addressed to the defaulting mortgagor to the mortgaged premises residential address containing the twenty (20) digit article tracking number, the certificate of mailing label which corresponds to the certified mailing containing the identical twenty (20) digit tracking number and a third label which provides the receipt for the certified mailing. Plaintiff also has submitted a copy of the RPAPL 1306 filing

statement filed with the State Department of Financial Services further confirming the mailing of the 90-day notices. Such proof provides sufficient evidence to prove strict compliance with RPAPL 1304 requirements (*CitiMortgage, Inc. v. Borek*, 171 AD3d 848, 97 NYS3d 657 (2nd Dept., 2019); *Nationstar Mortgage LLC v. LaPorte, supra.; HSBC Bank USA, N.A. v. Ozcan, supra.)*). Absent any relevant, admissible evidence to contradict the plaintiff's proof there is no legal basis to defeat plaintiff's summary judgment motion on these grounds (*see PHH Mortgage Corp. v. Muricy*, 135 AD3d 725, 24 NYS3d 137 (2nd Dept., 2016); *HSBC Bank USA, N.A. v. Espinal*, 137 AD3d 1079, 28 NYS3d 107 (2nd Dept., 2016)).

With respect to defendant's remaining claims that she is entitled to discovery and that plaintiff has failed to prove ownership of the mortgage loan, neither contention has merit. CPLR 3214(b) imposes an automatic stay of discovery upon service of a summary judgment motion. Moreover, even were the court to further consider defendant's claim of entitlement to discovery, no legal grounds exist to further delay prosecution of this action, since there has been no showing by the defendant how any additional evidence would create a genuine issue of fact. Absent some demonstration that reasonable attempts to discover facts might give rise to significant issues of fact, no basis exists to continue litigation in view of the fact that plaintiff has submitted sufficient proof to establish its entitlement fo foreclose this mortgage (*see Lee v. T.F. DeMilo Corp.*, 29 AD3d 867, 815 NYS2d 700 (2nd Dept., 2006); *Sasson v. Setina Mfg.Co.*, 26 AD3d 487, 810 NYS2d 500 (2nd Dept., 2006)). As to the defaulting mortgagor's claim that there is no proof of ownership of the mortgage loan, plaintiff has submitted an affidavit from its legal affairs representative attesting to 21st Mortgage Corporation's physical possession of the indorsed in blank promissory note which this defaulting mortgagor signed promising to repay the entire amount of the mortgage indebtedness. Such proof is sufficient to establish the plaintiff's ownership of the note and mortgage and 21st Mortgage Corporation's capacity to maintain this foreclosure action.

Finally, defendant has failed to raise any admissible evidence to support her remaining affirmative defenses in opposition to plaintiff's motion. Accordingly those affirmative defenses must be deemed abandoned and are hereby dismissed (*see Kronick v. L.P. Therault Co., Inc.*, 70 AD3d 648, 892 NYS2d 85 (2nd Dept., 2010); *Citibank, N.A, v. Van Brunt Properties, LLC*, 95 AD3d 1158, 945 NYS2d 330 (2nd Dept., 2012); *Flagstar Bank v. Bellafiore*, 94 AD3d 0144, 943 NYS2d 551 (2nd Dept., 2012); *Wells Fargo Bank Minnesota, N.A. v. Perez*, 41 AD3d 590, 837 NYS2d 877 (2nd Dept., 2007)).

Accordingly plaintiff's motion seeking summary judgment is granted. The proposed order of reference has been signed simultaneously with execution of this order.

Dated: July 30, 2019

HON. HOWARD H. HECKMAN, JR.

J.S.C.