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.: 3849-2014
MOTION DATE: 9-11-2020
MOTION SEQ. NO.: #003 MG

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HSBC BANK USA N.A.,

Plaintiff,

-against-

DAVID J. LOMEDICO, et al.,

Defendants.

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PLAINTIFF'S ATTORNEY:
FRIEDMAN VARTOLO LLP
85 BROAD STREET, STE 501
NEW YORK, NY 10004

DEFENDANT'S ATTORNEY:
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Upon the following papers numbered 1 to 26 read on this motion 1-22 : Notice of Motion/ Order to Show Cause and supporting papers__; Notice of Cross Motion and supporting papers___ ; Answering Affidavits and supporting papers 23-24 ; Replying Affidavits and supporting papers 25-26 ; Other___ ; (and after hearing counsel in support and opposed to the motion) it is,

ORDERED that this motion by plaintiff HSBC Bank USA, N.A. seeking an order: 1) granting summary judgment striking the answer of defendant David J. Lomedico; 2) substituting U.S. Bank National Association, not in its Individual capacity but solely as Trustee of NRZ Pass-Through Trust IX as the named party plaintiff in place and stead of HSBC Bank USA, N.A.; 3) deeming all appearing and non-appearing defendants in default; 4) amending the caption; and 5) 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 $335,000.00 executed by defendants David J. Lomedico and Jill A. Lomedico on September 23, 2004 in favor of Wells Fargo Bank, N.A. On the same date both mortgagors/borrowers executed a promissory note promising to re-pay the entire amount of the indebtedness to the mortgage lender. Both borrowers subsequently executed a consolidated mortgage (CEMA) dated May 31, 2007 in the sum of $350,000.00. Defendant David J. Lomedico signed the consolidated promissory note promising to repay the entire amount of the mortgage indebtedness. The mortgage and note were assigned to the plaintiff by assignment dated April 17, 2012 and by corrective assignment dated October 18, 2013. Plaintiff claims that the borrowers defaulted under the terms of the consolidated mortgage by failing to make timely monthly mortgage payments beginning March 1, 2012 and continuing to date. Plaintiff commenced this action by filing a summons, complaint and notice of pendency in the

Suffolk County Clerk's Office on February 24, 2014. Defendant/mortgagor David J. Lomedico served an answer dated March 20, 2014 asserting four (4) affirmative defenses. By Orders (Hinrichs, J.) dated November 17, 2015 and October 26, 2016 plaintiff's motions seeking summary judgment and for the appointment of a referee were granted. By So-Order Stipulation (Hinrichs, J.) dated September 4, 2018 the prior Orders (Hinrichs, J.) granting summary judgment were vacated.

Plaintiff's motion seeks an order granting summary judgment and for the appointment of a referee to compute the sums due and owing to the mortgage lender. In opposition, defendant claims that plaintiff has failed to submit sufficient admissible evidence to prove its entitlement to foreclose the mortgage and that plaintiff has failed to prove compliance with pre-foreclosure mortgage and RPAPL 1304 default notice requirements.

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. Mandrin,* 160 AD3d 1014 (2nd Dept., 2018) *Tribeca Lending Corp. v. Lawson,* 159 AD3d 936 (2nd Dept., 2018); *Deutsche Bank National Trust Co. v. Iarrobino,* 159 AD3d 670 (2nd Dept., 2018); *Central Mortgage Company v. Davis,* 149 AD3d 898 (2nd Dept., 2017); *U.S. Bank, N.A. v. Ehrenfeld,* 144 AD3d 893, 41 NYS3d 269 (2nd Dept., 2016); *JPMorgan Chase Bank v. Weinberger,* 142 AD3d 643, 37 NYS3d 286 (2nd Dept., 2016); *CitiMortgage, Inc. v. Klein,* 140 AD3d 913, 33 NYS3d 432 (2nd Dept., 2016); *U.S. Bank, N.A. v. Godwin,* 137 AD3d 1260, 28 NYS3d 450 (2nd Dept., 2016); *Wells Fargo Bank, N.A. v. Joseph,* 137 AD3d 896, 26 NYS3d 583 (2nd Dept., 2016); *Emigrant Bank v. Larizza, supra.; Deutsche Bank National Trust Co. v. Whalen,* 107 AD3d 931, 969 NYS2d 82 (2nd Dept., 2013); *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 standing to prosecute its claims for foreclosure and sale (*Nationstar Mortgage, LLC v. LaPorte*, 162 AD3d 784, 75 NYS3d 432 (2nd Dept., 2018); *Bank of New York Mellon v. Theobalds*, 161 AD3d 1137 (2nd Dept., 2018); *HSBC Bank USA, N.A. v. Oscar*, 161 AD3d 1055, 78 NYS3d 428 (2nd Dept., 2018); *CitiMortgage, Inc. v. McKenzie*, 161 AD3d 1040, 78 NYS3d 200 (2nd Dept., 2018); *U.S. Bank, N.A. v. Duthie*, 161 AD3d 809, 76 NYS3d 226 (2nd Dept., 2018); *Bank of New York Mellon v. Genova*, 159 AD3d 1009, 74 NYS3d 64 (2nd Dept., 2018); *Mariners Atl. Portfolio, LLC v. Hector*, 159 AD3d 686, 69 NYS3d 502 (2nd Dept., 2018); *Bank of New York Mellon v. Burke*, 155 AD3d 932, 64 NYS3d 114 (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)).

Proper service of RPAPL 1304 notices on borrower(s) are conditions precedent to the commencement of a foreclosure action, and the plaintiff has the burden of establishing compliance with this condition (*Aurora Loan Services, LLC v. Weisblum*, 85 AD3d 95, 923 NYS2d 609 (2nd Dept., 2011); *First National Bank of Chicago v. Silver*, 73 AD3d 162, 899 NYS2d 256 (2nd Dept., 2010)). RPAPL 1304(2) provides that notice be sent by registered or certified mail and by first-class mail to the last known address of the borrower(s), and if different, to the residence that is the subject of the mortgage. The notice is considered given as of the date it is mailed and must be sent in a separate envelope from any other mailing or notice and the notice must be in 14-point type.

At issue is whether the evidence submitted by the plaintiff is sufficient to establish its right to foreclose. The defendant does not contest his failure to make timely payments due under the terms of the promissory note and mortgage agreement since March 1, 2012. Rather, the issues raised by the defendant/borrower 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 and plaintiff's compliance with mortgage and statutory pre-foreclosure notice requirements..

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)).

The statute (CPLR 4518) clearly does not require a person to have personal knowledge of each and every entry contained in a business record (*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 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 affidavits submitted from the current mortgage servicer/attorney-in-fact's (New Rez LLC's) foreclosure litigation specialist dated June 4, 2019 ("Wilcox affidavit") and from the original mortgage lender's (Wells Fargo Bank, N.A.'s) vice president loan documentation dated May 24,

2019 ("Hemphill affidavit") provide the evidentiary foundation for establishing the mortgage lender's right to foreclose. The affidavits set forth each employee's review of the business records maintained by the mortgage servicers; the fact that the books and records are made in the regular course of New Rez/Wells Fargo's business; that it was New Rez/Wells Fargo's regular course of business to maintain such records; that the records were made at or near the time the underlying transactions took place; that the records were created by an individual with personal knowledge of the underlying transactions; and that to the extent the business records referred to were compiled by a prior servicer (with respect to the records maintained by New Rez), those records were integrated and incorporated into the business records maintained by New Rez in its regular course of business and are relied upon by New Rez in its regular course of business. The Appellate Division, Second Department's decision in *Bank of New York Mellon v. Gordon,* 171 AD3d 197, 97 NYS3d 286 (2nd Dept., 2019) reiterated the admissibility of testimony concerning business records maintained by a current servicer, which were compiled by a prior servicer, and thereafter "incorporated into the recipient's own records and routinely relied upon by the recipient in its own business" (citations omitted- *ID* at page 209). Based upon the submission of these two affidavits, 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 standing (addressed based upon defendant's answer's first affirmative defense), plaintiff's submission of documentary evidence in the form of a copy of the indorsed in blank original promissory note, which it attached to the complaint, together with the certificate of merit (CPLR 3012-b), provides sufficient evidence of possession of the underlying notes to establish the 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 Mellonv v. Burke,* 155 AD3d 932, 64 NYS3d 114 (2nd Dept., 2017); *Wells Fargo Bank, N.A. v. Thomas,* 150 AD3d 1312, 521 NYS3d 894 (2nd Dept., 2017); *Deutsche Bank National Trust Co. v. Garrison,* 147 AD3d 725, 46 NYS3d 185 (2nd Dept., 2017); *U.S. Bank, N.A. v. Saravanan,* 146 AD3d 1010, 45 NYS3d 547 (2nd Dept., 2017); *JPMorgan Chase Bank, N.A. v. Weinberger, supra.; Nationstar Mortgage LLC v. Catizone, supra.*). Any alleged issues concerning the mortgage assignments are therefore irrelevant to the issue of standing since plaintiff has established possession of the promissory note prior to commencing 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 the 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 Property Asset Management, Inc. v. Souffrant et al.,* 162 AD3d 919, 75 NYS3d 432 (2nd Dept., 2018); *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 documentary evidence in the form of internal business servicing records identified as the "Loan History Summary" (exhibit F) of this mortgagor's account which is sufficient to sustain its burden to prove the mortgagor has defaulted under the terms of the parties agreement by failing to make timely payments since March 1, 2012 (CPLR 4518; *see Bank of New York Mellon v. Gordon,* 171 AD3d 197, 97

NYS3d 286 (2nd Dept., 2019); *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 based upon defendant's breach of the mortgage agreement and promissory note must be granted.

With respect to service of the pre-foreclosure RPAPL 1304 90-day notices, the proof required to prove strict compliance with the statute (RPAPL 1304) can be satisfied: 1) by plaintiff's submission of an affidavit of service of the notices (*see CitiMortgage, Inc. v. Pappas,* 147 AD3d 900, 47 NYS3d 415 (2nd Dept., 2017); *Bank of New York Mellon v. Aquino,* 131 AD3d 1186, 16 NYS3d 770 (2nd Dept., 2015); *Deutsche Bank National Trust Co. v. Spanos,* 102 AD3d 909, 961 NYS2d 200 (2nd Dept., 2013)); or 2) by plaintiff's submission of sufficient proof to establish proof of mailing by the post office (*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); *CitiMortgage, Inc. v. Pappas, supra pg. 901; see 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 (*see Viviane Etienne Medical Care, P.C. v. Country-Wide Insurance Co., supra.; Flagstar Bank v. Mendoza,* 139 AD3d 898, 32 NYS3d 278 (2nd Dept., 2016); *Residential Holding Corp. v. Scottsdale Insurance Co.,* 286 AD2d 679, 729 NYS2d 766 (2nd Dept., 2001)).

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 submitted proof in the form of the "affidavit of mailing of 90 day notice and notice of default" from the original mortgage lender/servicer's (Wells Fargo's) vice president loan documentation ("Hemphill affidavit") who attests to her familiarity with Wells Fargo's "standard practices and procedures used to create, mail and store data regarding the 90 day pre-foreclosure notice ("90 Day Notice") required by New York law and the notice of default required by the mortgage ("Notice of Default") that are designed to ensure that these letters are properly addressed, mailed and that date reflecting those events is stored in Wells Fargo's business records" and who confirms the mailing of the 90-day notices was done in compliance with statutory requirements on October 4, 2013 which was more than ninety days prior to commencement of this foreclosure action. This testimony, coupled with plaintiff's submission of documentary evidence in the form of: 1) a copy of the actual 90 day notice mailed by first class and certified mail addressed to the borrowers at the mortgaged premises; 2) a copy of the United States Postal Service certified mail receipt containing the twenty digit article tracking number for the certified mailing; 3) two copies of the RPAPL 1306 filing statements confirming compliance with the mailing requirements of the 90 day notices with the New York State Banking Department; and 4) a copy of a page of the Wells Fargo internal business records identified as the "Letter Log History File" confirming the 90 day notice mailings were done on October 4, 2013 – provides more than sufficient evidence to prove strict compliance with service requirements pursuant to RPAPL 1304 (*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.*). Defense counsel's conclusory denials of service are not supported by any relevant, admissible evidence to contradict the proof submitted by the plaintiff and to raise a genuine an issue of fact which would 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 service of the mortgage default notice, plaintiff has submitted sufficient

admissible proof to show that the default notice required under the terms of the mortgage was mailed to the mortgagors on October 4, 2013 in compliance with mortgage requirements. Plaintiff's proof consists of the affidavit of mailing submitted by Wells Fargo's vice president loan documentation ("Hemphill affidavit") attesting to her familiarity with Wells Fargo's standard business practice for generating and mailing notices of default and confirming that the mailing was done on October 4, 2013; together with a copy of the actual default notice which was mailed by first class mail and addressed to the defaulting mortgagors at the mortgaged premises; and a copy of an internal business record confirming the mailing of this default. Such proof provides sufficient evidence of substantial compliance with mortgage default notice requirements (*see Hudson City Savings Bank v. Friedman,* 146 AD3d 757, 43 NYS3d 912 (2nd Dept., 2017); *PennyMac Holdings, LLC v. Tomanelli,* 139 AD3d 688, 32 NYS3d 181 (2nd Dept., 2016); *Wachovia Bank, N.A. v. Carcano,* 106 AD3d 724, 965 NYS2d 516 (2nd Dept., 2013); *IndyMac Bank, FSB v. Kamen,* 68 AD3d 931, 890 NYS2d 649 (2nd Dept., 2009)). Defense counsel's conclusory denial of service fails to raise a genuine issue of fact concerning service of the default notice (*see PHH Mortgage Corp. v. Muricy, supra.; HSBC Bank USA v. Espinal, supra.).* In addition, even were this court to deem the proof submitted by the plaintiff with respect to service of the mortgage default notice insufficient, plaintiff's proof submitted in support of service of the RPAPL 1304 90-day notices, satisfies the mortgage lender's obligations under the terms of the mortgage concerning the notice of default requirements (*see Wachovia Bank, N.A. v. Carcano,* 106 AD3d 724, 965 NYS2d 516 (2nd Dept., 2013)).

Finally, defendant has failed to submit any admissible evidence to support his remaining affirmative defenses in opposition to plaintiff's motion. Accordingly, those 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 an order granting summary judgment is granted and the proposed order of reference has been signed simultaneously with execution of this order.

Dated: September 11, 2020

HON. HOWARD H. HECKMAN, JR.

J.S.C.