

**Majestic Holdings (USA) LLC v Wilmington Sav.
Fund Socy., FSB**

2022 NY Slip Op 32828(U)

August 23, 2022

Supreme Court, New York County

Docket Number: Index No. 152365/2021

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 33

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MAJESTIC HOLDINGS (USA) LLC,

Plaintiff,

- v -

WILMINGTON SAVINGS FUND SOCIETY, FSB, AS
TRUSTEE OF STANWICH MORTGAGE LOAN TRUST A,

Defendant.
-----X

INDEX NO. 152365/2021

MOTION DATE 04/01/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

HON. MARY V. ROSADO:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 35

were read on this motion to/for

DISMISS

Oral argument took place on June 16, 2022 with Daniel H. Richland appearing on behalf of Plaintiff Majestic Holdings (USA) LLC (“Plaintiff”) and Zachary Gold appearing on behalf of Defendant Wilmington Savings Fund Society, FSB, as Trustee of Stanwich Mortgage Loan Trust A (“Wilmington”). Upon oral argument and the foregoing documents, it is ordered and decided as follows.

I. Factual and Procedural Background

Plaintiff acquired Condominium Unit 825 (the “Unit”) located at 55 Wall Street, New York, New York on October 25, 2006 (NYSCEF Doc. 1 at ¶ 4). Also on October 25, 2006, Plaintiff executed a note secured by a thirty-year mortgage on the Unit worth \$690,000.000 (“the Mortgage”) from lender GreenPoint Mortgage Funding, Inc. (“Greenpoint) (*id.* at ¶ 5). The Mortgage allowed for the loan to be paid immediately in full for any amount owed if Plaintiff defaulted in making required payments (*id.* at ¶ 6). Plaintiff allegedly stopped making payments

In January of 2009 (*id.* at ¶ 7).

In July of 2009, Greenpoint assigned the mortgage to BAC Home Loans Servicing, LP (“BAC”) (*id.* at ¶ 8). On August 14, 2009, BAC commenced a foreclosure action against Plaintiff (the “2009 foreclosure action”) (*id.* at ¶ 9). In its Complaint, BAC elected for \$690,000 to be immediately due on the Mortgage (*id.* at ¶ 10). On September 20, 2010, BAC commenced another foreclosure action against Plaintiff (the “2010 foreclosure action”) (*id.*). In the 2010 foreclosure action, BAC again elected to accelerate the loan by declaring the entire unpaid balance of principal immediately due (*id.*). On May 5, 2011, the 2009 foreclosure action was discontinued (*id.* at ¶ 11).

On August 6, 2012, BAC assigned the Mortgage to Capital One (*id.* at ¶ 12). On September 10, 2013, BAC discontinued the 2010 foreclosure action (*id.* at ¶ 13). Capital One assigned the mortgage to Defendant Wilmington on January 1, 2019 (*id.* at ¶ 16). Plaintiff has allegedly not made any payments on the Mortgage since January 2009 (*id.* at ¶ 15). Plaintiff filed a Complaint against Wilmington on March 8, 2021 seeking discharge of the Mortgage (*id.* at ¶ 17).

Wilmington filed a pre-answer motion to dismiss pursuant to CPLR §§ 3211(a)(1), (a)(7), and (b) (NYSCEF Doc. 15). Wilmington argues that Plaintiff’s Complaint must be dismissed because the statute of limitations has not run. The basis of Wilmington’s argument is that the statute of limitations is reset when a lender voluntarily discontinues a foreclosure action in which it accelerated the amount due; therefore, Plaintiff cannot seek discharge of its mortgage (NYSCEF Doc. 16). Plaintiff opposed Defendant’s motion to dismiss (NYSCEF Doc. 27). Plaintiff argued that where a note does not expressly allow a lender to decelerate an accelerated loan, the statute of limitations is not reset by a lender voluntarily discontinuing a foreclosure action (*id.*) Defendant filed a reply arguing that pursuant to Court of Appeals precedent, where the right to accelerate is discretionary, a voluntary withdrawal of a foreclosure action revokes the election to accelerate as a matter of law (NYSCEF Doc. 32). As this action was pending, a parallel foreclosure action

initiated by Wilmington's assignee, Oceanside NYUC LLC ("Oceanside" or "Wilmington's assignee") was filed under index number 850251/2021 (the "2021 Foreclosure Action") (NYSCEF Doc. 35). In that action, Hon. Francis Kahn, III, J.S.C. granted default judgment to Wilmington's assignee against Plaintiff, determining the mortgage was valid and compelling foreclosure (*id.*)

II. Discussion

A motion to dismiss based on documentary evidence pursuant to CPLR § 3211(a)(1) is appropriately granted only when the documentary evidence utterly refutes the plaintiff's factual allegations, conclusively establishing a defense as a matter of law (*Goshen v Mutual Life Ins. Co. of New York*, 98 NY2d 314 [2002]). The documentary evidence must be unambiguous, of undisputed authenticity, and its contents must be essentially undeniable (*VXI Lux Holdco S.A.R.L. v SIC Holdings, LLC*, 171 AD3d 189, 193 [1st Dept 2019]). A court may not dismiss a complaint based on documentary evidence unless the factual allegations are definitively contradicted by the evidence (*Leon v Martinez*, 84 NY2d 83, 88 [1994]).

On a motion to dismiss based on failure to state a cause of action pursuant to CPLR § 3211(a)(7) the Court must accept as true the facts as alleged in the Complaint and afford a plaintiff the benefit of every possible favorable inference (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]; *Chapman, Spira & Carson, LLC v Helix BioPharma Corp.*, 115 AD3d 526, 527 [1st Dept 2014]). The Court's inquiry in determining a motion to dismiss pursuant to CPLR § 3211(a)(7) is whether the alleged facts fit within any cognizable legal theory (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]).

Wilmington meets its burden pursuant to both CPLR § 3211(a)(5) and (7). The default judgment entered in the 2021 Foreclosure Action is presumed valid and unless reversed or annulled in a proper proceeding, it is not open to attack by parties or privies in any collateral action or other

proceeding (*Silvar v Commissioner of Labor of State*, 175 AD3d 95, 101 [1st Dept 2019]).

Therefore, Plaintiff's Complaint is barred by res judicata.

Moreover, even if Plaintiff's Complaint was not barred by res judicata, its Complaint still would not survive Wilmington's motion to dismiss. A lender revokes an election to accelerate mortgage debt made in a complaint when it voluntarily discontinues the foreclosure action where it elected to accelerate, even if de-acceleration is not mentioned in a stipulation of voluntary discontinuance (*Freedom Mortgage Corporation v Engel*, 37 NY3d 1, 31-32 [2021]). Therefore, withdrawal of a complaint where a lender elected to accelerate decelerates the loan as a matter of law (*id.*). Where a loan has not been accelerated, default on the obligation to make a timely payment will trigger the six-year statute of limitations for an action to recover that payment, but a default alone does not trigger the statute of limitations to commence a foreclosure action (*id.* at 21-22; *see also Adler v DLJ Mortgage Capital, Inc.*, 194 AD3d 633, 634 [1st Dept 2021]; CPLR §§ 203(a); 213(4)). Although a lender may be equitably estopped from revoking its election to accelerate, this will only occur if a borrower alleges she materially changed her position in detrimental reliance on the loan acceleration (*Freedom* at 36).

Plaintiff has not alleged it materially changed its position in detrimental reliance on any alleged loan acceleration, so equitable estoppel does not apply. Moreover, the clear and incontrovertible evidence shows that both foreclosure actions which accelerated the Mortgage were both voluntarily discontinued; therefore, the Mortgage was decelerated each time by operation of law (*Freedom* at 31-32). There is no allegation that the Mortgage was ever accelerated besides in the 2009 and 2010 foreclosure actions. Because the Mortgage remained decelerated, the statute of limitations for a foreclosure action has not run. Plaintiff's Complaint, which seeks discharge of the mortgage based on a statute of limitations argument, is therefore contradicted by

the documentary evidence and barred as a matter of law. Wilmington's motion to dismiss is granted.

Accordingly, it is hereby

ORDERED that Wilmington's motion to dismiss Plaintiff's Complaint is granted and it is further;

ORDERED that counsel for Wilmington Associates serve a copy of this order along with notice of entry on all parties within ten (10) days of this order; and it is further

ORDERED that, within 30 days from entry of this order, counsel for Wilmington shall serve a copy of this order with notice of entry upon the Clerk of this Court; and it is further

ORDERED that service upon the Clerk of this Court 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 www.nycourts.gov/supctmanh).

This constitutes the decision and order of the Court.

8/23/2022
DATE

Mary V Rosado
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		

<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE