

**JP Morgan Chase Bank, N.A. v Lees**

2015 NY Slip Op 32440(U)

November 24, 2015

Supreme Court, Suffolk County

Docket Number: 13028-2012

Judge: Glenn A. Murphy

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This opinion is uncorrected and not selected for official publication.

**COPY**

**SUPREME COURT - STATE OF NEW YORK  
IAS PART 25 - SUFFOLK COUNTY**

**PRESENT: Hon. GLENN A. MURPHY**  
Acting Justice of the Supreme Court

\_\_\_\_\_  
JP MORGAN CHASE BANK, NATIONAL ASSOCIATION, <sup>x</sup>

Plaintiff,

-against-

DANIEL LEES; 27 CLIFF STREET REALTY CO, INC.;  
WORLDWIDE ASSET PURCHASING LLC; "JOHN  
DOES" and "JANE DOES", said names being fictitious parties  
intended being possible tenants or occupants of premises, and  
corporations, other entities or persons who claim, or may claim,  
a lien against the premises,

Defendants,

\_\_\_\_\_  
<sup>x</sup>

MOTION DATE 09-25-14  
ADJ. DATE 11-24-15  
MOT. SEQ #01 MG

ROSICKI, ROSICKI & ASSOCIATES, P.C.  
Jeffrey Ertel, Esq.  
*Attorneys for Plaintiff*  
26 Harvester Avenue  
Batavia, New York 14020

DANIEL LEES, pro se  
12 Leland Street  
East Northport, New York 11731

Upon the following papers numbered 1 to 23 read on this motion for summary judgment and an order of reference; Notice of Motion/ Order to Show Cause and supporting papers 1-17; ~~Notice of Cross Motion and supporting papers~~; Answering Affidavits and supporting papers 18-20; Replying Affidavits and supporting papers 21-23; Other \_\_\_\_; (and after hearing counsel in support and opposed to the motion) it is,

UPON DUE DELIBERATION AND CONSIDERATION BY THE COURT of the foregoing papers, the motion is decided as follows: it is hereby

**ORDERED** that this motion by the plaintiff JP Morgan Chase, N.A. (Chase), pursuant to CPLR §3212 for summary judgment on its complaint, to strike the answer and counter-claim of Daniel Lees and, for an order of reference appointing a referee to compute pursuant to Real Property Actions and Proceedings Law (RPAPL) §1321, is granted; and it is further

**ORDERED** that the plaintiff's application for leave to amend the caption of this action pursuant to CPLR §3025 (b), is granted; and it is further

**ORDERED** that the caption is amended by striking therefrom the names of the remaining "JOHN DOES" and "JANE DOES", such names being fictitious; and all papers and proceedings heretofore filed herein shall be deemed amended accordingly; and it is further

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**ORDERED** that paragraph 8 of the complaint be amended, nunc pro tunc to read “ The aforesaid instruments were thereafter consolidated by Consolidation, Extension, and Modification Agreement, dated December 14, 2009, and recorded in the County of Suffolk on February 5, 2010, in Liber M00021915 at page 484, creating a single lien of \$396,800.00 with interest on the unpaid balance thereof, at the rate of 5.3750 percent per annum, to be computed from the date of said note by payments of \$2,221.97 on February 1, 2010, and thereafter in payments of \$2,221.97 on the like date of each subsequent month, until said note is fully paid, except the final payment of principal and interest remaining due, if not sooner paid, shall become due and payable on January 1, 2040.”; and it is further

**ORDERED** that the notice of pendency be amended, nunc pro tunc to reflect the date of recording of the Consolidation, Extension, and Modification Agreement as February 5, 2010; and it is further

**ORDERED** that the caption as amended shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

\_\_\_\_\_  
JP MORGAN CHASE BANK, NATIONAL ASSOCIATION,

Plaintiff,

INDEX NO.: 13028-2012

-against-

DANIEL LEES; 27 CLIFF STREET REALTY CO, INC.;  
WORLDWIDE ASSET PURCHASING LLC,;

Defendants.

\_\_\_\_\_x

**ORDERED** that a copy of this order with Notice of Entry shall be served upon the owner of the equity redemption, any tenants named in this action and any other party entitled to notice.

This is an action to foreclose a mortgage on premises known as 12 Leland Street East Northport, New York. On January 5, 2007, the defendant executed a note in favor of Chase, agreeing to pay the sum of \$404,000.00 at the yearly rate of 6.250 % (percent.) On the same date, the defendants executed a first mortgage in like sum on the subject property. The mortgage was recorded on March 9, 2007 in the Suffolk County Clerk’s Office. On December 14, 2009, the parties entered into a consolidation extension and modification agreement (CEMA) in which the defendant received a reduced rate on his mortgage from the original 6.25 % (percent) to 5.375% (percent). The documents related to the CEMA were recorded on February 5, 2010.

A notice of default, dated July 6, 2011, was sent to the defendant stating that he had defaulted on his mortgage loan and that the amount past due was \$ 12,030.76. On May 4, 2011, the plaintiff sent by regular and certified mail a ninety (90) day notice pursuant to RPAPL §1304. As a result of the defendant's continuing default, the plaintiff commenced this foreclosure action on April 26, 2012. In its complaint, the plaintiff alleges in pertinent part that the defendants breached their obligations under the terms of the note and mortgage by failing to make monthly payments. The summons and complaint comply with the requirement of RPAPL §1302. The defendants interposed an answer, dated October 11, 2012, consisting of general denials and six (6) affirmative defenses. On April 22, 2014, the defendant filed for bankruptcy protection and the instant matter was stayed. On August 11, 2014, the Bankruptcy Court lifted the stay.

The Court's computerized records indicate that a foreclosure settlement conference was held on December 12, 2013, at which time this matter was referred as an IAS case since a resolution or settlement had not been achieved. Thus, there has been compliance with CPLR §3408 and no further settlement conference is required.

The plaintiff now moves for summary judgment on its complaint contending that the defendants failed to comply with the terms of the loan agreement and mortgage and, that the defendant's general denials raised no issues of fact for trial. In support of its motion, the plaintiff submits among other things: the sworn affidavit of Grant Stephenson, Vice President of JP Morgan Chase, the original loan servicing and plaintiff (originator of the note.), the servicer of the plaintiffs loan; the affirmations of Jeffrey Ertel and Christina Perinelli in support of the instant motion together with his affirmation pursuant to the Administrative Order of the Chief Administrative Judge of the Courts (AO/431/11); the pleadings; the note, mortgage, and assignment of mortgage; notice of default; notices pursuant to RPAPL §§ 1320, 1304 and 1303; affidavits of service for the summons and complaint; and, an affidavit of service for the instant summary judgment motion upon the defendant's counsel. The defendant has submitted an answer with six (6) affirmative defenses and opposition to the plaintiffs' motion.

The defendants opposition papers with regard to the affidavit defense raised have failed to raise any triable issues of fact as to a bona fide defense to the action, such as waiver, estoppel, bad faith, fraud, or oppressive or unconscionable conduct on the part of the plaintiff (*see Cochran. Inv. Co., Inc. v Jackson*, 38 AD3d 704, 834 NYS2d 198 [2d Dept 2007] *quoting Mahopac Natl. Bank v Baisley*, 244 AD2d 466, 664 NYS2d 345 [2<sup>nd</sup> Dept 1997]). Here, answering the defendants have failed to demonstrate, through the production of competent and admissible evidence, a viable defense which could raise a triable issue of fact (*see Deutsche Bank Natl. Trust Co. V Posner*, 89 AD3d 674, 933 NYS2d 52 [2d Dept 2011]). "Motions for summary judgment may not be defeated merely by surmise, conjecture or suspicion" (*Shaw v Time-Life Records*, 38 NY2d 201, 379NYS2d 390 [1975]). Notably, the defendant does not deny that they have failed to make payments of interest or principal on the note (*see Citibank, N.A. v Souto Geffen Co.*, 231 AD2d 466, 647 NYS2d 467 [1<sup>st</sup> Dept 1996]).

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In light of the foregoing, the motion for summary judgment is granted against the defendants and the defendant's answer is stricken. The plaintiff's request for an order of reference appointing a referee to compute the amount due plaintiff under the note and mortgage is also granted (*see Vermont Fed. Bank v Chase*, 226 AD2d 1034, 641 NYS2d 440 [3d Dept 1996]; *Bank of East Asia, Ltd. v Smith*, 201 AD2d 522, 607 NYS2d 431 [2d Dept 1994]).

**ORDERED**, further that this action is hereby referred to Stephen A. Brown, Esq., with an office located at 131 Scudder Avenue, PO Box 211 Northport, NY 11768 Ph #631-424-8484, who is hereby appointed Referee to ascertain and compute the total amount due plaintiff for unpaid principal, accrued interest and all (other disbursements advanced as provided for by statute) mortgage costs and expenses other than attorneys' fees secured by the note and mortgage set forth in the complaint, and to examine and report as to whether the mortgaged premises can be sold in one parcel; and it is further

**ORDERED**, that plaintiff shall provide the Referee all required documents to compute within sixty (60) days from the date of this Order, and the Referee shall make his/her report no later than thirty (30) days thereafter and that, except for good cause shown, the plaintiff shall move for judgment no later than thirty (30) days of the date of the Referee's Report; and it is further

**ORDERED**, that by accepting this appointment the Referee certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to section 36.2 (c) ("Disqualifications from appointment"), and section 36.2 (d) ("Limitations on appointments based upon compensation"); and it is further

**ORDERED**, that upon submission of the Referee's Report, plaintiff shall pay pursuant to CPLR §8003 (a) \$250.00 to the Referee as compensation for his/her services, which sum may be recouped as a cost of litigation; and it is further

**ORDERED**, that the Referee is prohibited from accepting or retaining any funds for him/herself or paying funds to him/herself without compliance with Part 36 of the rules of the Chief Administrative Judge; and it is further

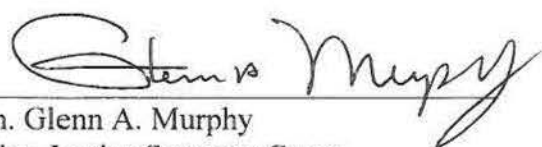
**ORDERED**, that the Referee appointed herein is subject to the requirements of Rule 36.2 (c) of the Chief Judge, and if the Referee is disqualified from receiving an appointment pursuant to the provision of that Rule, the Referee shall notify the appointing Justice forthwith; and it is further

**ORDERED**, plaintiff is to include in any proposed order for a judgment of foreclosure and sale language complying with the Suffolk County Local Rule for filing of the Foreclosure Action Surplus Monies form contained in Suffolk County Administrative Order #41-13; and it is further

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**ORDERED**, that a copy of this order with Notice of Entry shall be served upon the designated Referee, the owner of the equity of redemption, any tenants named in this action and any other party entitled notice within twenty (20) days of entry and no less than thirty (30) days prior to any hearing before the Referee. The Referee shall not proceed to take evidence as provided herein without proof of such service, which must accompany any application for Final Judgment of Foreclosure and Sale.

Dated: 11/24/15

  
\_\_\_\_\_  
Hon. Glenn A. Murphy  
Acting Justice Supreme Court

       FINAL DISPOSITION      X   NON-FINAL DISPOSITION

27 CLIFF STREET REALTY CO. INC.  
c/o BERNARD GREENBAUM, ESQ.  
605 THIRD AVENUE  
NEW YORK, NEW YORK 10158

WORLDWIDE ASSET PURCHASING LLC  
80 STATE STREET  
ALBANY, NEW YORK 12207

OCCUPANTS  
12 LELAND STREET  
EAST NORTHPORT, NEW YORK 11731