

AJAX Mtge Loan Trust 2020-A v Ayres

2024 NY Slip Op 34312(U)

October 4, 2023

Supreme Court, Suffolk County

Docket Number: Index No. 610279/2022

Judge: Robert F. Quinlan

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

INDEX NO. 610279/2022

**SUPREME COURT - STATE OF NEW YORK
IAS PART 27 - SUFFOLK COUNTY**

MOTION DATE: 8/9/23

ADJ. DATE: 9/26/23

Mot. Seq. #01/MG

**PRESENT: Hon. ROBERT F. QUINLAN
Supreme Court Justice**

**AJAX MORTGAGE LOAN TRUST 2020-A,
MORTGAGE-BACKED SECURITIES, SERIES 2020-A,
BY U.S. BANK NATIONAL ASSOCIATION, AS
INDENTURE TRUSTEE,**

**FRIEDMAN VARTOLO LLP
Attorneys for Plaintiff
1325 Franklin Avenue, Suite 160
Garden City, New York 11530**

Plaintiff,

-against-

**KAMONA AYRES A/K/A RAMONA AYRES;
BRENDA MCLEOD; CLERK OF THE SUFFOLK
COUNTY DISTRICT COURT; CLERK OF THE
SUFFOLK COUNTY TRAFFIC & PARKING
VIOLATIONS AGENCY; CAPITAL ONE BANK USA,
NA; "JOHN DOE" AND "JANE DOE" said names being
fictitious, it being the intention of Plaintiff to designate any
and all occupants of premises being foreclosed herein,**

**Binakis Law, P.C.
Attorneys for Defendants Kamona Ayres a/k/a
Ramona Ayres and Brenda McLeod
28-60 31st Street
Astoria, New York 11102**

Defendants.

x

Upon the papers submitted (notice of motion with supporting papers, opposition with supporting papers and reply) it is

ORDERED that the motion seeking leave to enter a default judgment and summary judgment is granted, and it is further

ORDERED that an order of reference is signed this date.

The plaintiff has established a basis to grant default judgments against the non-answering defendants (CPLR 3215). As to the answering defendant defenses, the plaintiff has established proof of standing ~~action~~ by annexing to the complaint upon commencement a copy of the note, endorsed in blank by the original lender, thereby demonstrating that the note was in plaintiff's possession at the time the action was commenced (see HSBC Bank USA v Olivier, 179 AD3d 648 [2nd Dept. 2020]). The affidavit of Naomi Hernandez, Litigation Specialist for the Attorney-in-Fact of plaintiff lays the foundation for the business records, which are attached to the affidavit, providing a basis for the motion. Defendant claims that servicing agreements were not provided, which are noted in the Limited Attorney-in-Fact agreement. The defendant argues that the motion for summary judgment must be denied due to the failure of the plaintiff to include the applicable servicing agreements, which are referred to by the Limited Power of Attorney. This is necessary to provide the authority for the affidavit for the motion. As the defendant notes, the Second Department stated that such agreements are required to demonstrate the authority to act for the plaintiff (U.S. Bank N.A. v. Tesoriero, 204 A.D.3d 1066 [2nd Dept. 2022]). However, as the plaintiff notes, the case cited by defendant is distinguishable from U.S. Bank N.A. v. Tesoriero as the Limited Attorney-in-Fact in this case does not refer to servicing agreements related to the authority to prosecute this foreclosure action (NYSCEF doc. no. 88). The plaintiff has also established, prima facie, that the list of 5 housing counseling agencies for Suffolk County are provided by the Department of Financial Services (see Investors Savings Bank v. Cover, 187 A.D.3d 868[2nd Dept. 2020]). The defendant failed to rebut that the five on the list did not serve the area(U.S. Bank N.A. v. Williams Family Trust, 202 A.D.3d 1024 [2nd Dept. 2022]). Furthermore, where a defendant does not address an affirmative defense in his or her opposition papers, the failure to do so constitutes an abandonment or waiver of such defense or defenses (see Kuehne & Nagel Inc. v Baiden, 36 NY2d 539 [1975]; U.S. Bank, N.A. v Gonzalez, 172 AD3d 1273 [2nd Dept. 2019]; JPMorgan Chase Bank, N.A. v Cao, 160 AD3d 821 [2nd Dept. 2018]). Consequently, the plaintiff is entitled to summary judgment, as it established prima facie the mortgage, note and default, against the answering defendant (Deutsche Bank Natl. Trust Co. v. Abdan, 131 A.D.3d 1001 [2nd Dept. 2015]).

The foregoing constitutes the decision and order of the Court.

Dated: October 4, 2023



 Hon. ROBERT F. QUINLAN, J.S.C.

_____ FINAL DISPOSITION X NON-FINAL DISPOSITION