

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

Index Number : 160840/2017  
COHN, DAVID  
vs  
NATIONSTAR MORTGAGE LLC  
Sequence Number : 001  
SUMMARY JUDGMENT

PART 55

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ No(s). \_\_\_\_\_  
Answering Affidavits — Exhibits \_\_\_\_\_ No(s). \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_ No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is granted.

The motion for summary judgment seeking an order pursuant to RPAPL 1501(4) cancelling and discharging a mortgage recorded against the subject property and declaring that the property is free of said incumbrance is granted. Putting aside defendant's inadequate reliance on an attorney's affirmation that simply asserts that she is familiar with the facts and circumstances surrounding the case, plaintiff has demonstrated an entitlement to judgment as a matter of law.

The subject mortgage states that if the borrower is in default, the lender may require immediate payment of the entire amount due. In the 2009 foreclosure action, the lender did exactly that: "[Lender] elects to call due the entire amount secured by the mortgage." The foreclosure action was thereafter voluntarily discontinued with prejudice. Moreover, a subsequent foreclosure action was dismissed in 2014 as a result of a motion. As of 2015, the statute of limitations has expired and a new action would no longer be timely. In the end, this Court has considered all of the various arguments raised in opposition to granting plaintiff summary judgment and find them to be unavailing. Accordingly, the motion is granted.

Settle judgment on notice.

This constitutes the decision and order of this Court.

Dated: 6/21/2018

  
\_\_\_\_\_, J.S.C.  
HON. JAMES E. d'AUGUSTE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

- 1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ~~ORDER~~  SUBMIT ORDER  
 DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE