

SHORT FORM ORDER

NEW YORK STATE SUPREME COURT – QUEENS COUNTY  
Present: HONORABLE BERNICE D. SIEGAL IAS TERM, PART 25  
Justice

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HSBC BANK USA, NATIONAL ASSOCIATION AS  
TRUSTEE FOR WELLS FARGO ASSET SECURITIES  
CORPORATION, MORTGAGE ASSET- BACKED  
PASS THROUGH CERTIFICATES, SERIES 2007-AR8

Index No.: 14333/2013  
Motion Date: 6/21/2016  
Motion Cal. No.: 66  
Motion Seq. No.:3

Plaintiff,

-against-

MANDEEP AKA MK SINGH AKA NIKKI SINGH  
AKA MANDEEP NIKKI SINGH SINGH; SURINDER  
SINGH; CORP.; NEW YORK CITY TRANSIT  
ADJUDICATION BUREAU, NEW YORK CITY  
PARKING VIOLATION BUREAU, COMMISSIONERS  
OF STATE INSURANCE FUND; ASSET ACCEPTANCE  
LLC AAO CITIBANK; ATLANTIC CREDIT & FINANCE  
INC.; CACV OF COLORADO LLC; CAPITAL ONE BANK  
USA, NA; CITIBANK SOUTH DAKOTA, NA; CRIMINAL  
COURT OF THE CITY OF NEW YORK; DISCOVER BANK;  
GE MONEY BANK; LVNV FUNDING LLC; METRO  
PORTFOLIOS, INC., MIDLAND FUNDING LLC DBA IN  
NEW YORK AS MIDLAND FUNDING OF DELAWARE,  
LLC; MONOGRAM CREDIT CARD BANK OF GEORGIA;  
NEW CENTURY FINANCIAL SERVICES INC.; NEW YORK  
STATE DEPARTMENT OF TAXATION AND FINANCE;  
PORTFOLIO RECOVERY ASSOCIATES, LLC; ROBERT  
MALISZEWSKI AND NYPD; THE BROOKLYN UNION  
GAS CO.; UNIFUND CCR PARTNERS (AAO); UNITED  
STATES OF AMERICA - INTERNAL REVENUE SERVICE;  
VELOCITY INVESTMENTS LLC; WORKERS  
COMPENSATION BOARD OF NEW YORK STATE;  
NEW YORK CITY ENVIRONMENTAL CONTROL BOARD;

**FILED**  
AUG 11 2016  
COUNTY CLERK  
QUEENS COUNTY

“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.

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The following papers numbered 1 to 19 read on this motion for an order (i) granting summary judgment pursuant to CPLR 3212 on plaintiff’s complaint, filed on July 26, 2013; (ii) dismissing with prejudice, the counterclaims and affirmative defenses set forth in the “Answer, Set Offs & Counterclaims,” dated September 27, 2013 (the “Answer”) of defendants’ counterclaimants Mandeep aka MK Singh aka Nikki Singh Mandeep Nikkia Singh and Surinder Singh (together, “Defendants”); (iii) granting permission to treat Defendants’ Answer as a limited Notice of Appearance entitling Defendants to receive, without prior notice, a copy of the Notice of Sale, Notice of Discontinuance, and Notice of Surplus Monies, if any; (iv) deleting the “John Does” and “Janes Does” from the caption to be replaced with the names “Asia Norfleet,” “Diana Doe,” “James Daniels,” “Jeff Doe” (refused to provide last name), “John Doe,” “Larry Doe,” and “Robert Doe”, and amending the caption to so reflect; (v) appointing a Referee to determine the amount due to Plaintiff, and to determine whether the premises being foreclosed can be sold in parcels; (vi) determining that all of the non-answering defendants be deemed in default, and said defaults be fixed; (vii) declaring that any prior adverse liens are invalid and extinguished, and reforming the record to so reflect.

	PAPERS NUMBERED
Notice of Motion - Affidavits-Exhibits.....	1 - 4
Memorandum in Support.....	5 - 7
Affirmation in Support.....	8 - 10
Affirmation in Opposition.....	11 - 13
Reply Affidavit.....	14 - 16
Reply Memorandum.....	17 - 19

Upon the foregoing papers, it is hereby ordered that the motion is resolved as follows:

Plaintiff, HSBC Bank USA, National Association as trustee for Wells Fargo Asset Securities Corporation, Mortgage Asset-Backed Pass-Through Certificates Series 2007-AR8 ("Plaintiff"), moves for an Order granting Plaintiff summary judgment against Mandeep Singh ("Defendant") and to dismiss Defendants' answer, including the counterclaim and defenses therein, with prejudice; granting permission to treat Defendants' Answer as a limited notice of appearance entitling Defendants' counsel to receive, without prior notice, a copy of the notice of sale, notice of discontinuance and notice of surplus monies; appointing a Referee to determine the amount due to

Plaintiff, and to determine whether the premises being foreclosed can be sold in parcels; providing that all non-appearing and non-answering defendants be deemed in default, and that said defaults be fixed and determined, and amending the caption.

For the reasons set forth below, Plaintiff's motion for summary judgement is denied.

### **Background**

Plaintiff brought the within action to foreclose on a note and mortgage relating to the property located at 144-13 222nd Street, Springfield Gardens, New York 11413 ("Property"). Plaintiff submitted a copy of the executed note, dated August 8, 2007, wherein the Defendant promised to pay \$450,000.00. The Note was executed by Mandeep Singh only. Plaintiff submitted an Affidavit of April H. Hatfield ("Hatfield"), a Vice President Loan Documentation for Wells Fargo Bank, N.A. ("Wells Fargo") the servicer and custodian of the mortgage loan at issue for Plaintiff, which asserts that the Pooling and Servicing Agreement ("PSA"), dated as of November 29, 2007, governs the relationship between and among Wells Fargo and the Plaintiff. Pursuant to the PSA, Plaintiff retains physical possession of the original note and mortgage for each mortgage loans, and on November 28, 2007, the original endorsed Note and Mortgage were physically delivered to Wells Fargo. Additionally, the Affidavit of Hatfield states that the Mortgage Loan was modified by agreement between the Defendant and the Plaintiff on December 28, 2009, and that the Wells Fargo's custodial department performed a certification review on January 11, 2012, confirming that the original Note was endorsed as required, and Wells Fargo, as custodian for the Trust, had physical possession of the collateral file with the original endorsed Note on July 26, 2013. Furthermore, Hatfield avers that the Defendant defaulted on the Mortgage Loan by failing to make the payment due March 1, 2012, and all payments thereafter.

On March 27, 2014, this court issued a Preliminary Conference Order directing Plaintiff to file a Note of Issue on or before October 3, 2014 and that all summary judgment applications were to be made no later than sixty days after the filing of the Note of Issue.

On July 2, 2014, this court issued a Compliance Conference Order directing Plaintiff to file a Note of Issue on or before October 10, 2014.

On October 10, 2014, Plaintiff timely filed a Note of Issue. However, on April 13, 2015, a stipulation was entered into by the parties vacating the Note of Issue with leave to Plaintiff to re-file the Note of Issue "within sixty days of completion of discovery" and so-ordered by the court. The parties agreed that discovery will be completed upon the deposition of Plaintiff on April 17, 2015.<sup>1</sup>

On April 17, 2015, Plaintiff's agent was deposed.

On December 4, 2015, Plaintiff filed a Note of Issue.

On April 4, 2016, Plaintiff filed the within application for summary judgment.

### Discussion

The court will first address Defendant's contention that the within application is untimely. "Statutory time frames—like court-ordered time frames (see *Kihl v. Pfeffer*, 94 N.Y.2d 118, 700 N.Y.S.2d 87, 722 N.E.2d 55 [1999])—are not options, they are requirements, to be taken seriously by the parties." (*Miceli v. State Farm Mut. Auto. Ins. Co.*, 3 N.Y.3d 725, 726 [2004].) "The vacatur of a note of issue, [omitted], returns the case to pre-note of issue status." (*Montalvo v. Mumpus Restorations, Inc.*, 110 A.D.3d 1045, 1046 [2nd Dept 2015]; *Melendez v. Plato Gen. Contractor*, 128 A.D.3d 653, 654 [2nd Dept 2015].) Here, the March 27, 2014 Order, directed that "any motion for summary judgment shall be made no later than 60 days after the filing of the note of issue."

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<sup>1</sup> The stipulation was silent as to when the Summary Judgment motion was to be made.

Subsequently, a "so-ordered" stipulation executed by both parties, vacated the Note of Issue, with leave to be re-file within sixty (60) days of completion of discovery<sup>2</sup>. The second Note of Issue was filed on December 4, 2015. Pursuant to the March 27, 2014 Order, the parties had 60 days after the filing of the Note of Issue to bring a motion for summary judgment. The April 13, 2015, Stipulation did not obviate the provision of the Preliminary Conference Order requiring both parties to move for summary judgment within sixty days of the filing of a Note of Issue. Accordingly, the within motion, having been brought 120 days after the filing of the second Note of Issue, is late.

CPLR §3212(a) provides that motions for summary judgment shall be made no later than 120 days, or a time specified by the court<sup>3</sup>, after the filing of the note of issue, except with leave of court on "good cause" shown. Under the standard set forth in *Brill v. City of New York*, 2 N.Y.3d 648 (2004), leave to file a late motion for summary judgment under CPLR §3212(a) requires a showing of a satisfactory explanation for the delay in filing the motion. "Good cause" requires a satisfactory explanation for the untimeliness of the motion even if the motion has merit and the adversary is not prejudiced. (See *Brill v City of New York*, supra; *Miceli v State Farm Mut. Auto Ins. Co.*, 3 N.Y.3d 725, 726-727[2004]; *Tower Ins. Co. of New York v. Razy Associates*, 37 A.D.3d 702 [2<sup>nd</sup> Dept 2007]; *Soltes v 260 Waverly Owners*, 42 A.D.3d 565 [2<sup>nd</sup> Dept. 2007].)

Plaintiff argues for the first time in reply that the difficulty in obtaining the Affidavit of Hatfield constitutes a "good cause" for the delay in making the motion for summary judgment. Hatfield contends that her original affidavit in support of summary judgement was provided for her in December 2015, but she was unable to execute the affidavit until she obtained all the documentary

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<sup>2</sup>Discovery was anticipated to be complete as of April 17, 2015.

<sup>3</sup>Herein, the time specified by the court in the March 27, 2014 Order was 60 days from the filing of the Note of Issue.

proof.<sup>4</sup> However, Plaintiff's excuse was not properly raised in the motion but was rather submitted for the first time in its reply papers and Defendant was not afforded the right to submit sur-reply. (*St. John's University v. Butler Rogers Baskett Architects, P.C.*, 105 A.D.3d 728 [2<sup>nd</sup> Dept 2013]; citing *Cabibel v. XYZ Assoc., L.P.*, 36 A.D.3d 498 [1<sup>st</sup> Dept 2007].)

Additionally, even if the Court were to allow the introduction of the excuse on reply, this matter has been pending since 2013; Plaintiff has had three years to obtain the documentary proof needed to support its affidavit. It is clear from the facts presented that Plaintiff failed to take the court-ordered time frame seriously (*Miceli v. State Farm Mut. Auto. Ins. Co.*, supra) and failed to submit a reasonable excuse for the delay. (*Brill v City of New York*, supra.) Accordingly, the Summary Judgment motion is untimely.

Furthermore, even if the within motion was timely, Plaintiff failed to establish its case as a matter of law through the production of the mortgage, the unpaid note, and evidence of default in an action to foreclose a mortgage. (*Deutsche Bank Nat. Trust Co. v. Weiss*, 133 A.D.3d 704, 705 [2<sup>nd</sup> Dept 2015].) Herein, the Plaintiff, via the Affidavit of Hatfield, produced the mortgage, unpaid note, and states that the Defendant defaulted under the terms of the Note on March 1, 2012.

Defendant, in opposition, argues that Plaintiff lacks standing. "Where the issue of standing is raised by a defendant, a plaintiff must prove its standing in order to be entitled to relief." (*Id.* at 705 quoting *HSBC Bank USA, N.A. v. Roumiantseva*, 130 A.D.3d 983,983 [2<sup>nd</sup> Dept 2015].) "A plaintiff has standing in mortgage foreclosure action where it is the holder or assignee of the underlying note at the time the action is commenced." (*Weiss*, 133 AD.3d at 705.) "Either a written assignment of the underlying note or the physical delivery of the note prior to the commencement

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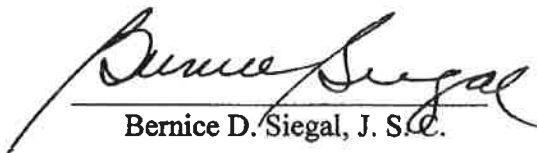
<sup>4</sup>The Hatfield affidavit in support of the motion for a Judgment of Foreclosure and sale was dated April 1, 2016.

of the foreclosure action is sufficient to transfer the obligation, or the mortgage passes with the debt as an inseparable incident." (Id. at 705 quoting *U.S. Bank, NA v. Collymore*, 968 A.D.3d 752, 753-754 [2nd Dept 2009]; see *Aurora Loan Servs., LLC v. Taylor*, 25 N.Y.3d 355, 361, 34 N.E.3d 363 [2015].) "A proper foundation for the admission of a business record must be provided by someone with personal knowledge of the maker's business practices and procedures." (*Citibank, N.A. v. Cabrera*, 130 A.D.3d 861 [2nd Dept 2015].) Hatfield's Affidavit asserts that she is "fully familiar" of "Wells Fargo's dealings in this action, and the relevant facts, circumstances, events, and documentation." However, Hatfield "did not attest that [s]he was *personally familiar* with the record keeping practices and procedures of the Plaintiff." (emphasis added)(see *Aurora Loan Servs., LLC v. Mercius*, 138 A.D.3d 650, 652 [2nd Dept 2016]; *Citibank, N.A. v. Cabrera*, 130 A.D.3d 861 [2nd Dept 2015]; *Aurora*, 25 N.Y.3d at 359-60.) Therefore, Hatfield's affidavit was insufficient to demonstrate that Plaintiff had standing to commence this action.

### Conclusion

For the reasons set forth above, Plaintiff's motion for summary judgment is denied.

Dated: *Aug 4, 2016*

  
Bernice D. Siegal, J. S.C.

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AUG 11 2016  
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