

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ROCKLAND  
VERNY530

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U.S. BANK TRUST, N.A., AS TRUSTEE FOR  
LSF9 MASTER PARTICIPATION TRUST,

Plaintiff,

**AFFIRMATION IN SUPPORT  
OF PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT AND  
AN ORDER OF REFERENCE**

-vs-

MARIANO IRIARTE; ANA IRIARTE A/K/A ANA M. IRIARTE; BENEFICIAL HOMEOWNER SERVICE CORPORATION; JPMORGAN CHASE BANK, N.A.; WESTERN NEW ENGLAND COLLEGE; COMMISSIONER OF TAXATION AND FINANCE; UNITED STATES OF AMERICA INTERNAL REVENUE SERVICE CCP LIEN UNIT; "JOHN DOE #1-5" and "JANE DOE #1-5" said names being fictitious, it being the intention of Plaintiff to designate any and all occupants, tenants, persons or corporations, if any, having or claiming an interest in or lien upon the premises being foreclosed herein,

Index No. 031383/2016

Defendants.

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MONICA G. CHRISTIE, ESQ., affirms under penalties of perjury the truth of the following:

1. I am an attorney in the law firm of Fein, Such & Crane, LLP, attorneys of record for the Plaintiff in this action and am duly admitted to practice law in New York State.

#### **FACTS AND PROCEDURAL HISTORY**

2. **THAT** this action is brought to foreclose a mortgage dated July 31, 2007, covering real property located at , 15 CARDINAL LANE, CHESTNUT RIDGE, NY 10977-6133, executed by MARIANO IRIARTE and ANA IRIARTE to BENEFICIAL HOMEOWNER SERVICE

CORPORATION to secure the sum of \$292,498.02, which was recorded in the ROCKLAND County Clerk's Office on August 9, 2007 in Instrument Number 2007-00040719. Said Mortgage was assigned by BENEFICIAL HOMEOWNER SERVICE CORPORATION to U.S. BANK TRUST, N.A. AS TRUSTEE FOR LSF9 MASTER PARTICIPATION TRUST by Assignment dated December 23, 2015 and recorded on January 15, 2016 in Instrument Number 2016-00001541.

3. **THAT** this action has proceeded as follows:
  - a) The Summons, Complaint and Certificate of Merit were filed in the ROCKLAND County Clerk's Office on April 21, 2016. *See* Exhibit "A" attached hereto.
  - b) The Notice of Pendency was filed in the ROCKLAND County Clerk's Office on April 21, 2016. *See* Exhibit "B" attached hereto.
  - c) Service of the Summons and Complaint was made upon all necessary Defendants and the affidavits of service thereof were duly filed in the ROCKLAND County Clerk's Office, date stamped copies of which are attached hereto as Exhibit "C".
  - d) On or about May 18, 2016, MARIANO IRIARTE and ANA IRIARTE A/K/A ANA N. IRIARTE, through their attorney, STEVEN W. STUTMAN, ESQ., served an Answer to the Complaint and Counterclaim, a copy of which is attached hereto as Exhibit "D".
  - e) On August 22, 2015, Defendants, MARIANO IRIARTE and ANA IRIARTE, were served with the Notice of Intent to Foreclose. Plaintiff refers the Court to Paragraph 7 of and Exhibit C to the August 15, 2017 Affidavit In Support of Summary Judgment of Romualdo D. Fernandez. **Affiant has personal**

**knowledge of the manner in which the business records of Plaintiff were created, has personal knowledge of Plaintiff's business and mailing procedures, and can attest to the content/service/ mailing of said Notice.**

- f) On May 15, 2015, Defendants, MARIANO IRIARTE and ANA IRIARTE, were served with the 90 day Pre-Foreclosure Notice. Plaintiff refers the Court to Paragraph 8 of and Exhibit D to the August 15, 2017 Affidavit In Support of Summary Judgment of Romualdo D. Fernandez. **Affiant has personal knowledge of the manner in which the business records of Plaintiff were created, has personal knowledge of Plaintiff's business and mailing procedures, and can attest to the content/service/ mailing of said Notice.**
- g) On June 3, 2016, Plaintiff filed a Reply to Counterclaims, a copy of which is attached hereto as Exhibit "E".
- h) Defendant, UNITED STATES OF AMERICA, served a Notice of Appearance and Waiver in Foreclosure, a copy of which is attached hereto as Exhibit "F".

4. **THAT** said filed Notice of Pendency of this action, was in the form prescribed by statute and containing, as your affirmant believes, correctly, all the particulars required by law to be stated in such notice, was filed in the Office of the Clerk of the County of ROCKLAND, that being the County in which the mortgaged premise is situated; and that since the filing of the said notice, the verified complaint in this action has not been amended by making new parties to this action, or so as to affect other property not described in the original complaint, or so as to extend the claims of the Plaintiff as against the mortgaged premises.

5. **THAT** all of the said Defendants are of full age; that none of the Defendants are in

the armed services of the United States of America.

6. **THAT** none of the Defendants are of unsound mind and that none of the Defendants, who have not appeared, are absentees.

7. **THAT** the time of the Defendants to appear, answer or otherwise move, with respect to the complaint has expired and has not been extended by stipulation, order of the Court or otherwise, and that none of the Defendants has appeared or answered the complaint, except for as set forth above and Plaintiff is entitled to judgment by default against Defendants, BENEFICIAL HOMEOWNER SERVICE CORPORATION; JPMORGAN CHASE BANK, N.A.; WESTERN NEW ENGLAND COLLEGE; COMMISSIONER OF TAXATION AND FINANCE; DANIEL IRIARTE and MARISA IRIARTE.

8. **THAT** the attached affidavits of service show that the name of the occupants of the subject property, as provided to the process server at time of service, are DANIEL IRIARTE and MARISA IRIARTE and request is therefore made that this name be substituted in the caption of this action in the place and stead of "JOHN DOE #1" and "JANE DOE #1" without prejudice to any of the proceedings heretofore had herein.

9. **THAT** Defendants captioned as "JOHN DOE #2-5" and "JANE DOE #2-5" were not served with copies of the summons and complaint and are not necessary party Defendants. Request is therefore made that said Defendants be excised from the action and from the caption of the action without prejudice to any of the proceedings heretofore had herein.

10. **THAT** The Summons and Complaint, printed on white paper, together with the Notice required by RPAPL 1303, printed on a different colored paper than that of the summons and complaint was served as can be seen from the affidavit of service attached hereto. The process server effected service upon the mortgagors with the complaint copy of the notification pursuant to RPAPL

1303. An exact photocopy of said Notice is attached hereto, evidencing that the title of the Notice is in bold, 20-point font, the text of the Notice is in bold 14-point font, it was on its own page and it was served with the Summons and Complaint.

11. **THAT** the mortgagors was served with additional notice of summons in compliance with CPLR 3215(g)(3), a copy of which is attached hereto as part of Exhibit "C".

### **SUMMARY JUDGMENT**

12. **THAT** as the attached affidavit on behalf of Plaintiff demonstrates, the denials and defenses raised in Defendant's Answer and Counterclaims are without merit and it is respectfully submitted that the Answer and Counterclaims should be stricken and dismissed. As the Complaint sets forth, and as attested to in Plaintiff's affidavit, Defendants, MARIANO IRIARTE and ANA IRIARTE defaulted under the terms of the Note and Mortgage for failure to pay the June 6, 2015 payment and all subsequent payments accruing thereafter. Defendant has not and cannot show proof of sufficient tender to defeat Plaintiff's right to have accelerated the debt and commenced the present action. Accordingly, Defendant does not appear to have a meritorious defense to the foreclosure action and Summary Judgment is warranted.

### **THE SUMMARY JUDGMENT STANDARDS**

13. Summary Judgment is appropriate when there is no issue of material fact requiring a trial and the movant is entitled to judgment as a matter of law. CPLR 3212(b); Zuckerman v. City of N.Y., 49 N.Y. 557, 562; N.Y.S.2d 595, 598 (1980). The movant has the initial burden of showing that no genuine issues of material fact exist. Ayotte v. Gervasio, 81 N.Y.2d 1062, 1063, 601 N.Y.S.S.2d 463, 464 (1993). The burden then shifts to the opposing party to come forward with

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