

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK
VERNY-731

JPMC SPECIALTY MORTGAGE LLC F/K/A WM
SPECIALTY MORTGAGE LLC,

Plaintiff,

-vs-

DAVID PADULA A/K/A DAVID E. PADULA;
SHARYN PADULA A/K/A SHARYN L. PADULA
A/K/A SHARYN DINUBILA A/K/A SHARYN L.
BIRNHOLZ; MIDLAND FUNDING LLC DBA IN
NEW YORK AS MIDLAND FUNDING OF
DELAWARE LLC A/P/O COLUMBUS BANK
AND TRUST; CLERK OF THE SUFFOLK
COUNTY TRAFFIC & PARKING VIOLATIONS
AGENCY; HOUSEHOLD FINANCE
CORPORATION III; JACOBY & JACOBY;
"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,

Defendants..

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

Index No. 608067/2016

MICHAEL S. HANUSEK 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. I am personally familiar with the relevant facts and circumstances of this matter, particularly the pleadings filed and proceedings conducted herein. I submit this affirmation in support of Plaintiff's Motion for Summary Judgment and Order of Reference.

FACTS AND PROCEDURAL HISTORY

2. **THAT** this action is brought to foreclose a mortgage dated May 30, 2006, covering

real property located at 6 AWIXA PLACE, SELDEN, NY 11784 executed by DAVID PADULA and SHARYN PADULA to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR ENCORE CREDIT CORP., A CALIFORNIA CORPORATION to secure the sum of \$388,500.00, which Mortgage was recorded in the SUFFOLK County Clerk's Office on September 11, 2006, in Liber 21379 of Mortgages, at Page 328, et seq.

On April 18, 2009, a Loan Modification Agreement was executed by DAVID PADULA and SHARYN PADULA to JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, **which Modification cured a prior default**, and which modified the terms of the Mortgage recorded in Liber 21379 of Mortgages, at Page 328, to reflect a new principal balance of \$408,239.30 ("Loan Modification Agreement"). These sums were contemplated by the original Mortgage.

On September 22, 2011, a Home Affordable Modification Agreement ("HAMP Agreement") was executed by DAVID PADULA to JPMORGAN CHASE BANK, NA, **which HAMP Modification cured a prior default**, and which modified the terms of the Mortgage recorded in Liber 21379 of Mortgages, at Page 328, to reflect a new principal balance of \$442,235.42. These sums were contemplated by the original Mortgage.

Said Mortgage was assigned by MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR ENCORE CREDIT CORP., ITS SUCCESSORS AND ASSIGNS to JPMC SPECIALTY MORTGAGE LLC F/K/A WM SPECIALTY MORTGAGE LLC by Assignment executed October 19, 2012 and recorded in the SUFFOLK County Clerk's Office on January 15, 2013, in Liber 22293 of Mortgages, at Page 103, et seq.

On February 10, 2014, a Loan Modification Agreement was executed by Defendant DAVID PADULA to JPMORGAN CHASE BANK, N.A., **which Modification cured a prior default**, and which modified the terms of the Mortgage recorded in Liber 21379 of Mortgages, at Page 328, to

reflect a new principal balance of \$421,098.51. These sums were contemplated by the original Mortgage.

Said Mortgage was further assigned by JPMC SPECIALTY MORTGAGE LLC F/K/A WM SPECIALTY MORTGAGE LLC to JPMORGAN CHASE BANK, NATIONAL ASSOCIATION by Assignment executed November 18, 2016 and recorded in the SUFFOLK County Clerk's Office on November 30, 2016, in Liber 22762 of Mortgages, at Page 819, et seq.

Said Mortgage was further assigned by JPMORGAN CHASE BANK, N.A., to U.S. BANK TRUST, N.A. AS TRUSTEE FOR LSF9 MASTER PART PARTICIPATION TRUST by Assignment executed March 21, 2017 and recorded in the SUFFOLK County Clerk's Office on April 10, 2017, in Liber 22806 of Mortgages, at Page 733, et seq. Plaintiff makes application for an order substituting U.S. BANK TRUST, N.A. AS TRUSTEE FOR LSF9 MASTER PART PARTICIPATION TRUST as Plaintiff herein.

3. **THAT** this action has proceeded as follows:

- a) The Summons, Complaint and Certificate of Merit were filed in the SUFFOLK County Clerk's Office on May 26, 2016. See Exhibit "A" attached hereto.
- b) The Notice of Pendency was filed in the SUFFOLK County Clerk's Office on May 26, 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 SUFFOLK County Clerk's Office, date stamped copies of which are attached hereto as Exhibit "C".
- d) On June 29, 2016, Defendants DAVID E. PADULA and SHARYN L.

PADULA, through their attorney FRIEDMAN LAW ASSOCIATES, P.C., served an Answer to the Complaint, a copy of which is attached hereto as Exhibit "D".

- e) On February 2, 2016, Defendants DAVID PADULA and SHARYN PADULA were served with the Notice of Intent to Foreclose. Counsel refers the Court to Paragraph 7 of, and Exhibit C to, the May 16, 2017 Affidavit In Support of Summary Judgment of DAVID NILSEN. **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 December 9, 2015, Defendants DAVID PADULA and SHARYN PADULA were served with the 90 day Pre-Foreclosure Notice. Counsel refers the Court to Paragraph 8 of, and Exhibit D to, the May 16, 2017 Affidavit In Support of Summary Judgment of DAVID NILSEN. **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 January 15, 2013, November 30, 2016 and April 10, 2017, Assignments of Mortgage were recorded in the SUFFOLK County Clerk's Office, copies of which are annexed collectively hereto as Exhibit "E".

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 SUFFOLK, 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 attached affidavits of service show that the name(s) of the occupant(s) of the subject property, as provided to the process server at time of service, are: LAUREN CRISCUOLO, NYKILAS DINUBILA, and SOMMYR DINBILA. Request is therefore made that these names be substituted in the caption of this action in the place and stead of defendants "JANE DOE #1" and "JOHN DOE #1-2", and that the caption of this action be amended accordingly, all without prejudice to any of the proceedings heretofore had herein.

8. **THAT** the fictitiously named defendants captioned as "JOHN DOE #3-5" and "JANE DOE #2-5" were not served with copies of the summons and complaint and are not necessary parties defendant. Request is therefore made that said defendant(s) be excised from the action and from the caption of the action, all without prejudice to any of the proceedings heretofore had herein.

9. **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 said non-answering

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