

**FORECLOSURE TRANSACTION
CONSUMER CREDIT TRANSACTION**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

COMPASS BANK,

Plaintiff,

-against-

FLORENCE L. KANE a/k/a FLORENCE KANE; ROBERT KANE; PENELOPE KANE; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR CITIBANK, N.A.; GE MONEY BANK; CITIBANK, N.A.; MIDLAND FUNDING LLC DBA in New York as MIDLAND FUNDING OF DELAWARE LLC; SLOMIN'S INC.; TEACHERS FEDERAL CREDIT UNION; FIA CARD SERVICES, N.A.; NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE; FEDERAL NATIONAL MORTGAGE ASSOCIATION; "JOHN DOE #1- #50" and "MARY ROE #1- #50", the last two names being fictitious, it being intended to name all other parties who may have some interest in or lien upon the premises described in the complaint,

**FORECLOSURE
COMPLAINT**

Index No.:

Date Filed:

Defendants.

The plaintiff, complaining of the defendants, by its attorneys, Schiller, Knapp, Lefkowitz & Hertz, LLP, alleges as follows:

1. That plaintiff was at all times hereinafter mentioned and now is a banking corporation authorized to conduct business in New York and organized under the laws of the state of Alabama.
2. Upon information and belief, the defendants set forth in Schedule "A" of this complaint reside at or have a place of business at the address set forth therein or, if a corporation, it was organized and is existing under and pursuant to the laws of the state set forth therein, and are made defendants in this action in accordance with the interests set forth therein.
3. That the United States of America, the People of the State of New York, the State

Tax Commission of the State of New York, the Industrial Commissioner of the State of New York, and all other agencies or instrumentalities of the Federal, State or a local government, if made defendants in this action, are named as defendants solely by reason of the matters set forth in Schedule "B" of this complaint.

4. Upon information and belief, that the defendants, "JOHN DOE" and "MARY ROE" (fictitious names), if named in the caption to this complaint, is or are a tenant or tenants occupying the premises, or some part thereof; or have some interest in, or lien upon, the premises to be foreclosed.

AS AND FOR A FIRST CAUSE OF ACTION

5. That heretofore, the defendants, whose names appear in the copy of the debt instrument set forth in Schedule "C" of this complaint (which is a true and exact copy thereof), duly executed and acknowledged the bond, note, guaranty, extension agreement, modification agreement, consolidation agreement, assumption agreement, security agreement, deed or other instrument set forth in Schedule "C" of this complaint for the purpose of securing payment of a sum of money to plaintiff wherein and whereby said defendants covenanted to pay said sum of money to plaintiff, with interest thereon, all as more fully appears, together with the terms of payment of said sum and the rights of plaintiff in Schedule "C". A lost note affidavit is also attached hereto as Schedule "C".

6. That as security for the payment of said indebtedness, Florence L. Kane a/k/a Florence Kane, Robert Kane, and Penelope Kane executed, acknowledged and delivered to plaintiff Mortgage included as Schedule "D" of this complaint.

7. That said mortgage was duly recorded in the Office of the Suffolk County Clerk and the appropriate mortgage tax was duly paid thereon.

8. That the mortgage has been assigned to plaintiff by Assignment included herein as Schedule "E".

9. That the defendants, Florence L. Kane a/k/a Florence Kane, Robert Kane, and Penelope Kane, failed and neglected to comply with the terms and conditions of the debt instrument and/or mortgage respectively described in Schedules "C" and "D" hereof, by failing and omitting to pay the items of principal, interest, taxes, assessments, water rents, insurance premiums, escrow and/or other charges, or by failing to perform a covenant contained in the aforesaid documents, all as more fully set forth in Schedule "F" of this complaint, and plaintiff has previously elected and hereby elects to call due the entire amount secured by the mortgage described in paragraph "6" hereof as more fully set forth in Schedule "F" hereof.

10. That in order to protect its security the plaintiff has been, and/or may be, compelled during the pendency of this action to pay local taxes, assessments, water rents, insurance premiums, F.H.A. or Veterans Administration premiums or charges, and other charges affecting the mortgaged premises, and the plaintiff requests that any sums thus paid by it for the said purposes, together with interest thereon, should be added to the sum otherwise due and be deemed secured by the said mortgage and be adjudged a valid lien on the mortgaged premises.

11. That in accordance with the terms of the said debt instrument and mortgage in any action upon same, the defendants referred to in paragraph "5" hereof agreed to pay plaintiff's reasonable attorney's fees in connection with such action, which fees are deemed to be secured by the said mortgage and are a lien on the premises prior to any right, title, claim or interest in, to or upon the mortgaged premises attaching or accruing subsequent to the lien of said mortgage.

12. That the defendants referred to in paragraph "5" hereof did in fact receive such loan in the principal amount evidenced by Schedules "C" and plaintiff did advance said sum to said defendant.

13. That Plaintiff shall not be deemed to have waived, released or changed the election hereinbefore made by reason of the payment, after the date of the commencement of this action, of any and all of the defaults mentioned herein; and such election shall continue and remain effective until the costs and disbursements of this action, and any and all future defaults under the aforesaid Note and Mortgage occurring prior to the discontinuance of this action are fully paid.

14. The defendants whose names appear in Schedules "A" and "B" hereof and the defendants made a party hereto as set forth in paragraph "4" hereof, if any, as the plaintiff is informed and believes, have a claim to or some interest in, or lien upon said mortgaged premises or some part thereof, which claims, interest or lien, if any, accrued subsequently to the lien of the plaintiff's aforesaid mortgage and is subordinate thereto.

15. That the plaintiff is now the sole, true and lawful owner and holder of the debt instrument set forth in Schedule "C" and the lien securing the same and all sums presently due thereunder. The note was physically delivered to, and is in plaintiff's possession, according to the plaintiff's records of delivery, such records having been made in the regular course of the plaintiff's business, it being the regular course of the plaintiff's business to make such records, at the time of delivery or within a reasonable time thereafter.

16. There are no pending proceedings and no proceedings have been commenced at law or otherwise to collect or enforce said debt instrument and mortgage, and there is no other action pending and no action previously commenced which has been brought to recover said mortgage debt or any part thereof and no part of the mortgage debt has been collected as a result of any legal proceedings. Except the action brought on November 6, 2013 and re-filed on October 13, 2016 under Index No. 13-29608; said action was cancelled on October 16, 2017.

17. If applicable, the mortgage was and still is in compliance with Banking Law Section 595-a, and any rules and regulations promulgated thereunder, and Sections 6-l and 6-m of the

banking law.

18. The plaintiff has complied with RPAPL 1304 by sending a notice, dated December 13, 2017, to Florence L. Kane a/k/a Florence Kane, Robert Kane, and Penelope Kane, by regular and certified mail. A copy of the notice is attached hereto as Schedule "G". Attached to each notice is a list of government-approved housing counseling agencies as required by RPAPL 1304.

19. Plaintiff has complied with RPAPL 1306 by filing the appropriate information with the Department of Financial Services within three business days of mailing the pre-foreclosure notice.

AS AND FOR A SECOND CAUSE OF ACTION

20. Plaintiff repeats and re-alleges the allegations contained in paragraphs "1" through "19" as though fully set forth herein.

21. Upon information and belief, all defendants named herein have or claim to have some interest in or lien upon said mortgaged premises, or some part thereof, and said interests or liens, if any, have accrued subsequent to the lien of plaintiff's mortgage, or have been paid or equitably subrogated to plaintiff's mortgage, or have been duly subordinated thereto; said defendants set forth in Schedules "A" and "B" hereof.

22. That it appears from public record that there is a prior mortgage held by Federal National Mortgage Association, which is adverse to the plaintiff's interest, and which remains open of record; said mortgage made by Florence L. Kane to Commonwealth Mortgage Company, Inc. for \$116,250.00 and recorded in Suffolk County on December 21, 1988 in Liber 14751 at Page 223. Said mortgage was assigned by Stanley Miller, Trustee of the CMC Liquidating Trust as Successor in Interest to Commonwealth Mortgage Company, Inc. to Federal National Mortgage Association by Assignment dated April 26, 1993 and recorded on August 31, 1993 in Liber 18700 at Page 517.

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