**To commence the statutory time period
For appeals as of right (CPLR § 5513[a]),
you are advised to serve a copy of this
order, with notice of entry,
upon all parties.**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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UNITED NATIONS FEDERAL CREDIT UNION,

Plaintiff,

-against-

ESTATE OF MOHAMED LAMIN SESAY; DISCOVER BANK; JOHN DOE Nos. 1-10; and JANE DOE Nos. 1-10, the last two names being fictitious and unknown to the plaintiff, the person or parties intended being the person, occupants, persons or corporations, if any, having or claiming an interest in or lien upon the premises described in the complaint,

Defendant,

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DECISION AND ORDER
Index No. 64840/2024

Motion Seq. No. 1

Hon. Elena Goldberg-Velazquez, J.S.C.

The following papers, numbered 1 to 3, were read and considered in connection with Plaintiff's Notice of Motion (Motion Seq. No. 1) for an Order pursuant to *Real Property Actions and Proceedings Law* § 1321, *Civil Practice Law and Rules* §§ 3212(b), 3215 and 3211(b): (i) appointing a referee to compute the amount due to Plaintiff; (ii) granting summary judgment against Paula Sesay, as administrator of the Estate of Mohamed Lemin[1] Sesay for the relief

1 Defendant's name is spelled "Mohamed Lamin Sesay" in the caption but spelled "Mohamed Lemin Sesay" in the Notice of Motion. Defendant's death certificate annexed to his daughter Paul Sesay's affidavit listed his name as "Mohamed Lamin Sesay."

sought in the verified complaint; (iii) dismissing Defendant's affirmative defenses; (iv) granting judgment on default against all other non-answering defendants for the relief sought in the verified complaint; and (v) amending the caption of the summons pursuant to *Civil Practice Law and Rules* § 305(c) excising the names of Defendants John and Jane Doe, replacing Jane Doe, excising XYZ Corp. 1-10 and (vi) granting such other and further relief as the court may deem just and proper:

PAPERS	**NUMBERED**
Notice of Motion (Motion Seq. No. 1)/Affirmation of Michele K. Jaspan, Esq./ Affidavit of Floyd Crumpton/Statement of Material Facts/Memorandum of Law In Support/Exhibits A-I	1
Affidavit of Paula Sesay in Opposition/Affirmation of Diana Dileonardo, Esq,/ Counter-Statement of Material Facts/Memorandum of Law in Opposition/Exhibits A-K	2
Reply Affirmation of Michele K. Jaspan, Esq. in Further Support/Memorandum of Law in Reply/Exhibit J	3

PROCEDURAL HISTORY

The instant action seeking foreclosure was commenced by Plaintiff [hereinafter UNFCU] on July 1, 2024, by filing a Summons and Complaint. Defendant Estate of Mohamed Lamin Sesay was served on July 25, 2024, at 76 Parkway East, Mount Vernon, New York by service on Paula Sesay, as Administrator of the Estate of Mohamed Lamin Sesay [hereinafter SESAY ESTATE]. Defendant Discover Bank was served on February 15, 2025, by service on an agent. Defendant Jane Doe was served on July 25, 2024, at 76 Parkway East, Mount Vernon, New York by service on Kira Sesay. Defendant SESAY ESTATE joined issue by filing a Verified Answer on August 15, 2024. No other Defendants appeared in the instant action.

Plaintiff filed the instant application seeking summary judgment and order of reference on November 21, 2024. Defendant SESAY ESTATE filed opposition after obtaining a brief

adjournment. Plaintiff submitted a reply. According to Defendant SESAY ESTATE, there is an estate action proceeding in Westchester Surrogate's Court (Index No. 2023-3046).

ARGUMENTS

Plaintiff's Arguments in Support of Motion for Summary Judgment and Order of Reference

Plaintiff filed the instant Notice of Motion seeking an Order, pursuant to *Civil Practice Law and Rules* § 3212, granting summary judgment to Plaintiff, an Order, pursuant to *Civil Practice Law and Rules* § 3215, and also seeking an Order of Reference to compute the sums due Plaintiff, and other related relief. In support of Plaintiff's application an Affidavit of Floyd Crumpton, the Mortgage Collections Manager for UNFCU, was submitted along with a copy of the original note, original mortgage, the Consolidation, Extension and Modification Agreement from the refinance, the consolidated mortgage, the note as to the consolidated mortgage, the Home Equity Line of Credit, the credit line mortgage, the mortgage payment history, the home equity line of credit payment history, a Notice of Default letter dated November 29, 2023, the thirty (30) day demand letter dated April 9, 2024, a copy of the Summons and Complaint, copies of the affidavits of service, and the Answer filed by Defendant SESAY ESTATE.

In this matter, Plaintiffs UNFCU have proved that they were the holder of and in possession of the note and mortgage at the time of the commencement of the action and ever since based on the Affidavit of Floyd Crumpton and the supporting documents filed with the affidavit. Plaintiff addressed each of the twenty-eight (28) affirmative defenses raised by Defendant Estate of Mohamed Lamin Sesay in their Answer.

Defendant SESAY ESTATE's Opposition to Plaintiff's Motion for Summary Judgment and Order of Reference

In opposition, Defendant SESAY ESTATE submitted the Affidavit of Paula Sesay, the Administrator of the SESAY ESTATE, the death certificate of Lyuba Sesay, the death certificate of Mohamed Lamin Sesay, correspondence between Plaintiff UNFCU and Paul Sesay dated

November 29, 2023, a notice sent to Paula Sesay as "proposed Administrator" for Defendant SESAY ESTATE, copies of the decree granting an Administration for the SESAY ESTATE and providing Paul Sesay with Letters of Administration, a copy of the Consolidated Mortgage Agreement, a copy of an Exclusive Right to Sell Agreement between Paula Sesay as Administrator of the SESAY ESTATE and Houlihan Lawrence, a copy of a supplemental citation issued by the Surrogate's Court of Westchester in the Administration of the Estate of Mohamed Lamin Sesay, a copy of the summons and complaint and Defendant SESAY ESTATE's Verified Answer. Defendant SESAY ESTATE contends in their opposition that Plaintiff's motion for summary judgment should be denied since there are triable issues of fact as to whether Plaintiff served the required thirty (30) day notice of default in the proper party and that the SESAY ESTATE's default arises from an interference of a third party, Kira Sesay, for which the Estate should not be held accountable. The arguments provided by Defendant solely addressed the twenty-third (23rd) affirmative defense. The balance of the twenty-eight (28) affirmative defenses have been abandoned by Defendant SESAY ESTATE in their opposition.

Defendant SESAY ESTATE through Paula Sesay, the Administrator for the SESAY ESTATE contends that the Consolidated Mortgage Agreement that Plaintiff relies on is a valid and binding contract between Plaintiff and Lyuba Sesay and Mohamed Lamin Sesay which contains prerequisites to the commencement of the instant foreclosure action. According to the SESAY ESTATE prior to the commencement of a foreclosure action as to the Consolidated Mortgage Agreement [hereinafter Agreement] Plaintiff is required to serve a valid thirty (30) day notice of default upon the borrower or debtor. The Defendant asserts that the contractual obligation within the Agreement is "separate and distinct" from the statutory notice requirements set forth in *Real Property Actions and Proceedings Law* §1304. Defendant concedes that the requirements set forth in §1304 are inapplicable in a circumstance where the borrower is deceased, such as the present matter. However, Defendant SESAY ESTATE argues there is no exception to the express terms in the mortgage contract and therefore as condition precedent to commence a foreclosure action as to the Agreement the Plaintiff was required to serve a thirty (30) day notice of default on the borrowers, Lyuba Sesay and Mohamed Lamin Sesay, or if they

are deceased upon an individual authorized to act on behalf of their estates. The Defendant argues that the correspondence sent to Paula Sesay from Plaintiff on November 29, 2023, and April 9, 2024, are insufficient to satisfy the contractual requirements of the CEMA because at the time the letters/notices were served Paula Sesay was not yet appointed the Administrator of the SESAY ESTATE and therefore had no authority to act on the Estate's behalf. Additionally, Defendant argues that correspondence to Paula Sesay as the power of attorney for Mohamed Lamin Sesay was invalid since the power of attorney terminated upon Mohamed's death. Similarly, Defendant avers that the April 9, 2024, correspondence addressed to Paula Sesay as the proposed administrator for the SESAY ESTATE was insufficient since the administration was commenced but no administrator or executor had been appointed at that time. Defendant cites *Federal Natl. Mtg. Assn. v. Adago*, 2023 NY Slip Op 04717 (1st Dept 2023), *U.S. Bank National Association v. Cope*, 167 AD3d 965 (2d Dept 2018), *Bank of America, N.A. v. Kljajic*, N.Y. App. Div. LEXIS 107, 01 NYS3d 231 (2d Dept 2019), and *U.S. Bank National Association v. Kissi*, 2023 NY Slip Op. 65977 (2d Dept 2023) asserting that it is "well-settled that the failure to serve a borrower (or in this case, their estate) with notice as required by the terms of the mortgage documents precludes summary judgment."

Plaintiff's Reply Arguments in Further Support of Motion for Summary Judgment and Order of Reference

In opposition Plaintiff contends that the Agreement and the HELOC, which are both the subject of the instant foreclosure, do not contain any provision that requires a notice to cure be served on the borrower's executor or administrator if the borrower is deceased. Plaintiff argues the application of the maxim "expression *unius est exclusion alterius*" to statutory construction applies here in that "where a law expressly describes a particular act, thing or person to which it shall apply, an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted or excluded." According to Plaintiff, applying the aforementioned maxim to the Agreement and HELOC, which are the subject of this action, where there is no reference as to whom should be served in lieu of a deceased borrower then the notice of default provision cannot be altered to add the service of an estate administrator. The Plaintiff asserts that with the

borrower being deceased the portion of the Agreement that requires service of a notice of default upon the "borrower" is no longer a condition precedent to the instant foreclosure action. Additionally, the Plaintiff argues that Paula Sesay as the administrator of the SESAY ESTATE admits she was not an obligor on the Agreement or HELOC and has not assumed the mortgage debts and therefore is not entitled to a notice to cure as contemplated in the Agreement.

The Plaintiff also contends that the cases relied upon by Defendant SESAY ESTATE are inapplicable to the instant action since the obligors in each of those cases was not deceased and were therefore entitled to either the statutory *Real Property Actions and Proceedings Law* § 1304 notice or contractual notice to cure.

ANALYSIS

It is well-settled that a plaintiff in an action to foreclose a mortgage establishes its case as a matter of law through the production of the mortgage, the unpaid note, and evidence of the default. *See Village Bank v. Wild Oaks Holding, Inc.*, 196 A.D.2d 812 (2d Dept. 1993); *See also Home Sav. Bank v. Schorr Bros. Development Corp.*, 213 A.D.2d 512, 512-13 (2d Dept. 1995). Once a plaintiff does that, it is incumbent upon the defendant to assert any defenses which could properly raise a viable question of fact as to his default. *See Village Bank v. Wild Oaks Holding, Inc.*, 196 A.D.2d 812 (2d Dept. 1993); *Home Sav. Bank v. Schorr Bros. Development Corp*., 213 A.D.2d 512, 512-13 (2d Dept. 1995). Further, a defendant is required to offer evidentiary proof in admissible form sufficient to demonstrate the existence of a triable issue of fact. *See Hecht v. Vanderbilt Associates*, 141 A.D.2d 696, 699 (2d Dept. 1988). Conclusory and unsubstantiated assertions that are not supported by competent evidence are insufficient to defeat a plaintiff's motion for summary judgment. *Home Sav. Bank v. Schorr Bros. Development Corp*., 213 A.D.2d 512, 513 (2d Dept. 1995).

The Plaintiff has met their *prima facie* burden by the production of the underlying notes (the CEMA and the HELOC), evidence of default as to both the CEMA and the HELOC signed by Lyuba Sesay and Mohamed Liman Sesay, who were both deceased before the instant action was commenced. Further, the Plaintiff provided an Affidavit of Floyd Crumpton, an employee

of Plaintiff and supporting documents which demonstrated compliance with the statutory precondition provisions where applicable. Specifically, here, Plaintiff has demonstrated that the statutory requirements for notices set forth in *Real Property Actions and Proceedings Law* § 1304 are inapplicable since the borrowers, Lyuba Sesay and Mohamed Liman Sesay are both deceased. The Court notes that § 1304 was enacted to protect borrowers who are "natural persons," not an administrator or executor of an estate who could not raise the statutory defense created by *Real Property Actions and Proceedings Law* § 1302(2) for noncompliance with § 1304 since it is a "personal defense" which can only be raised by a borrower on the underlying mortgage. *See HSBC Bank USA, N.A. v. Tigani*, 185 AD3d 796, 799 (2d Dept 2020).

Upon the shifting of the burden Defendant SESAY ESTATE abandoned all of their affirmative defenses except the twenty-third (23rd) in which they asserted Plaintiff failed to comply with contractual provisions as to default notice in the "Consolidated Mortgage Agreement"[2] which they argue are a pre-condition to the commencement of a foreclosure action. Of note, Defendant SESAY ESTATE does not challenge the validity of the underlying notes for the CEMA or the HELOC or the default as to either of those notes or raise any triable issues of fact as to non-compliance with the terms of the HELOC Agreement (Exhibit G to the Summons and Complaint, NYSCEF Doc. No. 10). In Defendant's Memorandum of Law in Opposition counsel asserts that the "Consolidated Mortgage Agreement" provides a pre-condition requirement in section twenty-two (22) and cites the section and references Exhibit G, p. 15, ¶ 22. *See* NYSCEF Doc. No. 43, p. 5-6. The citation provided by Defendant SESAY ESTATE is erroneous as Exhibit G is a document titled "UNFCU Home EquityLine of Credit" dated February 8, 2007, consists of four (4) pages and has no section numbered twenty-two (22). *See* NYSCEF Doc. No. 10. However, the document entitled "Mortgage" and filed on NYSCEF as Exhibit E with a description of "Consolidated Mortgage" dated November 13, 2002, does contain a section twenty-two (22) on page fifteen (15). *See* NYSCEF Doc. No. 8.

2 The only document filed on NYSCEF by Plaintiff entitled "Consolidation, Extension, and Modification Agreement is dated November 13, 2002, and does not contain a Section twenty-two (22) as referenced by Defendant.

The provision within the November 13, 2002 Consolidated Mortgage, [hereinafter Mortgage], Paragraph 22, which is the subject of Defendant's opposition is titled "Lender's Rights If Borrower Fails to Keep Promises and Agreements" and provides that if all of the conditions that are stated in subsections (a), (b), and (c) of Section 22 are met than the lender (Plaintiff) may require the borrower to pay the entire remaining unpaid amount immediately. *See* Exhibit E to Summons and Complaint, NYSCEF Doc. No. 8., p. 14 – 15. Section 22 indicates that Plaintiff can seek immediate payment in full if (a) the borrower fails to keep their promises or agreements under the note, (b) the Plaintiff sends a default notice in the manner described in Section fifteen (15) of the note that contains the six (6) enumerated statements and (c) the borrower does not correct the default as stated in the notice before the date stated in the notice. Similar to the language within *Real Property Actions Proceedings Law* § 1304, section twenty-two (22) of the Mortgage makes no mention of a requirement to provide the aforementioned notice to anyone other than the "borrower." Specifically, there is no contemplation as to whom, if anyone, is to be served the contractual notice of default if the borrower is deceased. The underlying note, a/k/a security instrument, also solely contemplates that notices that are required to be given under the note are to be given to the "borrower" under the note at the property address or another address only if that address is given to the note holder, i.e. the Plaintiff. Additionally, Section fifteen (15) of the Mortgage, which is referenced in Section twenty-two (22) of the Mortgage provides the manner in which notices are to be given under the Mortgage and clearly indicates that "[i]f any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument." *See* Exhibit E, NYSCEF Doc. No. 8, ¶ 15, p. 12. The requirements for a pre-foreclosure notice of default are also included within *Real Property Actions and Proceedings Law* § 1304 and based upon the language within Section fifteen (15) of the subject Mortgage the requirements set forth in the "[a]pplicable law" satisfy the requirements for service of the contractual obligations for the pre-foreclosure notice of default delineated in Section twenty-two (22) of the subject mortgage.

Based upon the language set forth in Section fifteen (15) of the subject Mortgage Defendant SESAY ESTATE's argument that the requirements for service of the pre-condition set forth in Section twenty-two (22) are different from the statutory notices set forth in *Real Property Actions and Proceedings Law* § 1304 lacks merit. The Court considered the cases cited by Defendant in support of their argument and note that in each of the cases the questioned notices were sent to a living borrower, not an estate, and also each notice addressed the manner in which the notice was sent, i.e. the mailing or the procedures set forth in the plaintiff's affidavit as to the knowledge of the mailing, not whether service of the notice of default was served on the borrower or a person who was alleged to have been standing in the borrower's place. If this Court were to accept the argument proffered by Defendant, that if a borrower is deceased or incapacitated then the contractual notice of default must be served on a person appointed by a court or by a person holding an active power of attorney that would be contradictory the requirements as set forth in the "[a]pplicable law, " i.e. § 1304. The Defendants are asking this Court to create two different standards for service of notices of default in foreclosure action that could be repugnant and would also prevent a plaintiff from proceeding against a defaulting deceased borrower or their estate until their next of kin or the public administrator is able to obtain letters of administration or testamentary. The interpretation of the contractual requirements set forth in Section twenty-two (22) of the Mortgage suggested by Defendant in their opposition is not only contradictory to the applicable law, but also would unjustly prejudice a plaintiff mortgagor and leave them beholden to family or heirs of the deceased borrower and encourage the delay of the appointment of a representative to stand in place of the borrower preventing commencement of a foreclosure action while also encouraging continued default on the security instruments.

Turning to the statutory requirements for notice pursuant to *Real Property Actions and Proceedings Law* § 1304, "[w]here a loan is a home loan for the borrower's principal residence, the mortgage creditor contemplating a mortgage foreclosure action is required pursuant to *Real Property Actions and Proceedings Law* § 1304, to serve the borrower with notice of his or her default in a specified form at least 90 days prior to commencement of the action*." HSBC Bank,*

USA, N.A., v. Shah, 185 AD3d 794, 795-796 (2d Dept 2020) *citing Bank of N.Y. Mellon v. Forman*, 176 AD3d 663, 665 (2d Dept 2019). "[P]roper service of RPAPL 1304 notice on the borrower or borrowers is a condition precedent to the commencement of a foreclosure action and the plaintiff has the burden of establishing satisfaction of the condition." *Bank of N.Y. Mellon v. Forman*, 176 AD3d at 666 *quoting Aurora Loan Servs., LLC v. Weisblum*, 85 AD3d 95, 106 (2d Dept 2011). Noncompliance with *Real Property Actions and Proceedings Law* § 1304 is a personal defense that cannot be raised by a "stranger to the note and underlying mortgage." *Deutsche Bank National Trust Company v. Mangi*, 222 AD3d 942 944 (2d Dept 2023) *quoting Bank of N.Y. Mellon Trust Co., N.A. v. Obadia*, 176 AD3d 1020, 1024 (2d Dept 2019)

In this matter Paula Sesay, the current Administrator of Defendant SESAY ESTATE is not a "borrower" as contemplated by *Real Property Actions and Proceedings Law* § 1304 and was not entitled to notice pursuant to § 1304. *See Charles Schwab Bank v. Winitch*, 179 AD3d 1103 (2d Dept 2020); *See also U.S. Bank N. A. v. Lloyd-Lewis*, 205 AD3d 838 (2d Dept 2022). Further, as demonstrated by the Mortgage and HELOC in this matter, which are the subject of the foreclosure action, Paula Sesay was also not a signatory or guarantor on either of these agreements or notes. She is not named as a "borrower" in any of the mortgages or security instruments upon which Plaintiff is seeking foreclosure. It is clear from the face of the documents that the only two borrowers were Lyuba Sesay and Mohamed Lamin Sesay, both of whom were deceased before the commencement of the instant action and before the default alleged as to both the Mortgage and HELOC. Therefore, Paula Sesay as Administrator for the SESAY ESTATE as a stranger to the note and underlying mortgage cannot raise a defense of noncompliance with the requirements of *Real Property Actions and Proceedings Law §* 1304. The Court finds that under the contractual provisions of the underlying Mortgage, consistent with the requirements of *Real Property Actions and Proceedings Law* § 1304, the "applicable law," that the borrowers were deceased at the time that the notice of default would have been required to be sent and therefore Plaintiff was not required to serve Paula Sesay, as the eventual administrator, with notice as a precondition of commencement of the instant foreclosure. As such, Plaintiff has failed to raise a triable issue of fact as to the Plaintiff's compliance with the

contractual pre-conditions that would prevent this Court from granting plaintiff summary judgment.

Next, the Court finds the argument made by Defendant SESAY ESTATE that the default arises from interference of a third-party, specifically Kira Sesay, decedent's daughter is also unavailing. The mortgage and HELOC account history provided by Plaintiff in support of the instant motion demonstrate that the SESAY ESTATE was late in making the mortgage and HELOC payments for months prior to the death of Mohamed Lamin Sesay on August 25, 2023. According to Plaintiffs the date of default as to the consolidated mortgage was September 1, 2023, and as to the HELOC was July 1, 2023. Paula Sesay's argument that the SESAY ESTATE's default as to the subject mortgage and HELOC arose from the interference of Kira Sesay in Paula's attempt to sell the property in August 2024 is belied by the documentary evidence annexed to Plaintiff's motion. First, any actions of Kira Sesay allegedly interfering with the potential private sale of the property which Paula Sesay arranged in an attempt to satisfy the SESAY ESTATE's debts have been alleged to have begun in August 2024, which is almost a year after the default occurred as to the subject mortgage and HELOC. Further, the alleged conduct of Kira Sesay, including contacting the broker Paula Sesay hired as the SESAY ESTATE Administrator, preventing agents and purchasers from entering and "showing" the subject property and videoing the interactions to bully agents and prospective buyers is not causally related to the default. Additionally, the Court is sympathetic to the plight of Paula Sesay as the Administrator of the SESAY ESTATE, but the argument that the default as to the mortgage and HELOC "clearly stems from the deliberate interference of a third party" is not supported by any of the documents presented by Plaintiff in support of the instant motion or by any evidence provided by Defendant. Granting of summary judgment to the Plaintiff in this action does not penalize the SESAY ESTATE or negate the Estate or Administrator's efforts to satisfy the subject mortgage and HELOC. The Defendant through Paula Sesay has indicated to the undersigned that she has been provided the legal authority by Westchester Surrogate Court to sell the subject property. Nothing within this action prevents Paula Sesay from continuing to attempt to sell the subject property despite the instant foreclosure action or to seek additional court intervention

from Westchester Surrogate's Court to address the conduct of Kira Sesay in preventing Paula Sesay's exercise of her authority as Administrator in attempting to sell the property. The assertions made by Defendant as to the interference of Kira Sesay are not triable issues of fact that should result in denial of Plaintiff's summary judgment motion.

As such, Plaintiff's motion for summary judgment and order of reference is granted in its entirety.

In arriving at this decision the Court has reviewed, evaluated, and considered all of the issues framed by these motion papers and the failure of the Court to specifically mention any particular issue in this Decision and Order does not mean that it has not been considered by the Court in light of the appropriate legal authority.

Accordingly, it is hereby

ORDERED that the Motion for Summary Judgment, Default Judgment and Order of Reference filed by Plaintiff (Motion Seq. No. 1) is granted in its entirety; and it is further

ORDERED that the Proposed Order is conformed consistent with the instant Decision and Order.

ORDERED that Plaintiff is directed to appear on **May 14, 2025 at 10:00a.m**. unless a motion for Judgment of Foreclosure and Sale is filed and served through NYSCEF.

The foregoing constitutes the Decision and Order of this Court on Motion Seq. No. 1.

Dated: White Plains, New York
March 25, 2025

Hon. Elena Goldberg-Velazquez, J.S.C.

TO:

MICHELE K. JASPAN
FALCON RAPPAPORT & BERKMAN LLO
Attorneys for Plaintiff
(via NYSCEF)

DIANA DILEONRARDO, ESQ.
CONA ELDER LAW PLLC
Attorney for Defendant
(via NYSCEF)