

AUG 14 [REDACTED]

IAS
At an Part 12 of the Supreme Court
of the State of New York, held in
and for the County of Bronx, at the
Courthouse located at 851 Grand
Concourse, Bronx, NY 10451 on
the 21 day of July 20 [REDACTED]
August

PRESENT: HON. JOHN A. BARONE
JUSTICE, SUPREME COURT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
AURORA LOAN SERVICES, LLC

Plaintiff(s),

-against-

Index No [REDACTED]

[REDACTED] NEW YORK CITY
TRANSIT ADJUDICATION BUREAU; NEW
YORK CITY ENVIRONMENTAL CONTROL
BOARD; NEW YORK CITY PARKING
VIOLATIONS BUREAU;

Defendant(s).

-----X

ORDER DISMISSING COMPLAINT AND DISMISSING ACTION

Defendant [REDACTED], by her attorneys, Lanin Law P.C., having moved by order to show cause for an order to stay the foreclosure sale, accept late answer with counterclaims pursuant CPLR 3012 and 2004, and to vacate her default pursuant CPLR 5015, and for such other and further relief as this Court shall deem just and proper;

Now, upon reading and filing the defendant's motion, together with the supporting affirmation of Scott Lanin, Esq., dated [REDACTED] and the affidavit of defendant [REDACTED], dated [REDACTED] and upon the opposing affirmation of plaintiff's attorney, Margaret J. Cascino, Esq.,

dated [REDACTED] and the reply affirmation of Scott Lanin, Esq., and affidavit of [REDACTED], dated [REDACTED] in further support of defendant's motion, and the parties' attorneys having appeared on [REDACTED] and the Court having rendered a decision dated [REDACTED], a true copy of which is attached, and the Court hearing granted the motion and dismissed the action and hearing and directed plaintiff to settle an order;

Now, upon the motion of defendant [REDACTED], by her attorney, Lanin Law P.C., it is

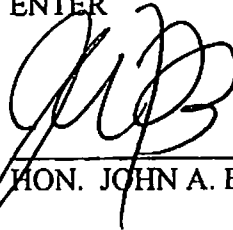
ORDERED, that the motion be and the same is hereby granted in all respects, and it is further,

ORDERED, that the defendant's default is hereby vacated and the action and the complaint are dismissed, and it is further,

ORDERED, that the County Clerk for the County of Bronx is directed to cancel the lis pendens dated [REDACTED] and file this order in the public record and, it is further,

ORDERED, that the judgment dated September 15, [REDACTED] is hereby vacated.

ENTER



HON. JOHN A. BARONE, J.S.C.

PART 12

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: _____ X

AURORA LOAN SERVICES, LLC,

-against-

_____ et al.

Case Disposed X
Settle Order X
Schedule Appearance □

Index No. _____

Hon. JOHN A. BARONE,

Justice.

The following papers numbered 1 to 23 were read on this motion TRO noticed on JANUARY 31, _____ and duly submitted as No. 2 on the motion calendar of NOVEMBER 14, _____ X

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	1-11	
Answering Affidavit and Exhibits	12-20	
Replying Affidavit and Exhibits	21-23	
_____ Affidavits and Exhibits		
Memoranda of Law		

Upon the foregoing papers this motion by defendant _____ for an order staying and enjoining the foreclosure sale scheduled to be held herein on or after January 24, _____ with respect to the subject real property located at _____; temporarily restraining and enjoining plaintiff and its successors, officers, directors, employees, representatives, attorneys, agents and assigns as well as the court appointed referee from selling, transferring, hypothecating, pledging, assigning, encumbering or otherwise disposing of, or making any attempt to take possession of, any part of the property at issue; pursuant to CPLR 3012 and 2004, compelling acceptance of movant's late answer with counterclaims filed on November 4, _____; and pursuant to CPLR 5015, vacating movant's default is granted in its entirety.

Between June 13, _____ and August 15, _____, movant sent plaintiff four Western Union payments in the total amount of \$16,690.96 after a representative had orally assured her that upon receipt of same, the foreclosure action would end and her mortgage loan would be reinstated. See the affidavit in support of _____ and Exhibit 8 annexed thereto.

"A mortgagee may waive a default by agreement ... even after acceleration and commencement of the foreclosure proceeding" and if it does waive a default without agreement, the lender must commence a new action. See *Federal National Mortgage Association v. Miller*, 123 Misc2d 431 (Sup. Ct. Nassau Cty. 1984).

An oral waiver and agreement to permit a reinstatement by the foreclosing mortgagee must be sustained, notwithstanding that the mortgage required all changes to be in writing. See *Nassau Trust Company v. Montrose Concrete Products*, 56 NY2d 175 (1982). The Court of Appeals held that an estoppel or waiver "is imposed by law in the interest of fairness to prevent the enforcement of rights which would work fraud or injustice upon the person against whom enforcement is sought and who, in justifiable reliance upon the opposing party's words or conduct, has been misled into acting upon the belief that such enforcement would not be sought [citation omitted]. While estoppel requires detriment to the party claiming to have been misled, waiver requires no more than the voluntary and intentional abandonment of a known right which, but for the waiver, would have been enforceable." *Id* at 184. In dicta, the Court of Appeals added that "[t]he statute of frauds was not intended to offer an asylum of escape from that fundamental principal of justice." *Id* at 185-186.

Accordingly, the action is dismissed. See *Myung Chun v. North American Mortgage Co.*, 285 AD2d 42 (1st Dept. 2001); see also *European American Bank v. Wemmick*, 102 AD2d 905 (2nd Dept. 1992) (defense of equitable estoppel).

Settle Order on Notice.

Dated: 8/12/12 _____

Hon. _____

JOHN A. BARONE, J.S.C.

Motion is Respectfully Referred to:

Justice:

Dated: