

**IN THE COURT OF COMMON PLEAS OF
NORTHAMPTON COUNTY, PENNSYLVANIA
CIVIL ACTION**

NEXT GENERATION TS FBO)	
GUY FERRAILOLO IRA)	
ACCOUNT NO. 2709,)	No. C-48-CV-2015-10205
Plaintiff)	
)	
v.)	
)	
TERREY PROPERTY)	
MANAGEMENT CO.,)	
Defendant)	

ORDER OF COURT

AND NOW, this 1st day of March, 2016, "Defendant's Preliminary Objections to Plaintiff's Complaint," filed on December 16, 2015, are hereby **SUSTAINED**. Plaintiff's Complaint is hereby **DISMISSED**. Plaintiff is granted leave to file an amended complaint within twenty (20) days.

STATEMENT OF REASONS

Plaintiff commenced this mortgage foreclosure action on October 29, 2015, by filing a Complaint alleging that Plaintiff is the mortgagee and Defendant is the mortgagor with regard to a mortgage dated December 6, 2013, and recorded in the Northampton County Recorder of Deeds' Office, in

Book 2013-1, at Page 330189. (Compl. ¶ 2.) The mortgage secures a note payable from Defendant to Plaintiff in the principal amount of \$70,000.00. (*Id.* ¶ 4.) The property subject to the mortgage is located at 427 W. Berwick Street, Easton, Northampton County, Pennsylvania. (*Id.* ¶ 5.) Defendant is the owner of the mortgaged property by way of a deed dated November 21, 2013, and recorded in the Northampton County Recorder of Deeds' Office, in Book 2013-1, at Page 330183. (*Id.* ¶¶ 5-6.) Defendant is a Pennsylvania corporation with a principal place of business located at 739 N. New Street #1, Bethlehem, Northampton County, Pennsylvania. (*Id.* ¶ 3.) Plaintiff alleges that the mortgage is in default and that the default has not been cured. (*Id.* ¶¶ 7-8.)

On December 16, 2015, Defendant filed the instant Preliminary Objections. The parties have filed briefs, and the matter is ready for disposition.

Defendant asserts three objections. First, Defendant argues that Plaintiff lacks standing and/or is not the real party in interest in this matter.

Pennsylvania Rule of Civil Procedure 2002 provides, “[e]xcept as otherwise provided . . . all actions shall be prosecuted by and in the name of the real party in interest” Pa.R.C.P. 2002(a); *see also J.P. Morgan Chase Bank, N.A. v. Murray*, 63 A.3d 1258, 1258 (Pa. Super. 2013) (finding a debtor’s claim that appellee bank was not a real party in interest to bring foreclosure action was a challenge to appellee’s standing). “[A] real party in interest is a [p]erson who will be entitled to benefits of an action if successful. . . . [A] party is a real party in interest if it has the legal right under the applicable substantive law to enforce the claim in question.” *U.S. Bank, N.A. v. Mallory*, 982 A.2d 986,

993–994 (Pa. Super. 2009) (citation and quotation marks omitted; some brackets in original).

In a mortgage foreclosure action, the mortgagee is the real party in interest. See *Wells Fargo Bank, N.A. v. Lupori*, 8 A.3d 919, 922 n.3 (Pa. Super. 2010).

CitiMortgage, Inc. v. Barbezat, No. 536 MDA 2014, 2016 WL 99772 at *2 (Pa. Super. Jan. 7, 2016).

Here, the mortgage states that the mortgagee is “Next Generation T.S., FBO Guy Ferraiolo IRA Account # [REDACTED].”¹ (Prelim. Objections ¶ 6, Ex. A.) This appears to be the same entity named as the plaintiff in the caption, except that in the caption the “T.S.” is stated as “TS” and the redacted account number is supplied as 2709. However, Defendant points out that Plaintiff alleges that it is a limited liability company operating under the laws of New Jersey. (See Compl. ¶ 1.) Defendant argues that “[t]here is no indication in the [m]ortgage that the mortgagee is a [New Jersey] limited liability company known as Next Generation TS.” (Def.’s Br. at 3.) While the Court agrees with Defendant that the mortgage makes no mention of a New Jersey limited liability company, the Court does not agree with Defendant’s argument that “the mortgagee on the [m]ortgage, and hence the real party in interest, is Next Generation T.S., FBO Guy Ferraiolo IRA Account # [REDACTED].” (Def.’s Br. at 3.) This is because while Defendant reads the

¹ “[A] court may take judicial notice of public documents in ruling on a preliminary objection in the nature of a demurrer.” *Solomon v. U.S. Healthcare Sys. of Pa., Inc.*, 797 A.2d 346, 352 (Pa. Commw. 2002). Although Defendant does not specify the ground for its first objection, because Defendant argues that Plaintiff’s Complaint fails to conform to Rule 2002, its first objection appears to be grounded upon Rule 1028(a)(2). The Court sees no reason why the rationale of *Solomon* should not apply to an objection based upon that rule.

mortgage in a way that suggests that the mortgage was granted to "Next Generation T.S., FBO Guy Ferraiolo IRA Account # [REDACTED]," the Court reads the mortgage such that the mortgage was granted to "Next Generation T.S." and was granted to Next Generation T.S. acting in its capacity as a beneficial representative of Guy Ferraiolo IRA Account # [REDACTED]. Thus, by the Court's reading, the mortgagor with regard to the instant mortgage is Next Generation T.S.

That having been determined, the verification attached to the Complaint is signed by a "managing member of Next Generation TS, LLC." Thus, two entities are identified in Plaintiff's Complaint, Next Generation TS and Next Generation TS, LLC. There is no mention of Next Generation "T.S.," the mortgagor. Further, pursuant to New Jersey law, "[t]he name of a limited liability company shall contain the words 'limited liability company' or the abbreviation 'L.L.C.' or 'LLC'." N.J. STAT. ANN. § 42:2C-8. Accordingly, the Court cannot assume that Next Generation, TS and Next Generation TS, LLC are the same entities and that either is Next Generation, T.S. In fact, based upon the caption, paragraph one of the Complaint, and the verification attached to the Complaint, the Court cannot say, for certain, who the actual Plaintiff is. Given the verification and paragraph one, the Court must conclude that the plaintiff is Next Generation TS, LLC, an entity not named in the mortgage and that is not Next Generation "T.S.," the

mortgagee. Accordingly, Defendant's first objection will be sustained, and Plaintiff's Complaint will be dismissed.

In light of the Court's disposition of the first objection, it need not address Defendant's remaining objections.

BY THE COURT:

/s/ Anthony S. Beltrami
ANTHONY S. BELTRAMI, J.