

**U.S. Bank Trust N.A. v Adames**

2024 NY Slip Op 31293(U)

April 4, 2024

Supreme Court, Nassau County

Docket Number: Index No. 613091/2022

Judge: Jeffrey A. Goodstein

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT: STATE OF NEW YORK  
COUNTY OF NASSAU

PRESENT:

HON. JEFFREY A. GOODSTEIN,  
A.J.S.C.

PART 31

U.S. BANK TRUST NATIONAL ASSOCIATION,  
AS TRUSTEE OF FW-BKPL SERIES I TRUST,

Index No. 613091/2022

Plaintiff,

Sequence No.: 001 & 002

- against -

DECISION & ORDER

ADRIANO ADAMES A/K/A ADRIANO D. ADAMES;  
NEW YORK STATE DEPARTMENT OF TAXATION  
AND FINANCE; SECRETARY OF HOUSING AND  
URBAN DEVELOPMENT; "JOHN DOE" AND  
"JANE DOE,"

Defendants.

The following papers were read on this motion:

Notice of Motion (Motion Sequence 1), Proposed Order, Statement of Material Facts, Affidavit and Affirmation in Support, and Exhibits.....	1
Notice of Cross-Motion (Motion Sequence 2), Statement of Material Facts, Memorandum in Opposition (Motion Sequence 1) and in Support of Cross-Motion, and Exhibits.....	2
Reply Affirmation.....	3

U.S. Bank Trust National Association, as Trustee Of FW-BKPL Series I Trust's ("Plaintiff") moves by Notice of Motion seeking an Order: (1) granting Plaintiff summary judgment against Adriano Adames A/K/A Adriano D. Adames ("Defendant"), (2) declaring all non-appearing and non-answering defendants in default, (3) striking the affirmative defenses of Defendant, (4) appointing a Referee to compute the amount due to Plaintiff, and (5) amending the caption. Defendant cross-moves seeking summary judgment dismissing Plaintiff's Complaint. The Plaintiff's motion and Defendant's cross-motion are consolidated for disposition and determined as set forth hereinafter.

### RELEVANT FACTS AND PROCEDURAL HISTORY

This is an action to foreclose a mortgage encumbering a property located at 99 Shonnard Avenue, Freeport, New York, County of Nassau ("the premises"). On February 22, 2007, Defendant executed a note and mortgage on the premises in the amount of \$315,000. On December 12, 2012, upon Defendant's default of the mortgage, Nationstar Mortgage, LLC<sup>1</sup> commenced a foreclosure action against Defendant, entitled *Nationstar Mortgage, LLC v. Adriano Adames, "John Doe #1-5" and "Jane Doe # 1-5", Index Number 000201/2013* ("2013 action"). On December 18, 2019, Plaintiff and Defendant executed a loan modification agreement ("loan modification"). Pursuant to the loan modification, the principal balance of the mortgage was increased to \$565,529.00 and the term of the note was extended to January 1, 2060. Thereafter, Plaintiff moved to discontinue the 2013 action. On July 7, 2020, Plaintiff's application to discontinue the 2013 action was granted. Thereafter, Defendant defaulted on the terms of the loan modification.

On September 29, 2022, Plaintiff commenced this action against Defendant by the filing of a Summons and Complaint. On February 23, 2023, Defendant answered. On August 1, 2023, Plaintiff moved for an Order, seeking summary judgment against Plaintiff, among other things. On October 17, 2023, Defendant cross-moved for an Order granting Defendant summary judgment dismissing Plaintiff's Complaint on the grounds that the instant action is time-barred, as the 2013 action accelerated the debt owed to Plaintiff and the six-year statute of limitations for foreclosure actions expired in 2019. On October 25, 2023, Plaintiff submitted Opposition.

### ANALYSIS

#### Defendant's Cross-Motion

"Pursuant to CPLR §213(4), an action to foreclose a mortgage is subject to a six-year statute of limitations. Even if the mortgage is payable in installments, once a mortgage debt is accelerated, the entire

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<sup>1</sup>Nationstar Mortgage, LLC is Plaintiff's predecessor in interest to the subject mortgage.

amount is due and payable, and the statute of limitations begins to run on the entire debt. Acceleration occurs, *inter alia*, by the commencement of a foreclosure action wherein the plaintiff elects in the complaint to call due the entire amount secured by the mortgage" (*GMAT Legal Title Trust 2014-1 v Kator*, 213 AD3d 915 [2d Dept 2023] [internal citations and quotations omitted]).

Moreover, "General Obligations Law § 17-101 effectively revives a time-barred claim when the debtor has signed a writing which validly acknowledges the debt. To constitute a valid acknowledgment, a writing must be signed and recognize an existing debt and must contain nothing inconsistent with an intention on the part of the debtor to pay it" (*Bayview Loan Servicing, LLC v. Paniagua*, 207 AD3d 691, 693 [2d Dept 2022]).

Defendant argues that the 2013 action accelerated the mortgage, and the six-year statute of limitations to commence a foreclosure action has expired, warranting a dismissal of the instant action pursuant to the Foreclosure Abuse Prevention Act ("FAPA"). Defendant further argues that the statute of limitations expired on January 7, 2019, as there was no signed agreement between Plaintiff and Defendant extending or waiving the statute of limitations.

In Opposition, Plaintiff argues that Defendant's contention that the statute of limitations has expired is without merit. Plaintiff argues that the loan modification executed by Defendant in 2019 extended the statute of limitations. Plaintiff further argues that Defendant specifically acknowledged and reaffirmed the note and mortgage executed in 2007 and subsequently made payments until October 2020. Based on the foregoing, Plaintiff argues that Defendant's motion should be denied.

Here, contrary to Defendant's contentions the loan modification constituted a reaffirmation of the debt and thus renewed the statute of limitations rendering the instant action timely (see *Deutsche Bank National Trust Company v. MacPherson*, 200 AD3d 647 [2d Dept 2021]). The loan modification is a clear expressed promise by Defendant to pay the mortgage debt.

Accordingly, it is hereby

ORDERED, that Defendant's motion seeking summary judgment dismissing Plaintiff's Complaint is DENIED.

Plaintiff's Motion Sequence 1

Summary judgment is drastic relief which should only be granted where there are no triable issues of fact (see *114 Woodbury Realty, LLC v. 10 Bethpage Rd., LLC*, 178 AD3d 757, 759 [2d Dept 2019]). The plaintiff has the burden of establishing, by evidence in admissible form, its *prima facie* entitlement to judgment as a matter of law (see *US Bank N.A. v. Hunte*, 176 AD3d 894 [2d Dept 2019]). Once the movant has demonstrated a *prima facie* showing of entitlement to judgment, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action (see *Zuckerman v. New York*, 49 NY2d 557 [1980]). "Only the existence of a bona fide issue of fact and not one based on conclusory or irrelevant allegations will suffice to defeat a summary judgment motion." (*Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223 [1978]). To establish a *prima facie* entitlement to judgment as a matter of law in a foreclosure action, a plaintiff must produce the mortgage, the unpaid note, and evidence of the default (see *Bank of N.Y. Mellon v Pigott*, 200 AD3d 633 [2d Dept 2021]).

Here, Plaintiff submits, among other things, a copy of the Note, a copy of the Mortgage, a copy of the loan modification, and evidence of the Defendant's default. Plaintiff also submits the affidavit of Allison Levaugh, the asset manager of SN Servicing Corporation, servicer for Plaintiff, as well as Plaintiff's business records exhibiting the amount due to Plaintiff by Defendant.

In Opposition, Defendant has failed to raise a triable issue of fact, as he has failed to raise arguments in opposition to Plaintiff's motion for summary judgment or in support of his affirmative defenses. Therefore, Defendant's affirmative defenses are deemed abandoned (see *114 Woodbury Realty, LLC v. 10 Bethpage Rd., LLC*, 178 AD3d 757 [2d Dept 2019] ; *New York Commercial Bank v. Bank of J. Realty F Rockaway, Ltd.*, 108 AD3d 756 [2d Dept 2013]).

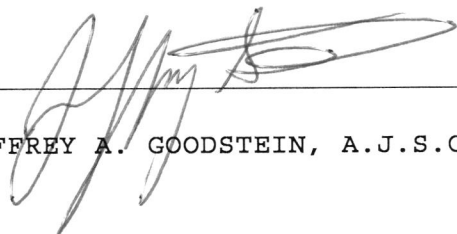
Accordingly, it is hereby,

ORDERED, that Defendant's motion is DENIED in its entirety; and it is further

ORDERED, that Plaintiff's motion is GRANTED in its entirety. Plaintiff's Proposed Order is executed simultaneously herewith. This shall constitute the Decision and Order of the Court.

DATED: Mineola, New York  
April 4, 2024

ENTER:



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HON. JEFFREY A. GOODSTEIN, A.J.S.C.