U.S. Bank N.A. v Gordon
2026 NY Slip Op 30675(U)
January 23, 2026
Supreme Court, Kings County
Docket Number: Index No. 512178/2018
Judge: Cenceria P. Edwards
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At an IAS Term, Part FRP-1 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 23rd day of January, 2026.

P R E S E N T:

HON. CENCERIA P. EDWARDS,
Justice.

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U.S. BANK NATIONAL ASSOCIATION,

Plaintiff,

- against - Index No. 512178/2018

ELSIE M. GORDON; PAULINE A. BURKE; ASSOCIATES HOME EQUITY SERVICES, INC.;

"JOHN DOE #1" through "John Doe #12," the last twelve names being fictitious and unknown to plaintiff, the persons or parties intended being the tenants, occupants, persons or corporations, if any, having or claiming an interest in or lien upon the premises, described in the complaint,

Defendants.

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The following papers read herein:	NYSCEF and Hard Copy Doc Nos.
Notice of Motion/Order to Show Cause/Cross Motion and Affidavits (Affirmations)	68-71, 73-91 1-3
Opposing Affidavits (Affirmations)	1-3 93-97
Reply Affidavits (Affirmations)	93-97

Upon the foregoing papers in this action to foreclose a mortgage encumbering the property, a two-family residence at 21 Turner Place in Brooklyn (Block 5341, Lot 30) (Property), plaintiff U.S. Bank National Association (US Bank or Plaintiff) moves (in motion sequence [mot. seq.] three) for an order: (1) granting it summary judgment as against defendant Elsie M. Gordon (Gordon or Defendant), pursuant to CPLRE 3212, and

striking Gordon's amended answer to the complaint; (2) dismissing Gordon's affirmative defenses and counterclaims with prejudice; (3) appointing a referee to compute the amounts due to Plaintiff and determine whether the Property may be sold in parcels and make his/her computation and report with all convenient speed, pursuant to RPAPL § 1321; (4) granting it a default judgment against all non-appearing and non-answering defendants, pursuant to CPLR 3215; (5) amending the caption to substitute the names of Ano Burke, Junior Charles, Richard Smith and Thelma Vaughn in place and instead of the John Doe defendants; and (6) declaring that the lien held by the defendant Associates Home Equity Services, Inc. (Associates) to be invalid and extinguished, pursuant to RPAPL Article 15 (NYSCEF Doc No. 68).

Defendant Gordon cross-moves (in mot. seq. four) for an order: (1) granting her summary judgment dismissing the complaint with prejudice as time-barred, pursuant to CPLR 213 (4) and CPLR 3212; (2) dismissing this action due to US Bank's failure to strictly comply with RPAPL §§ 1303, 1304 and 1306 and the default notice provision in the mortgage; (3) declaring that the mortgage is invalid, cancelled and discharged, pursuant to RPAPL § 1501 (4); and (4) striking US Bank's affirmative defenses pled in opposition to her counterclaims, pursuant to CPLR 3211 (b).

Background

On June 13, 2018, *seven years and one month after* US Bank commenced a prior foreclosure action on or about April 25, 2011 (2011 Foreclosure Action),[1] which it voluntarily discontinued by a July 20, 2017, order entered on August 1, 2017, US Bank commenced this action to foreclose the same mortgage by filing a summons, an unverified complaint and a notice of pendency against the Property (NYSCEF Doc Nos. 1-2).

US Bank's 2018 complaint alleges that on December 11, 2001, Defendant Gordon and defendant Pauline A. Burke (Burke) executed and delivered a note in the principal amount of $288,970.00, which was secured by a mortgage encumbering the Property (Complaint at ¶¶ 2, 4 and 5). The complaint alleges that "Defendants failed to comply with the conditions of the note and mortgage by failing to make the payment that became due on October 01, 2010 and each subsequent payment thereafter" and "by reason of such defaults, Plaintiff hereby declares the balance of the principal indebtedness immediately due and payable" (*id.* at ¶¶ 9-10). The complaint vaguely alleges that "no other proceedings have been had for the recovery of the mortgage indebtedness or if any such action is pending, a final judgment was not rendered in favor of Plaintiff and such action is intended to be discontinued" (*id.* at ¶ 14). The complaint asserts a cause of action against Gordon and Burke to foreclose the mortgage and a second cause of action to bar Associates from any right, title or interest in the Property, pursuant to RPAPL Article 15 (*id.* at ¶¶ 20-27).

[1] *See U.S. Bank National Association v Burke, et al.*, Kings County index No. 9388/2011.

Notably, the complaint annexed a copy of the December 11, 2001, note in favor of Alliance Mortgage Banking, Corp. (Alliance), the lender, which has an endorsement from Alliance to the order of Firstar Bank, N.A. (Firstar) and a blank endorsement from Firstar on the bottom of the second page (*id.* at 10-11).

On December 20, 2018, Defendant Gordon answered the complaint, denied the material allegations therein and asserted affirmative defenses, including failure to comply with RPAPL §§ 1304 and 1306 (NYSCEF Doc No. 31).

On August 16, 2019, US Bank moved (in mot. seq. one) for summary judgment against Defendant Gordon and striking her answer, an order of reference, a default judgment against the non-answering defendants, amending the caption and deeming US Bank's lien superior to the lien held by defendant Associates (NYSCEF Doc No. 33). Defendant Gordon opposed and cross-moved (in mot. seq. two) for an order, pursuant to CPLR 3025 (b), granting her leave to amend her answer to assert additional defenses, including the statute of limitations, and two counterclaims to quiet title to the Property and for an award of attorneys' fees, pursuant to RPL § 282 (NYSCEF Doc No. 59 at 2-272). By a February 18, 2020, decision and order, the court (Dear, J.) granted Defendant Gordon's cross-motion, accepted Gordon's proposed amended answer (*id.* at 20-29), deemed the amended answer served and denied US Bank's motion as moot (*id.* at 1).

On October 8, 2020, US Bank replied to Defendant Gordon's counterclaims, denied the material allegations therein and asserted the following affirmative defenses: (1) breach of contract; (2) failure to state a cause of action; (3) defenses are founded upon

documentary evidence; (4) failure to plead fraud with particularity; (5) the counterclaims are frivolous; (6) "Plaintiff is a good faith encumbrancer for value without knowledge of any purported fraud . . ."; (7) "Plaintiff is a good faith purchaser of the note and mortgage and was unaware of the defendant's defenses and claims"; (8) "Plaintiff did not owe the Defendant any of the duties alleged in the Counterclaims"; (9) the Statute of Frauds; (10) "the applicable Statutes of Limitations pertaining to the counterclaims have expired"; (11) Defendant lacks standing; (12) unclean hands; (13) laches; and (14) failure to mitigate damages (NYSCEF Doc No. 60).

US Bank's Instant Summary Judgment Motion

On June 10, 2021, US Bank, once again, moved for an order granting it summary judgment as against Defendant Gordon and dismissing her amended answer and counterclaims, an order of reference, a default judgment as against the non-answering defendants, amending the caption and declaring that the lien held by the defendant Associates to be invalid, pursuant to RPAPL Article 15 (NYSCEF Doc No. 68).

US Bank's second summary judgment motion is supported by an attorney affirmation erroneously asserting that "[n]o previous application for Motion for Summary Judgment has been made" (NYSCEF Doc No. 34 at ¶ 20). While US Bank's counsel also asserted that each of Defendant Gordon's affirmative defenses and counterclaims lack merit, counsel only addressed the merits of Gordon's affirmative defense regarding US Bank's compliance with RPAPL §§ 1304 and 1306, and failed to address, or even mention, Defendant Gordon's statute of limitations defense or her counterclaims (*id.* at ¶¶ 33-39).

US Bank also submitted a moving affidavit from Barrett J. Ludwiczak, an officer of US Bank, who attested that "Borrowers breached the obligations owed Plaintiff by failing to tender the installment which became due and payable on October 01, 2010 . . ." and that "[t]he loan records reflect that U.S. Bank followed its standard practices with respect to the mailing of default notices[,]" which were mailed on December 8, 2010, by first class mail (NYSCEF Doc No. 47 at ¶¶ 9 and 12). Ludwiczak failed to mention that US Bank subsequently commenced the 2011 Foreclosure Action on or about April 25, 2011.

US Bank also submitted an affidavit from Erin Matlock (Matlock), an officer of US Bank, who attested to Defendants' execution and delivery of the note and mortgage, their alleged payment default on October 1, 2010, a December 8, 2010, default notice sent to the borrowers, the mailing of 90-day notices to Defendants in March 2017, and US Bank's compliance with RPAPL §1306, based on her review of US Bank's business records (NYSCEF Doc No. 84 at ¶¶ 5-17). Matlock, like Ludwiczak, fails to mention US Bank's commencement of the 2011 Foreclosure Action.

Gordon's Opposition and Cross-Motion

On or about February 20, 2023, Gordon opposed US Bank's second summary judgment motion and cross-moved for an order granting her summary judgment dismissing the complaint with prejudice as time-barred, pursuant to CPLR 213 (4) and CPLR 3212, and/or based on US Bank's failure to strictly comply with RPAPL §§ 1303, 1304 and 1306 and invalidating, cancelling and discharging the mortgage, pursuant to RPAPL § 1504 (4).

Defense counsel submitted an affirmation asserting that US Bank commenced the 2011 Foreclosure Action as against Defendant Gordon and her daughter, Defendant Burke, on or about April 25, 2011, and annexed a copy of US Bank's 2011 complaint, in which US Bank alleged that Defendants failed to pay the mortgage on October 1, 2010, and thus, "Plaintiff has elected and hereby elects to declare immediately due and payable the entire unpaid balance of principal" (Pyronneau Affirmation at ¶¶ 9-11 and Ex. 4 at ¶¶ 7 and 10). Defense counsel recounted that US Bank subsequently moved to voluntarily discontinue the 2011 Foreclosure Action and by a July 20, 2017, order, the court (Dear, J.) granted US Bank's motion and discontinued the 2011 Foreclosure Action (*id.* at ¶ 16 and Ex. 6).

Defense counsel asserted that "it is undisputed that the case at bar was commenced more than six (6) years after the cause of action for foreclosure first accrued (i.e., through acceleration of the subject mortgage debt in the 2011 Action)" (*id.* at ¶ 25). Defense counsel asserted that the Legislature's passage of the Foreclosure Abuse Prevention Act (FAPA) on December 30, 2022, during the pendency of this action, "rejected the finding of New York's Court of Appeals in *Freedom Mortgage Corp. v Engel*, 37 N.Y.3d 1 (2021) and imposed a number of amendments . . . specifically prohibiting lenders' ability of unilateral de-acceleration of the debt[,]" including CPLR 3217 (e) (*id.* at ¶¶ 26-27). Defense counsel asserts that under CPLR 3217 (e), US Bank's voluntary discontinuance of the 2011 Foreclosure Action did not de-accelerate the mortgage debt (*id.* at ¶¶ 27-28).

Defendant Gordon submitted an affidavit in support of her summary judgment cross-motion attesting that US Bank previously commenced the 2011 Foreclosure Action,

which US Bank voluntarily discontinued, after which it commenced this action "over seven years after it had commenced the 2011 foreclosure" (Gordon Affidavit at ¶¶ 13 and 17).

US Bank's Opposition and Reply

US Bank, in opposition to Gordon's cross-motion and in further support of its motion, submitted an attorney affirmation, the majority of which addresses US Bank's entitled to summary judgment based on Matlock's affidavit testimony and US Bank's compliance with the statutory pre-foreclosure notices and RPAPL §§ 1303, 1304 and 1306 (NYSCEF Doc No. 93 at ¶¶ 4-57).

Regarding the timeliness of this action, US Bank's counsel seemingly argues that US Bank may have lacked standing to commence the 2011 Foreclosure Action, since US Bank's 2011 complaint failed to annex a copy of the note (*id.* at ¶¶ 63-64). US Bank's counsel further argues that "even assuming *arguendo*, that the mortgage was accelerated upon the commencement of the 2011 Action, CPLR 213 (4) is inapplicable to the case at bar since Plaintiff is acti[ng] as an agent of the United States of America by and through the Department of Housing and Urban Development ('HUD')" (*id.* at ¶ 66). US Bank submits an affidavit from Shannon B. Bevins, an officer of US Bank, who attests, *for the first time on reply*, that "Plaintiff's Mortgage is funded/insured by the FHA/HUD" and "HUD is the beneficiary of the underlying loan" as reflected by the note and mortgage (NYSCEF Doc No. 95 at ¶¶ 3-5). Without citing any particular guidelines, Bevins attests that "pursuant to HUD guidelines, once U.S. Bank completes the foreclosure process . . .

HUS then sells the foreclosed property without the assistance of U.S. Bank" and thus, "HUS is the ultimate beneficiary of the completed foreclosure . . ." (*id.* at ¶ 10).

Discussion

Summary judgment is a drastic remedy that deprives a litigant of his or her day in court and should, thus, only be employed when there is no doubt as to the absence of triable issues of material fact (*Kolivas v Kirchoff*, 14 AD3d 493 [2d Dept 2005]; *see also Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). "The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment, as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Manicone v City of New York*, 75 AD3d 535, 537 [2d Dept 2010], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *see also Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). If it is determined that the movant has made a prima facie showing of entitlement to summary judgment, "the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (*Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493 [2d Dept 1989]).

(1)

An action to foreclose a mortgage is subject to a six-year statute of limitation (CPLR 213 [4]; *MTGLQ Invs., L.P. v Singh*, 216 AD3d 1087, 1088 [2d Dept 2023]). "The statute of limitations in a mortgage foreclosure action begins to run six years from the due date for

each unpaid installment or the time the mortgagee is entitled to demand full payment, or *when the mortgage debt has been accelerated*" (*Zinker v Makler*, 298 AD2d 516, 517 [2d Dept 2002] [emphasis added]). "[E]ven if a mortgage is payable in installments, once a mortgage debt is accelerated, the entire amount is due and the Statute of Limitations begins to run on the entire debt" (*BHMPW Funding, LLC v Lloyd-Lewis*, 194 AD3d 780, 782 [2d Dept 2021]; *Nationstar Mortg., LLC v Weisblum*, 143 AD3d 866, 867 [2d Dept 2016]). "Acceleration occurs, inter alia, by the commencement of a foreclosure action wherein the holder of the note elects in the complaint to call due the entire amount secured by the mortgage" (*MTGLQ Invs., L.P. v Singh*, 216 AD3d 1087, 1088 [2d Dept 2023]). "A lender may revoke its election to accelerate the mortgage debt, but it must do so by an affirmative act of revocation occurring during the six-year statute of limitations period" (*Pennymac Corp. v Holcomb*, 198 AD3d 978, 980 [2d Dept 2021]).

FAPA, which was enacted in December 2022, during the pendency of this action, amended CPLR 3217 to add a new subsection (e), which provides that:

> "[i]n any action [to foreclose a mortgage], the voluntary discontinuance of such action, whether on motion, order, *stipulation* or by notice, *shall not,* in form or effect*, waive, postpone, cancel, toll, extend, revive or reset the limitations period* to commence an action and to interpose a claim, unless expressly prescribed by statute" (emphasis added).

Thus, under FAPA, the voluntary discontinuance of a prior foreclosure action does not de-accelerate the mortgage debt, or revive, or reset the statute of limitations, as a matter of law (*Deutsche Bank Nat'l Tr. Co. v Dagrin*, 233 AD3d 1065, 1067 [2d Dept 2024]; *97 Lyman*

Ave., LLC v MTGLQ Invs., L.P., 233 AD3d 1038, 1041 [2d Dept 2024]). FAPA was "intended to prevent lenders from using voluntary discontinuances to manipulate the statute of limitations and avoid the consequences of the time limits set by law" (*Wilmington Sav. Fund Soc'y, FSB as Tr. of Bosco Credit II Tr. Series 2010-1 v Sinclair*, 87 Misc 3d 813, 822 [Sup. Ct. Kings County 2025]).

Here, Defendant Gordon demonstrated, prima facie, that the six-year statute of limitations began to run on or about April 25, 2011, when US Bank commenced the 2011 Foreclosure Action and alleged in its 2011 complaint that it elected to call due the entire amount secured by the subject mortgage. Defendant Gordon demonstrated that the instant foreclosure action was not commenced by US Bank until June 13, 2018, *more than seven years after* US Bank's 2011 acceleration of the mortgage debt. Defendant Gordon thus satisfied her prima facie burden of establishing that this foreclosure action was untimely, warranting summary judgment dismissing the complaint. US Bank, in opposition, failed to raise an issue of fact as to whether the statute of limitations was tolled or was otherwise inapplicable.

US Banks' suggestion that the mortgage debt was not accelerated by its commencement of the 2011 Foreclosure Action based on its lack of standing is rejected. US Bank is estopped, as a matter of law, from arguing that it did not validly accelerate the mortgage debt when it commenced the 2011 Foreclosure Action, pursuant to CPLR 213 (4) (a), which provides:

> "[i]n any action on an instrument described under this subdivision, if the statute of limitations is raised as a defense, and if that defense is based on a claim that the instrument at issue was accelerated prior to, or by way of commencement of a prior action, *a plaintiff shall be estopped from asserting that the instrument was not validly accelerated, unless the prior action was dismissed based on an expressed judicial determination*, made upon a timely interposed defense, that the instrument was not validly accelerated" (emphasis added).

The Second Department has held that CPLR 213 (4) (a), which was enacted as part of FAPA, precludes a foreclosure plaintiff from asserting that the mortgage debt was not validly accelerated by the commencement of a prior foreclosure action based on a lack of standing if the prior action "was not dismissed based upon an expressed judicial determination that the instrument was not validly accelerated" (*Deutsche Bank Nat'l Tr. Co. v DiGiorgio*, 237 AD3d 899, 901 [2d Dept 2025]; *see also US Bank Tr., N.A. v Reizes*, 222 AD3d 907, 910 [2d Dept 2023]; *MTGLQ Invs., L.P. v Singh*, 216 AD3d 1087, 1088 [2d Dept 2023]). Because the 2011 Foreclosure Action was voluntarily dismissed, and there was no judicial determination in the 2011 Foreclosure Action regarding US bank's standing to foreclose, US Bank is now estopped from asserting that the mortgage debt was not validly accelerated by its commencement of the 2011 Foreclosure Action.

Equally unavailing is US Bank's contention that the six-year statute of limitation, set forth in CPLR 213 (4), does not apply to this foreclosure action because the subject mortgage loan is insured by HUD.

As a preliminary matter, in reply to Gordon's amended answer and counterclaims (NYSCEF Doc No. 60), which raised the statute of limitations and sought to quiet title to

the Property, US Bank failed to raise the defense that as assignee of an agency of the federal government, HUD, it was immune to the statute of limitations (*see*, *e.g.*, *Go Sweat, LLC v GRA Legal Title Tr. 2013-1, U.S. Bank, Nat'l Ass'n*, 225 AD3d 486, 487 [1st Dept 2024]).

US Bank's contention that the statute of limitations is inapplicable based on the fact that the mortgage loan is insured by HUD is rejected, as a matter of law. HUD is not a party to this action, and the record does not contain any information explaining the alleged insurance program or the extent of any liability that HUD may incur. Nor does the record show that HUD ever held the mortgage or had a right to foreclose it, regardless of whether it insured the loan (*Bank of Am., N.A. v Gulnick*, 170 AD3d 1365, 1367 [3d Dept 2019] [rejecting Plaintiff's claim that it was "immune from the statute of limitations imposed by state law" because it was acting as an agent of HUD]; *see also Nationstar Mortg., LLC v Scheinberg*, 216 AD3d 652, 654 [2d Dept 2023] [citing *Gulnick* with approval and holding that "(c)ontrary to the plaintiff's contention, it failed to establish that it was an assignee of a federal agency entitled to immunity from New York's statute of limitations"]).

Importantly, the Second Department has explicitly held that "[a] plaintiff seeking to foreclose a mortgage that was merely insured by a federal agency is not entitled to immunity" because "[a]llowing immunity in such instances would inappropriately expand its application and would be inconsistent with the purpose of 'allow[ing] the government to maintain belated actions to enforce public rights,' where the government never had the ability to maintain such an action" (*Bank of Am., N.A. v Reid*, 233 AD3d 38, 42 [2d Dept 2024]). In *Reid*, the Second Department characterized plaintiff's argument (the very same

argument asserted by US Bank here) as a "red herring" because "[t]he relevant distinction in this case is that between a loan that was merely *insured* by a federal agency and a loan that was *held* by a federal agency, such that the federal agency had a right to foreclose the mortgage, and then assigned to the plaintiff" (*id.* at 42). Because US Bank failed to demonstrate that the subject mortgage loan was previously *held* by HUD, such that HUD had a right to foreclose the mortgage, and subsequently assigned the mortgage to US Bank, immunity from the six-year statute of limitations is not applicable here.

Defendant Gordon has satisfied her burden of demonstrating that dismissal of this foreclosure action is warranted based on the expiration of the six-year statute of limitations. US Bank has failed to raise a triable issue of fact in opposition. Based on the foregoing, US Bank's summary judgment motion has been rendered moot.

(2)

"'Pursuant to RPAPL 1501 (4), a person having an estate or an interest in real property subject to a mortgage can seek to cancel and discharge that encumbrance where the period allowed by the applicable statute of limitations for the commencement of an action to foreclose the mortgage has expired, provided that the mortgagee or its successor was not in possession of the subject real property at the time the action to cancel and discharge the mortgage was commenced'" (*Cmty. Loan Servicing, LLC v Mendlovits*, 239 AD3d 591, 592 [2d Dept 2025], quoting *BH 263, LLC v Bayview Loan Servicing, LLC*, 175 AD3d 1375, 1376 [2d Dept 2019]).

There is no dispute that Defendant Gordon and her mother, Defendant Burke, are the record owners of the Property, as reflected in the May 3, 2000 deed recorded at Reel 4893, Page 2110 on the City Register's Automated City Register Information System (ACRIS).[2] Defendant Gordon demonstrated that US Bank accelerated the mortgage debt when it commenced the 2011 Foreclosure Action on or about April 25, 2011, and that the statute of limitations expired six years later, on or about April 25, 2017, prior to the commencement of this action on June 13, 2018. Gordon established that the commencement of a new action to foreclosure the subject mortgage would be time-barred, and thus, Gordon is entitled to summary judgment on her first counterclaim to quiet title to the Property, pursuant to RPAPL § 1501 (4). US Bank, in opposition, failed to raise a triable issue of fact.

Notably, Gordon failed to move for summary judgment on her second counterclaim seeking an award of attorneys' fees, pursuant to RPL § 282, which is the only outstanding claim or counterclaim remaining in this action. Accordingly, it is hereby

ORDERED that US Bank's summary judgment motion (mot. seq. three) is denied as moot; and it is further

ORDERED that Defendant Gordon's cross-motion (mot. seq. four) is granted and: (1) US Bank's complaint in this foreclosure action is dismissed with prejudice as time-

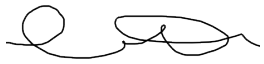
[2] This court takes judicial notice of the deed recorded on ACRIS (*LaSonde v Seabrook,* 89 AD3d 132, 137 [1st Dept 2011]; *Kingsbrook Jewish Med. Ctr. v Allstate Ins. Co.,* 61 AD3d 13, 19-20 [2d Dept 2009], *lv denied* 18 NY3d 911 [2012]).

barred by the six-year statute of limitations; (2) Gordon's counterclaim to quiet title to the Property, pursuant to RPAPL § 1501 (4), is granted; and (3) the Notice of Pendency that US Bank filed against the Property is canceled and discharged; and it is further

ORDERED that the subject mortgage recorded against the Property is hereby canceled and discharged, pursuant to RPAPL § 1501 (4), and a copy of this decision and order shall be filed with the New York City Department of Finance within 15 days after service of this decision and order with notice of entry thereof.

This constitutes the decision and order of the court.

E N T E R,



Hon. Cenceria P. Edwards, J. S. C., CPA