

U.S. Bank N.A. v McGown
2026 NY Slip Op 30962(U)
March 9, 2026
Supreme Court, Kings County
Docket Number: Index No. 4079/2008
Judge: Derefim B. Neckles
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At an IAS Term, Part FSMP, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 9th day of March 2026.

P R E S E N T:

HON. DEREKIM B. NECKLES,
J.S.C.

Index No.: 4079/2008

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U.S. BANK NATIONAL ASSOCIATION AS
TRUSTEE FOR DEUTSCHE ALT-A SECURITIES
MORTGAGE LOAN TRUST SERIES 2007-2,

Plaintiff,

DECISION AND ORDER

-against-

JAMES MCGOWN; A.M., GLEN K. WILLIAMS;
MANUFACTURERS AND TRADERS TRUST
COMPANY; NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD; NEW
YORK CITY TRANSIT ADJUDICATION
BUREAU; PEOPLE OF THE STATE OF NEW
YORK; THE PARK AVENUE BANK; "JANE DOE",
"JANE DOE", ALISON HARTFORD, ASHLYNN
MANNING, EARL DENNIS, EILEEN RYAN,
EMILY BOUBILAR, ESMAHAN SUCCAR, KATIE
KEY, MICHAEL PEREZ, ROBIN HENERSON,
SUMARTY SCHIFFER,

Defendant,

_____ X

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion:

Papers	NYSCEF DOC #
Motion (MS 13)	<u>109, 111</u>
Opposition	<u>124</u>
Reply	<u>133</u>
Cross (MS 14)	<u>126, 127</u>
Opp to Cross	<u>135</u>
Cross-Reply	<u>139</u>

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

The instant action was commenced in 2008 and all defendants defaulted in answering. An order of reference was granted in 2009. In 2014, Plaintiff moved to vacate the order of reference and for a new order to be signed upon updated papers. Defendant AM¹ cross-moved for dismissal of the action pursuant to CPLR 3215[c]. By order dated May 25, 2016, Plaintiff's motion was granted and defendant's cross-motion denied.

Thereafter, AM – by her mother, natural guardian, and court-appointed guardian (Amy Hicks) – moved for vacatur of the orders of reference and dismissal of the action as to AM as she was not served pursuant to CPLR 309[a]. Plaintiff cross-moved to 1) set aside the conveyance from McGown to his then-baby daughter AM or 2) amend the caption to *nunc pro tunc* to substitute Hicks in her representative capacity in place of AM or 3) drop AM as a Defendant and add Hicks in her representative capacity in place of a “Doe.” By order dated June 29, 2018, Plaintiff's second requested relief was granted by the Honorable Mark Partnow – Hicks was substituted for AM *nunc pro tunc* – and Hicks' motion was denied.

Upon Hicks' appeal, the Appellate Division, finding that AM was not properly served pursuant to CPLR 309, dismissed the case as to AM, and denied leave to substitute Hicks for AM.

Hicks and AM then moved for dismissal of the action in light of the Appellate Division's decision, arguing that AM is an indispensable party. Plaintiff cross-moved for leave to file a supplemental summons and amended complaint to add Hicks in her representative capacity, extending its time to serve Hicks, and allowing service upon her via certified mail to her counsel. Both motions were denied by Judge Partnow. Upon Plaintiff's motion to reargue, however, Plaintiff's time to serve AM pursuant to CPLR 309 was extended until one hundred and twenty days from the entry of the order in June 2023. While Plaintiff attempted to settle an amplified order setting forth the caption to use in the supplemental summons and amended complaint, it was not signed.

¹ Though at the time the record does not appear to reflect that AM was (and still is) a minor and the motion was filed in her (unabbreviated) name, the Court will follow the Appellate Division's lead and refer to her by her initials throughout.

Plaintiff then served a supplemental summons reflecting her initials rather than full name and a copy of the original 2008 complaint with her name redacted other than her initials. Per the affidavits of service, AM was served by substitute service upon her mother and Hicks was separately personally served in her representative capacity.

AM then moved for dismissal of the action on a variety of grounds. After opposition was filed, the motion was withdrawn.

Plaintiff now moves for an order declaring that Hicks has appeared in this action on behalf of AM and sufficiently represents her interests herein. In the alternative, Plaintiff seeks the appointment of a guardian ad litem to represent AM. AM opposes and cross-moves for dismissal, alleging that Plaintiff served the wrong summons and complaint and named AM rather than Hicks in her representative capacity. Plaintiff opposes.


Pursuant to CPLR 309[a], “[p]ersonal service upon an infant shall be made by personally serving the summons within the state upon a parent or any guardian or any person having legal custody ... If the infant is of the age of fourteen years or over, the summons shall also be personally served upon him within the state.” Put differently, service upon AM’s guardian (Hicks) and AM herself were both necessary (see, *Kolodzinski v Ferreiras*, 168 AD2d 431, 431-432 [2d Dept 1990]). Here, plaintiff did serve AM’s guardian and AM herself. Contrary to AM’s contentions, no support has been offered for the proposition that her guardian, rather than AM herself, should have been the named party.

Plaintiff previously sought leave to supplement the summons and amend the caption – but not the substance of the complaint – and for an extension of time to serve the amended papers upon Hicks in her representational capacity. Judge Partnow only granted the latter relief which would seemingly have required service of the original summons and complaint. Plaintiff’s issuance of a supplemental summons and striking of AM’s full name from the copy of the complaint was, however, not inappropriate under the circumstances. To the extent that AM asserts that the complaint includes no claims against her, that is inaccurate. Plaintiff states a claim for foreclosure and provides that AM was named as the deeded owner of the property-in-suit. The fact that no additional prayer for relief is directed at her personally is irrelevant and not atypical where the owner of the property is not also a borrower.

Accordingly, plaintiff's motion is granted to the extent that the Court finds that AM was served pursuant to CPLR 309[a] and that she has appeared in this action through her guardian and counsel. Therefore, there is no need to appoint a GAL. Defendant's cross-motion is denied.

This constitutes the decision and order of the Court.

ENTER.



Hon. Derefim B. Neckles AJSC

**Hon. Derefim B. Neckles
Supreme Court Justice**

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KINGS COUNTY CLERK
FILED