

**US Bank Natl. Assn. v Beymer**

2009 NY Slip Op 31917(U)

August 25, 2009

Supreme Court, New York County

Docket Number: 110513/08

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. EILEEN A. RAKOWER

PART \_\_\_\_\_

Index Number : 110513/2008  
US BANK NATIONAL ASSOCIATION

INDEX NO. \_\_\_\_\_

vs  
BEYMER, JOHN M.

MOTION DATE \_\_\_\_\_

Sequence Number : 001

MOTION SEQ. NO. \_\_\_\_\_

SUMMARY JUDGMENT

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED	
1	

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**FILED**  
AUG 26 2009  
COUNTY CLERK'S OFFICE  
NEW YORK

MOTION IS DECIDED IN ACCORDANCE WITH  
THE ACCOMPANYING MEMORANDUM DECISION.

Dated: 8/25/09

  
\_\_\_\_\_  
HON. EILEEN A. RAKOWER <sup>J.S.C.</sup>

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 5

-----X  
US BANK NATIONAL ASSOCIATION AS TRUSTEE  
FOR JPMMT 2006-A6  
3415 Vision Drive  
Columbus, OH 43219,

Plaintiff,

Index. No.  
110513/08

-against-

**DECISION  
and ORDER**

JOHN BEYMER, BARBARA BRUNO, BOARD OF  
MANAGERS OF 50 PINE STREET CONDOMINIUM,  
CUMIS INSURANCE SOCIETY INCEETC,  
JP MORGAN CHASE BANK NA, NEW YORK CITY  
ENVIRONMENTAL CONTROL BOARD, NEW YORK  
CITY PARKING VIOLATIONS BUREAU, NEW YORK  
CITY TRANSIT ADJUDICATION BUREAU, PEOPLE  
OF THE STATE OF NEW YORK,

Mot. Seq. 001

JOHN DOE (Said name being fictitious, it being the intention  
of plaintiff to designate any and all occupants of premises being  
foreclosed herein, and any parties, corporations or entities  
if any, having or claiming an interest or lien upon the mortgage  
premises),

**FILED**  
AUG 26 2009  
COUNTY CLERK'S OFFICE  
NEW YORK

Defendants.

-----X  
HON. EILEEN A. RAKOWER

Plaintiff US Bank National Association as Trustee for JPMMT 2006-A6 ("US Bank") brings this action to foreclose a mortgage lien on real property located at 50 Pine Street, Unit 12S in the State and County of New York. US Bank now moves for an Order of this Court (1) granting US Bank summary judgment; (2) amending the caption to add "JOHN DOE" JD #1 (tenant) as a party Defendant to the action in place of "John Doe" and amending the caption to reflect the same; and (3) dismissing the answers of defendants John Beymer and Barbara Bruno and directing that the answers be treated as a limited notice of appearance. No party opposes the instant motion.

The Bank submits the following: an affirmation of regularity; the affidavit of Cindy A Smith, Assistant Secretary of Chase Home Finance, LLC, the services of the loan; a copy of the mortgage note; a copy of a letter dated June 2, 2008 giving John M. Beymer an acceleration warning and notice of default; a copy of the recorded mortgage

\* 3 ]

and a copy of the recorded assignment of to US Bank; a copy of the notice of pendency; a copy of the required notice about the foreclosure process with the summons and complaint; the affidavits of service; and the Answer on behalf of both Barbara Bruno and John Beymer.

The proponent of a motion for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law. That party must produce sufficient evidence in admissible form to eliminate any material issue of fact from the case. Where the proponent makes such a showing, the burden shifts to the party opposing the motion to demonstrate by admissible evidence that a factual issue remains requiring the trier of fact to determine the issue. The affirmation of counsel alone is not sufficient to satisfy this requirement. (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]). In addition, bald, conclusory allegations, even if believable, are not enough. (*Ehrlich v. American Moninger Greenhouse Mfg. Corp.*, 26 N.Y.2d 255 [1970]). (*Edison Stone Corp. v. 42nd Street Development Corp.*, 145 A.D.2d 249, 251-252 [1st Dept. 1989]).

In mortgage foreclosure actions, it is well settled that a mortgagee makes a *prima facie* showing of entitlement to judgment as a matter of law when it “produce[s] the mortgage documents underlying the transaction and undisputed evidence of nonpayment (*Red Tulip, LLC v. Neiva*, 2007 NY Slip Op 6340, \*5 [1st Dept. 2007]) (citation omitted). Once a mortgagee fulfills its initial burden, it becomes incumbent on the party opposing summary judgment to come forward with competent evidence of any defenses to raise an issue of fact (*see Barcov Holding Corp. v. Bexin Realty Corp.*, 16 A.D.3d 282, 283 [1st Dept. 2005]).

Here, US Bank has made its *prima facie* showing of entitlement to summary judgment. US Bank has annexed copies of the mortgage documents underlying the subject property, and has submitted proof of nonpayment in the form of Cindy Smith’s Affidavit, which states that the “last payment made was applied to the monthly payment due the 1<sup>st</sup> day of March, 2008. As such the loan is now due for monthly payments commencing with the payment due on the 1<sup>st</sup> day of April, 2008.” The mortgage note shows the monthly payment due at the time of the default was \$4,900. By letter dated June 2, 2008, Mr. Beymer was notified of his default under the mortgage, which at that time, amounted to \$9,996.16. By letter dated October 28, 2008, Mr. Beymer and Ms. Bruno sent their answer to the within summons and complaint, asserting that they were “currently trying to work out a forbearance for both mortgages (according to the answer, in addition to the primary mortgage pf \$980,000, which is the subject of this action, there is a second mortgage on the property for \$350,000) at a modified payment while we continue to try and find work.”

No opposition was filed. Where the movants have established a prima facie showing of entitlement to summary judgment, the motion, unopposed on the merits, shall be granted. (*See, Access Capital v. DeCicco*, 302 AD2d 48, 53-54 [1<sup>st</sup> Dept. 2002]). Further, "the factual allegations of the moving papers, uncontradicted by plaintiff, are sufficient to entitle defendants to judgment dismissing the complaint as a matter of law." (*Tortorello v. Carlin*, 260 A.D.2d 201[1st Dept. 1999]).

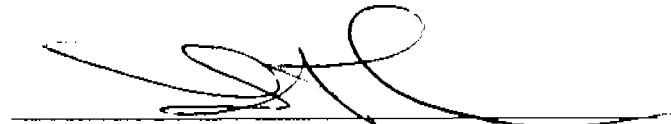
The Court directed the appearance of all parties for a voluntary settlement conference on August 25, 2009 at 10 a.m. in Part 5, located at 80 Centre Street, Room 308, in the County and State of New York. Defendants appeared by counsel with various financial documents. It was clear that defendants no longer reside in the subject premises, and indeed, have relocated out of state. The parties were unable to work out a settlement.

Wherefore, it is hereby

ORDERED that the motion is granted pursuant to plaintiffs proposed order, attached hereto; and it is further

ORDERED that plaintiff's attorney serve a conformed copy of this order upon the County Clerk and the Trial Support Office for amendment of their records.

DATED: August 25, 2009



EILEEN A. RAKOWER, J.S.C.

At an IAS Term, Part 5 of the Supreme Court of the State of New York, County of NEW YORK held in the County Courthouse in the City of New York City, NY 10007 on the 25 day of Aug, 2009.

PRESIDING:  
HON. Rakover  
Justice of the Supreme Court

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF NEW YORK

-----X  
US BANK NATIONAL ASSOCIATION AS TRUSTEE  
FOR JPMMT 2006-A6  
3415 Vision Drive  
Columbus, OH 43219

Plaintiff,

vs.

JOHN M. BEYMER, BARBARA BRUNO, BOARD OF MANAGERS OF 50 PINE STREET CONDOMINIUM, CUMIS INSURANCESOCIETY INCEETC, JPMORGAN CHASE BANK NA, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, NEW YORK CITY PARKING VIOLATIONS BUREAU, NEW YORK CITY TRANSIT ADJUDICATION BUREAU, PEOPLE OF THE STATE OF NEW YORK,

JOHN DOE (Said name being fictitious, it being the intention of Plaintiff to designate any and all occupants of premises being foreclosed herein, and any parties, corporations or entities, if any, having or claiming an interest or lien upon the mortgaged premises.)

Defendant(s).

-----X

**ORDER**

INDEX NO.: 110513/08

Mortgaged Premises:  
50 PINE STREET UNIT 12S  
NEW YORK, NY 10005

SBL #:  
BLOCK: 41 LOT: 1022

Upon reading Plaintiff's Affidavit of Whitney K. Cook, an Assistant Secretary of CHASE HOME FINANCE LLC, as servicer for, US BANK NATIONAL ASSOCIATION AS

TRUSTEE FOR JPMMT 2006-A6, dated the 9<sup>th</sup> day of April, 2009, and upon reading the Summons, Complaint, and Answer submitted by Defendants, BARBARA BRUNO and JOHN M. BEYMER, *Pro Se*, and upon proof that all other defendants have been duly served and their time to answer has expired or they have filed a Notice of Appearance, and after hearing Steven J. Baum, P.C., Plaintiff's attorney in this action in support of said motion, and after hearing

\_\_\_\_\_ with no ~~in~~ opposition thereto, it is hereby

**ORDERED**, that the Answer of the Defendants, BARBARA BRUNO and JOHN M. BEYMER, *Pro Se*, be and is hereby dismissed and that summary judgment be and is hereby granted in favor of Plaintiff, US BANK NATIONAL ASSOCIATION AS TRUSTEE FOR JPMMT 2006-A6; and it is further

**ORDERED**, that the Answer of the Defendants, BARBARA BRUNO and JOHN M. BEYMER, *Pro Se*, be treated as a limited Notice of Appearance, entitling said Defendants to receive, without prior notice, a copy of the Notice of Sale, Notice of Discontinuance and Notice of Surplus Monies; and it is further

**ORDERED**, that Defendants "JOHN DOE" JD #1, BOARD OF MANAGERS OF 50 PINE STREET CONDOMINIUM, CUMIS INSURANCESOCIETY INCEETC, JPMORGAN CHASE BANK NA, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, NEW YORK CITY PARKING VIOLATIONS BUREAU, NEW YORK CITY TRANSIT ADJUDICATION BUREAU and PEOPLE OF THE STATE OF NEW YORK have not appeared or answered in this matter and are deemed in default and said defaults are hereby fixed and determined; and it is further

**ORDERED**, that, the caption shall be amended by substituting "JOHN DOE JD #1", as a party Defendant in place of "John Doe"; all without prejudice to the proceedings heretofore had

herein; and it is further

**ORDERED**, that the caption shall read as follows:

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF NEW YORK

-----X  
US BANK NATIONAL ASSOCIATION AS TRUSTEE  
FOR JPMMT 2006-A6  
3415 Vision Drive  
Columbus, OH 43219

Plaintiff,

INDEX NO.: 110513/08

vs.

JOHN M. BEYMER, BARBARA BRUNO, BOARD OF  
MANAGERS OF 50 PINE STREET CONDOMINIUM,  
CUMIS INSURANCESOCIETY INCEETC,  
JPMORGAN CHASE BANK NA, NEW YORK CITY  
ENVIRONMENTAL CONTROL BOARD, NEW YORK  
CITY PARKING VIOLATIONS BUREAU, NEW  
YORK CITY TRANSIT ADJUDICATION BUREAU,  
PEOPLE OF THE STATE OF NEW YORK, "JOHN  
DOE" JD #1,

Mortgaged Premises:  
50 PINE STREET UNIT 12S  
NEW YORK, NY 10005

SBL #:  
BLOCK: 41 LOT: 1022

Defendant(s).

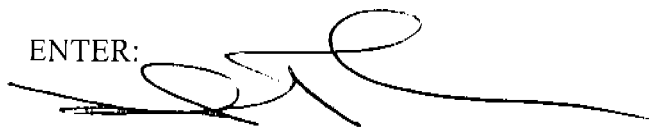
-----X; and it is further  
*Law Offices of Arthur & Associates, PLLC*  
*1501 Newkirk Avenue*  
*Brooklyn NY 11226*  
**ORDERED**, that Kent D. Arthur of (347) 240-2876 be appointed

Referee in this foreclosure action to determine the amount due and to determine whether or not  
the premises can be sold in parcels; and it is further

**ORDERED**, that by accepting this appointment the Referee certifies that he/she is in  
compliance with Part 36 of the Rules of the Chief Judge (22NYCRR Part 36), including, but not  
limited to, section 36.2(c) ("Disqualifications from appointment"), and section 36.2(d)  
("Limitations on appointments based upon compensation"); and it is further

**ORDERED**, that a copy of this Order with Notice of Entry shall be served upon the owner of the equity of redemption, any tenants named in this action, and any other party entitled to notice.

ENTER:



Justice of the Supreme Court

**HON. EILEEN A. RAKOWER**

**FILED**  
AUG 26 2009  
COUNTY CLERK'S OFFICE  
NEW YORK