

US Bank v Bank of Am.
2017 NY Slip Op 32445(U)
November 1, 2017
Supreme Court, Kings County
Docket Number: 500021/15
Judge: Noach Dear
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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 360 Adams Street, Brooklyn, New York, on the 1st day of November 2017.

PRESENT:

HON. NOACH DEAR,

J.S.C.

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US BANK,

Plaintiff,

DECISION AND ORDER

-against-

BANK OF AMERICA et al,

Defendant,

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

Papers	Numbered
Moving Papers and Affidavits Annexed	<u>1</u>
Opposition/Cross	<u>2</u>
Reply/Opp to Cross	<u>3</u>
Cross-Reply	<u>4</u>

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

Plaintiff moves for JFS. Defendant 778 opposes and cross-moves for renewal of this Court's order granting summary judgment to Plaintiff.

Defendant argues that the First Department's *Royal Blue* decision requires this Court to find that the prior default notice (which used the language "will") was an acceleration. The Second Department has held to the contrary, however (*21st Mortg. Corp. v. Adames*, 153 A.D.3d 474[2d Dept 2017] [letter¹ stating in part that "[i]f you have not cured the default within forty five (45) days of this notice, Litton will accelerate the maturity date of the Note and declare all outstanding amounts

¹ This Court took the liberty of pulling a copy of the letter from the County Clerk Minutes for that action.

immediately due and payable” deemed to be “nothing more than a letter discussing acceleration as a possible future event, which does not constitute an exercise of the mortgage's optional acceleration clause”]).

Though Defendant is correct that a Referee's Hearing should have been noticed, it has not availed itself of the opportunity to challenge the Referee's findings and has pointed to no errors in the Referee's calculations.

Motion for JFS granted (see accompanying order). Cross-motion denied.

ENTER:


Hon. Noach Dear, J.S.C.

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FILED