

U.S. Bank N.A. v Kitt
2019 NY Slip Op 31639(U)
June 3, 2019
Supreme Court, New York County
Docket Number: 850161/2015
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 32

Justice

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INDEX NO. 850161/2015

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR
STRUCTURED ASSET INVESTMENT LOAN TRUST
MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-4,

MOTION DATE N/A

MOTION SEQ. NO. 001

Plaintiff,

- v -

DONNA KITT, HOUSEHOLD FINANCE REALTY CORPORATION
OF NEW YORK, NEW YORK CITY PARKING VIOLATIONS
BUREAU, UNITED STATES OF AMERICA, DEPARTMENT OF
TREASURY-INTERNAL REVENUE SERVICE, CAPITAL ONE
BANK, JOHN DOE #1 THROUGH JOHN DOE #12,

**DECISION AND ORDER OF
REFERENCE**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 21, 22, 23, 24, 25,
26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42

were read on this motion to/for JUDGMENT - SUMMARY

The motion by for summary judgment and to appoint a referee to compute is granted.

Background

Plaintiff seeks to foreclose on a property located at 2556A Frederick Douglass Boulevard
in Manhattan. Plaintiff claims that defendant executed a note for \$328,500 in January 2005.
Plaintiff contends that defendant stopped making payments in June 2009 but plaintiff waited
until October 2014 to send the 90-day pre-foreclosure notice.

In opposition, defendant (self-represented) contends that she is eligible for a Home
Affordable Modification Program ("HAMP") because she has a one-to-four unit property, her
loan originated before January 1, 2009 and she cannot afford her monthly mortgage payments.
Defendant explains that she "was downsized" from her position at a law firm and started
working for a church at a much lower salary.

In reply, plaintiff claims that HAMP ended in December 2016 and that defendant failed to accept a trial period modification proposal in September 2017. Plaintiff contends that defendant is not entitled to a loan modification.

Discussion

Plaintiff's motion is granted because defendant failed to raise an issue of fact in opposition. Whether the case settles is beyond this Court's purview. While there is no doubt that the Court in mortgage foreclosure cases must ensure that settlement negotiations occur in good faith, the Court cannot force the parties to settle. And here, there is ample evidence that defendant was provided the chance for a loan modification and she failed to accept it. Of course, the parties may continue to seek a settlement during the pendency of this action but the prospect of settlement is not a justification to deny plaintiff's motion.

Accordingly, it is hereby

ORDERED that the motion by plaintiff for summary judgment is granted and the answer and any affirmative defenses of defendant Donna Kitt are severed and dismissed; and it is further

ORDERED that plaintiff is entitled to a default judgment against the non-answering defendants; and it is further

ORDERED that Elaine Shay 800 Third Avenue, Suite 2800, New York, NY 10022, is hereby appointed Referee in accordance with RPAPL § 1321 to compute the amount due to Plaintiff for principal, interest and other disbursements advanced as provided for in the note and mortgage upon which this action is brought, and to examine whether the mortgaged property can be sold in parcels; and it is further

ORDERED that the Referee may take testimony pursuant to RPAPL § 1321; and it is further

ORDERED that by accepting this appointment the Referee certifies that she/he is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2 (c) (“Disqualifications from appointment”), and §36.2 (d) (“Limitations on appointments based upon compensation”), and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall immediately notify the Appointing Judge; and it is further

ORDERED that, pursuant to CPLR 8003(a), and in the discretion of the court, a fee of \$350 shall be paid to the Referee for the computation of the amount due and upon the filing of her/his report and the Referee shall not request or accept additional compensation for the computation unless it has been fixed by the court in accordance with CPLR 8003(b); and it is further;

ORDERED that the Referee is prohibited from accepting or retaining any funds for herself/himself or paying funds to him/herself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED that plaintiff shall forward all necessary documents to the Referee within 30 days of the date of this order and shall *promptly* respond to every inquiry made by the referee (promptly means within two business days); and it is further

ORDERED that plaintiff must bring a motion for a judgment of foreclosure and sale within 30 days of receipt of the referee’s report; and it is further

ORDERED that if plaintiff fails to meet these deadlines, then the Court may *sua sponte* vacate this order and direct plaintiff to move again for an order of reference and the Court may *sua sponte* toll interest depending on whether the delays are due to plaintiff’s failure to move this litigation forward; and it further

ORDERED that the caption be amended to remove John Doe #1 through #12 from the caption, and the caption shall read as follows:

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

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U.S. BANK NATIONAL ASSOCIATION , AS
TRUSTEE FOR STRUCTURED ASSET
INVESTMENT LOAN TRUST MORTGAGE
PASS-THROUGH CERTIFICATES, SERIES
2005-4,
Plaintiff,

v.

DONNA KITT, HOUSEHOLD FINANCE
REALTY CORPORATION OF NEW YORK,
NEW YORK CITY PARKING VIOLATIONS
BUREAU, UNITED STATES OF AMERICA,
DEPARTMENT OF TREASURY-INTERNAL
REVENUE SERVICE, CAPITAL ONE BANK,

Defendant(s).
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and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the parties being added and removed; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address (www.nycourts.gov/supctmanh)); and it is further

ORDERED that Plaintiff shall serve a copy of this Order with notice of entry on all parties and persons entitled to notice, including the Referee appointed herein and the Receiver.

Next Conference: November 12, 2019 at 2:15 p.m. If plaintiff has moved for a judgment of foreclosure and sale before the conference, then plaintiff can seek an adjournment. Please consult the part's rules for information about how to obtain an adjournment. An appearance is required if a motion for a JFS has not been made; counsel appearing for plaintiff must come prepared to explain the delay or interest may be tolled.

6.3.19

DATE

ARLENE P. BLUTH, J.S.C.

HON. ARLENE P. BLUTH

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE