

U.S. Bank N.A. v Ortiz
2019 NY Slip Op 32227(U)
July 25, 2019
Supreme Court, New York County
Docket Number: 850220/2017
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. 850220/2017

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR
THE C-BASS MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2006-RP2,

MOTION DATE N/A

MOTION SEQ. NO. 001

Plaintiff,

- v -

RICHARD ORTIZ, CRIMINAL COURT OF THE CITY OF
NEW YORK, NEW YORK SUPREME COURT, NEW YORK
STATE DEPARTMENT OF TAXATION AND FINANCE,
NEW YORK CITY PARKING VIOLATIONS BUREAU, NEW
YORK CITY ENVIRONMENTAL CONTROL BOARD, JOHN
DOE #1 THROUGH JOHN DOE #12

**DECISION + ORDER ON
MOTION, ORDER OF
REFERENCE**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 53, 54, 55, 56, 57, 60, 61, 62, 63

were read on this motion to/for

JUDGMENT - SUMMARY

The motion for summary judgment is granted.

Background

This mortgage foreclosure action relates to a property owned by defendant Ortiz located at 561 West 182nd Street in Manhattan. Ortiz executed a note in 1998 for \$125,000 and plaintiff claims Ortiz stopped making payments beginning with the March 23, 2017 payment.

In opposition, Ortiz complains about plaintiff's standing. He claims that he is unfamiliar with plaintiff due to the various assignments that have purportedly occurred since he executed the note. Ortiz also contends he never received the RPAPL 1304 notice.

The Court grants the motion. As an initial matter, plaintiff attached the note to the complaint (NYSCEF Doc. No. 1, exh A), which establishes its standing to prosecute this case

(Bank of New York Mellon v Knowles, 151 AD3d 596, 596-97, 57 NYS3d 473 [1st Dept 2017]).

Moreover, the affidavit of Daniel Delpesche establishes that the proper notices were sent, including the 90-day notice required under RPAL 1304 (NYSCEF Doc. No. 35).

Accordingly, it is hereby

ORDERED that the motion by plaintiff for a default judgment against the non-appearing defendants and for summary judgment against defendant Richard Ortiz is granted and his answer, affirmative defenses and counterclaims are severed and dismissed, and it is further

ORDERED that Elaine Shay, Esq. with an address of 800 Third Ave Suite 2800 N.Y.N.Y 10022 ²¹²⁻⁵²⁰⁻²⁶⁹⁰ is hereby appointed Referee in accordance with RPAPL § 1321 to compute the amount due to Plaintiff and to examine whether the tax parcel 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 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 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 himself or paying funds to himself 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 George Doe, John Doe and Jane Doe shall be substituted for John Doe #1 through John Doe #3 and the remaining John Doe defendants are removed as party defendants 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 THE C-BASS MORTGAGE
LOAN ASSET-BACKED CERTIFICATES,
SERIES 2006-RP2,

Plaintiff,

v.

RICHARD ORTIZ, CRIMINAL COURT OF
THE CITY OF NEW YORK, NEW YORK
SUPREME COURT, NEW YORK STATE
DEPARTMENT OF TAXATION AND
FINANCE, NEW YORK CITY PARKING
VIOLATIONS BUREAU, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD,
GEORGE DOE, JOHN DOE, JANE DOE,

Defendant(s).

-----X

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 removed and substituted pursuant hereto; 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)).

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.

Next Conference: January 7, 2020 @ 2:15 p.m. If a motion for judgment of foreclosure and sale has been filed, plaintiff may seek an adjournment of the conference. Please consult this part's rules for information on how to obtain an adjournment. If a motion has been made, then a conference is required to explore the reasons for the delay.

2/25/19

DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINANCIAL

HON. ARLENE P. BLUTH

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE