

Bank of Am., N.A. v Kabot

2019 NY Slip Op 33311(U)

November 4, 2019

Supreme Court, New York County

Docket Number: 850078/2014

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**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. 850078/2014

BANK OF AMERICA, N.A.,
Plaintiff,

MOTION DATE 10/29/2019

MOTION SEQ. NO. 001

- v -

CRAIG KABOT, NEW YORK CITY PARKING VIOLATIONS
BUREAU, NEW YORK CITY TRANSIT ADJUDICATION
BUREAU, NEW YORK CITY ENVIRONMENTAL CONTROL
BOARD, NATIONAL CITY BANK, THE BOARD OF
MANAGERS OF THE BATTERY POINTE CONDOMINIUM,
JOHN DOES AND JANE DOES

**DECISION + ORDER ON
MOTION**

Defendant.

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

were read on this motion to/for AMEND CAPTION/PLEADINGS

The motion by plaintiff for leave to amend the pleadings is granted; however, the Court strikes interest as described below due to plaintiff's unexplained more than five year delay in prosecuting this case. It would be unfair to allow plaintiff to profit and collect so many years of interest, thereby slashing any surplus money availability, under these circumstances.

In this five-year old foreclosure matter, plaintiff moves for leave to amend its summons and complaint to remove the borrower, Craig Kabot, and to add certain defendants including the new owner of the property (Rector 70 LLC). The interest transfer document dated November 25, 2014 suggests that Rector purchased the property from a referee at the condo's foreclosure sale (NYSCEF Doc. No. 30).

Plaintiff vaguely claims that "For unknown reasons, service on the defendant Craig Kabot was not completed within 120 days from the initial filing of the Notice of Pendency on

February 20, 2014 (NYSCEF Doc. No. 24, ¶ 3). A review of the docket for this matter indicates that no affidavit of service was ever filed for Mr. Kabot. That means that plaintiff started a mortgage foreclosure case on February 20, 2014 and never served the mortgagor. Now, more than five years after the time to serve expired, plaintiff wants to amend the caption to add new defendants and remove the original borrower.

The Court cannot ignore the unexplained delay of five years nor plaintiff's failure to serve Mr. Kabot. The Court also observes that plaintiff never moved for an extension of time to serve Mr. Kabot. Therefore, the Court grants the motion but finds that plaintiff is not entitled to recover any interest after June 20, 2014 (120 days after commencement).

Accordingly, it is hereby

ORDERED that the motion to amend the summons and complaint is granted and the proposed amended summons and complaint annexed to the moving papers as NYSCEF Doc. No. 26 shall be personally served on defendants pursuant to the CPLR within 30 days; and it is further

ORDERED that plaintiff shall not recover any interest with respect to the subject note and mortgage after June 20, 2014; and it is further

ORDERED that plaintiff shall e-file the proposed supplemental summons and amended complaint as a separate document on NYSCEF; and it is further .

ORDERED that defendant Craig Kabot be removed and to add RECTOR 70 LLC AKA RECTOR 70LLC, DREAMBUILDER INVESTMENT LLC and DEUTSCHE BANK NATIONAL TRUST COMPANY, AS CERTIFICATE TRUSTEE ON BEHALF OF BOSCO CREDIT II TRUST SERIES 2010-A as party defendants, and substitute plaintiff with U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF11 MASTER PARTICIPATION TRUST, 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 TRUST, N.A., AS TRUSTEE
FOR LSF11 MASTER PARTICIPATION
TRUST,

Plaintiff,

v.

RECTOR 70 LLC AKA RECTOR 7OLLC,
DREAMBUILDER INVESTMENT LLC,
DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS CERTIFICATE TRUSTEE
ON BEHALF OF BOSCO CREDIT II TRUST
SERIES 2010-A NEW YORK CITY
PARKING VIOLATIONS BUREAU, NEW
YORK CITY TRANSIT ADJUDICATION
BUREAU, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD,
NATIONAL CITY BANK, THE BOARD OF
MANAGERS OF THE BATTERY POINTE
CONDOMINIUM, JOHN DOES AND JANE
DOES

Defendant(s).
-----X

and it is further

ORDERED that, by November 30, 2019, 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, added 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 (ww.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; and it is further

ORDERED that Plaintiff shall serve all the parties added with the amended summons and complaint by December 15, 2019.

Next Conference: February 4, 2020 @ 2:15 p.m. If a motion for an order of reference 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 not been made, then a conference is required to explore the reasons for the delay.

HON. ARLENE P. BLUTH

11-4-19
DATE

ARLENE P. BLUTH, J.S.C.
HON. ARLENE P. BLUTH

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	OTHER