

U.S. Bank N.A. v Beymer
2019 NY Slip Op 33529(U)
November 21, 2019
Supreme Court, New York County
Docket Number: 850260/2018
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. 850260/2018

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR
J.P. MORGAN MORTGAGE TRUST 2006-A6,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 002

- v -

JOHN M. BEYMER aka JOHN BEYMER, BARBARA
BRUNO, BOARD OF MANAGERS OF 50 PINE STREET
CONDOMINIUM, BELLEVUE HOSPITAL CENTER, NEW
YORK CITY ENVIRONMENTAL CONTROL BOARD, AND
JOHN DOE AND JANE DOE

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

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112

were read on this motion to/for JUDGMENT - SUMMARY

The motion by plaintiff for summary judgment is granted and the cross-motion by defendants John Beymer and Barbara Bruno (the "borrowers") is denied.

Background

This foreclosure action concerns a property owned by the borrowers located at 50 Pine Street in Manhattan. In 2006, the borrowers took out a note and mortgage on the property worth \$980,000. Plaintiff claims that the borrowers stopped making payments in July 2008.

In opposition and in support of their cross-motion to dismiss, the borrowers claim that plaintiff lacks standing and complains that the RPAPL 1304 and contractual notices were sent on the same day. The borrowers argue that this contravenes the intention of the notice scheme set forth by the legislature in the RPAPL. They claim that it makes no sense to send a 90-day notice

about a potential foreclosure and the contractual notice of default at the same time. The borrowers also contend that certain required filings with the Department of Financial Services were not completed.

The borrowers also want the Court to strike interest because this is the third foreclosure case brought on the subject note and mortgage. They insist plaintiff is not entitled to recover interest that has accrued while plaintiff has unsuccessfully tried to foreclose.

Discussion

As an initial matter, plaintiff attached the note to the complaint (NYSCEF Doc. Nos 1-6) and has therefore established its standing to prosecute this case (*Bank of New York Mellon v Knowles*, 151 AD3d 596, 596-97, 57 NYS3d 473 [1st Dept 2017]).

The Court also rejects the borrowers' complaints about the simultaneous sending of the 90-day notice and the contractual notice of default. There is nothing in the RPAPL that suggests that the Court should dismiss a foreclosure case because plaintiff received two default notices at the same time. One notice, RPAPL 1304, gives a borrower a 90-day period in which to potentially resolve a default before a plaintiff can commence a foreclosure action. The other notice is a creature of contract. Even if there were some unfairness or inequitable argument about sending the notices simultaneously, the remedy suggested by the borrowers-- dismissal of the case—far outweighs any harm suffered by the borrowers. There is no dispute here that they got notice that they had defaulted on their payments and there is no question that they have not made payments for over a decade.

The Court also declines to strike any interest. This Court views the striking of interest as a serious penalty and one that should only be imposed in certain circumstances. This may

include situations where a lender ignores Court orders or fails to timely prosecute a case where the borrowers have defaulted. However, each case must be evaluated on its own merits.

And in this case, the borrowers heavily litigated the second foreclosure action and eventually won an appeal at the First Department. While the borrowers were certainly entitled to defend themselves, plaintiff's recovery should not be reduced because the borrowers prevailed in a previous case. The fact is that the borrowers have not made a payment in over a decade and have rented or had the ability to live in the property throughout that entire time, all without making a single payment. There is simply no reason to strike interest.

To the extent that plaintiff may have failed to comply with certain filing requirements with the Department of Finance, the Court finds that those omissions are not grounds to dismiss a foreclosure action.

Accordingly, it is hereby

ORDERED that the motion by plaintiff for summary judgment is granted and the answer and affirmative defenses of defendants John M. Beymer aka John Beymer and Barbara Bruno are severed and dismissed; and it is further

ORDERED that the cross-motion by defendants is denied; and it is further

ORDERED that plaintiff is awarded a default judgment against the non-appearing defendants; and it is further

ORDERED that Paul R. Sklar, Esq. with an address of 551 Fifth Ave Suite 2200, NY NY 10176 ²¹²⁻⁹⁷²⁻⁸⁸⁴⁵ 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 shall hold no hearing and take no testimony or evidence other than by written submission; the Court is the ultimate arbiter and the Referee's report is merely an advisory finding; 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 and to defendants who have appeared in this case 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 if defendant(s) have objections, they must submit them to the referee within 14 days of the mailing of plaintiff's submissions; and include these objections to the Court if opposing the motion for a judgment of foreclosure and sale; and it is further

ORDERED the failure by defendants to submit objections to the referee shall be deemed a waiver of objections before the Court on an application for a judgment of foreclosure and sale; 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 John Doe and Jane Doe be removed in this action, that Julie Long be substituted for Jane Doe #1 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 J.P. MORGAN MORTGAGE
TRUST 2006-A6,
Plaintiff,

v.

JOHN M. BEYMER aka JOHN BEYMER,
BARBARA BRUNO, BOARD OF MANAGERS OF
50 PINE STREET CONDOMINIUM, BELLEVUE
HOSPITAL CENTER, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD, JULIE
LONG

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 substituted and removed 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, including the Referee appointed herein.

Next Conference: March 31, 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.

11-21-19

DATE

ARLENE P. BLUTH, J.S.C.

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