

U.S. Bank, N.A. v Navarro

2022 NY Slip Op 32291(U)

June 30, 2022

Supreme Court, Queens County

Docket Number: Index No. 702449/16

Judge: Carmen R. Velasquez

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE CARMEN R. VELASQUEZ IAS PART 38
Justice

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U.S. BANK, N.A., in its Capacity as Index No. 702449/16
Trustee for the Registered Holders
of MASTR Asset Backed Securities Trust
2005-NC2, Mortgage Pass Through
Certificates, Series 2005-NC2,

Plaintiff,

Motion

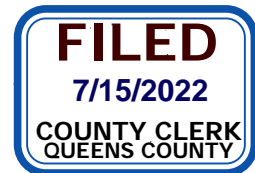
Date: October 4, 2021

-against-

M# 6

NORBERTO NAVARRO, ET AL.,

Defendants.



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This motion by the defendant Norberto Navarro for leave to
resettle this court's order dated December 21, 2017 and cross
motion by the plaintiff for leave to renew plaintiff's prior
motion for summary judgment are decided as follows:

In this foreclosure action, pursuant to an order dated
December 21, 2017, this court denied plaintiff's motion for
summary judgment and granted the cross motion by defendant for
summary judgment dismissing the complaint. The court directed
cancellation of the notice of pendency but did not cancel and
discharge the subject mortgage as requested in the prior motion.

A motion to renew is based upon additional material facts
which existed at the time of the prior application but were not
made known to the party seeking to renew and, therefore, not made

known to the court. (CPLR 2221[e]; *Matter of Brooklyn Welding Corp. v Chin*, 236 AD2d 392, 392 [2d Dept 1997]; *Cannistra v Gibbons*, 224 AD2d 570, 571 [2d Dept 1996].) The movant must present a reasonable justification for the failure to present the additional facts on the prior motion. (CPLR 2221[e][3]; *Renna v Gullo*, 19 AD3d 472, 473 [2d Dept 2005]; *Kaufman v Kunis*, 14 AD3d 542, 542 [2d Dept 2005]; *Baker v Monarch Life Ins. Co.*, 12 AD3d 630, 630 [2d Dept 2004].)

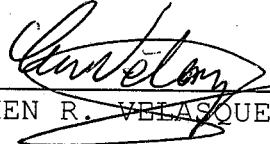
At bar, there was an express, contemporaneous statement that the plaintiff did not intend to revoke its prior acceleration of the mortgage when it commenced a new action for the same default. (see *Freedom Mtge. Corp. v Engel*, 37 NY3d 1, 32 [2021].) Indeed, plaintiff commenced an action in 2012 before an earlier 2009 action was discontinued. Therefore, there is no basis to change the outcome of plaintiff's earlier motion.

Accordingly, this motion by the defendant Norberto Navarro for leave to resettle this court's order dated December 21, 2017 is granted.

The cross motion by plaintiff for leave to renew is denied.

Settle order.

Dated: June 30, 2022


CARMEN R. VELASQUEZ, J.S.C.

