

Deutsche Bank Natl. Trust Co. v Morrow

2024 NY Slip Op 33286(U)

September 13, 2024

Supreme Court, New York County

Docket Number: Index No. 850190/2019

Judge: Francis A. Kahn III

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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. FRANCIS A. KAHN, III PART 32

Justice

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INDEX NO. 850190/2019

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS
TRUSTEE FOR GSAA HOME EQUITY TRUST 2004-10
ASSET-BACKED CERTIFICATES, SERIES 2004-10,

MOTION DATE _____

MOTION SEQ. NO. 003

Plaintiff,

- v -

JACQUELINE MORROW, SARAH MICHELLE MORROW,
TYRONE JOHN MORROW, UNKNOWN HEIRS AND
DISTRIBUTEES TO THE ESTATE OF TYRONE MORROW,
BOARD OF MANAGERS OF TOWERS ON THE PARK
CONDOMINIUM, NEW YORK CITY ENVIRONMENTAL
CONTROL BOARD, NEW YORK CITY PARKING
VIOLATIONS BUREAU, NEW YORK CITY TRANSIT
ADJUDICATION BUREAU, NEW YORK STATE
DEPARTMENT OF TAXATION AND FINANCE, UNITED
STATES OF AMERICA, JOHN DOE, JOHN DOE

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, the motion and cross-motion are determined as follows:

This is an action to foreclose on a mortgage encumbering residential real property located at 301/311 CATHEDRAL PARKWAY, APT/UNIT 2 A/K/A 2 FREDERICK DOUGLASS CIRCLE A/K/A 7 FREDERICK DOUGLASS CIRCLE A/K/A 300/318 WEST 111 STREET A/K/A 2031/2039 FREDERICK DOUGLASS BOULEVARD A/K/A 301/311 WEST 110 STREET, APT/UNIT 2V, NEW YORK, NEW YORK. In the complaint, Plaintiff pleads that the mortgagor defaulted in repayment of the indebtedness. The mortgagor Jacqueline Morrow (“Morrow”) answered *pro se*. Defendant Board of Managers of Towers on the Park Condominium (“Board”), a purported lienor for unpaid common charges, answered and pled certain affirmative defenses and a counterclaim. The priority of Plaintiff’s lien over all Defendant lienors is undisputed.

Plaintiff’s motion was supported with an affirmation from Doris Shen, as well as supporting documentation, which established the mortgage, note, and evidence of mortgagor’s default and was sufficiently supported by appropriate documentary evidence (*see eg Bank of NY v Knowles*, 151 AD3d 596 [1st Dept 2017]; *Fortress Credit Corp. v Hudson Yards, LLC*, 78 AD3d 577 [1st Dept 2010]). As pled, all the affirmative defenses and the counterclaim are entirely conclusory and unsupported by any facts in the answer. As such, these affirmative defenses are nothing more than unsubstantiated legal conclusions which are insufficiently pled as a matter of law (*see Board of Mgrs. of Ruppert Yorkville Towers Condominium v Hayden*, 169 AD3d 569 [1st

Dept 2019]; *see also* *Bosco Credit V Trust Series 2012-1 v. Johnson*, 177 AD3d 561 [1st Dept 2020]; *170 W. Vil. Assoc. v. G & E Realty, Inc.*, 56 AD3d 372 [1st Dept 2008]; *see also* *Becher v Feller*, 64 AD3d 672 [2d Dept 2009]; *Cohen Fashion Opt., Inc. v V & M Opt., Inc.*, 51 AD3d 619 [2d Dept 2008]). Defendants submitted no opposition.

On the issue of interest, “[i]n ‘an action of an equitable nature, the recovery of interest is within the court’s discretion. The exercise of that discretion will be governed by particular facts in each case,’ including wrongful conduct by either party” (*U.S. Bank N.A. v Beymer*, 190 AD3d 445 [1st Dept 2021], *citing* *South Shore Fed. Sav. & Loan Assn. v Shore Club Holding Corp.*, 54 AD2d 978, [2d Dept 1976]). Generally, lengthy unexplained delays and “egregious” wrongful conduct must exist for the Court to assess an interest toll (*see eg* *U.S. Bank, N.A. v Gendelman*, 214 AD3d 928 [2d Dept 2023]; *Wells Fargo Bank, N.A. v Lee*, 208 AD3d 1384 [2d Dept 2022]; *Prompt Mtge. Providers of N. Am., LLC v Zarour*, 155 AD3d 912, 915 [2d Dept 2017]).

Defendants have not established the existence of significant delays in this matter solely attributable to Plaintiff. Indeed, such an accusation from Board is ironic considering it commenced its own action to foreclose its lien for common charges seven years ago (*Board v Morrow*, NY Cty Index No 158313/2017) and obtained a judgment of foreclosure and sale over five years ago. Moreover, a sale of the property pursuant to Board’s judgment was conducted on March 13, 2024.

The branch of Plaintiff’s motion for a default judgment against the non-appearing parties is granted without opposition (*see* CPLR §3215; *SRMOF II 2012-1 Trust v Tella*, 139 AD3d 599, 600 [1st Dept 2016]).

The branch of Plaintiff’s motion to amend the caption is granted without opposition (*see generally* CPLR §3025; *JP Morgan Chase Bank, N.A. v Laszio*, 169 AD3d 885, 887 [2d Dept 2019]).

Accordingly, it is

ORDERED that the motion for summary judgment against the answering parties, a default judgment against the non-appearing parties and the appointment of a referee to compute is granted without opposition; and it is further

ORDERED that Defendant Board’s cross-motion is denied in its entirety; and it is further

ORDERED that **Tom Kleinberger, Esq., 411 5th Avenue, New York, New York 10016 (917) 326-5523** is hereby appointed Referee in accordance with RPAPL § 1321 to compute the amount due to Plaintiff and examine whether the tax parcel can be sold in parcels; and it is further

ORDERED that if a Defendant appears and contests the amount due, in the discretion of the Referee, a hearing may be held, and testimony taken, otherwise the Referee shall hold no hearing and take no testimony or evidence other than by written submission; 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 if the Referee holds a hearing or is required to perform other significant services in issuing the report, the Referee may seek additional compensation at the Referee's usual and customary hourly rate; 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 the record is hereby reformed to reflect that the prior Deed recorded in the Office of the Clerk in the County of New York on August 23, 1995 in Reel 2236 at Page 701, be indexed as intended against Block 1846, Lot 1038, and it is further

ORDERED that the Clerk in the County of New York is hereby directed to reform its record to reflect that the prior Deed contain the correct record description annexed to this Order as Schedule "A".

ORDERED that the branch of the motion to retain any "JOHN DOE" as a Defendant is denied as the New York County Clerk will not accept any judgment with a "Doe" Defendant in the caption; and it is further

ORDERED that the caption is amended by deleting "JOHN DOE #1" through "JOHN DOE #12" and shall read as follows:

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

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DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE FOR GSAA HOME

EQUITY TRUST 2004-10 ASSET-BACKED
CERTIFICATES, SERIES 2004-10,

Plaintiff,

-against-

JACQUELINE MORROW A/K/A JACQUELINE
CREIGHTNEY, INDIVIDUALLY AND AS HEIR
AND DISTRIBUTE AND EXECUTOR OF THE
ESTATE OF TYRONE MORROW; SARAH
MICHELLE MORROW, AS HEIR AND
DISTRIBUTE OF THE ESTATE OF TYRONE
MORROW; TYRONE JOHN MORROW II, AS HEIR
AND DISTRIBUTE OF THE ESTATE OF
TYRONE MORROW; UNKNOWN HEIRS AND
DISTRIBUTEES TO THE ESTATE OF TYRONE
MORROW, any and all persons unknown to plaintiff,
claiming, or who may claim to have an interest in, or
general or specific lien upon the real property described
in this action; such unknown persons being herein
generally described and intended to be included in the
following designation, namely: the wife, widow,
husband, widower, heirs at law, next of kin,
descendants, executors, administrators, devisees,
legatees, creditors, trustees, committees, lienors, and
assignees of such deceased, any and all persons
deriving interest in or lien upon, or title to said real
property by, through or under them, or either of them,
and their respective wives, widows, husbands,
widowers, heirs at law, next of kin, descendants,
executors, administrators, devisees, legatees, creditors,
trustees, committees, lienors and assigns, all of whom
and whose names, except as stated, are unknown to
plaintiff; BOARD OF MANAGERS OF TOWERS ON
THE PARK CONDOMINIUM; NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD; NEW
YORK CITY PARKING VIOLATIONS BUREAU;
NEW YORK CITY TRANSIT ADJUDICATION
BUREAU; NEW YORK STATE DEPARTMENT OF
TAXATION AND FINANCE; UNITED STATES OF
AMERICA;

Defendants.

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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 removed pursuant hereto; and it is further

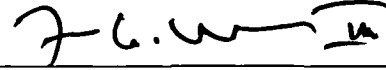
ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address (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.

All parties are to appear for a virtual conference via Microsoft Teams on **January 16, 2025 at 10:20 a.m.** If a motion for judgment of foreclosure and sale has been filed Plaintiff may contact the Part Clerk (SFC-Part32-Clerk@nycourts.gov) in writing to request that the conference be cancelled. If a motion has not been made, then a conference is required to explore the reasons for the delay.

Mortgage Servicer: Nationstar Mortgage LLC -- Phone: (888) 480-2432

9/13/2024
DATE



FRANCIS KAHN, III, A.J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input checked="" type="checkbox"/>	NOT FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input checked="" type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

HON. FRANCIS A. KAHN III
J.S.C.