

**NYCTL 2021-A Trust v Suky**

2024 NY Slip Op 34083(U)

November 8, 2024

Supreme Court, Kings County

Docket Number: Index No. 523803/2022

Judge: Derefim B. Neckles

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FRP-2 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, 11201 on the 8th day of November, 2024.

PRESENT:

HON. DEREKIM B. NECKLES,  
Acting Justice.

-----X  
NYCTL 2021-A TRUST AND THE BANK OF NEW YORK MELLON AS COLLATERAL AGENT AND CUSTODIAN,

Plaintiff,

- against -

Index No. 523803/2022

BEN-ZION SUKY A/K/A BENZION SUKY,  
HSBC NATIONAL NY LLC, NEW YORK CITY  
ENVIRONMENTAL CONTROL BOARD,  
NOMAD MEZZ LENDING LLC, M.M.N. YAD  
DAVID USA LTD, OFEK RACHEL LTD,

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Affidavits (Affirmations) Annexed	<u>87-99</u>
Opposition Affirmation to Motion	<u>101</u>
Reply Affirmation to Opposition	<u>102</u>

Upon the foregoing papers in this proceeding, defendants Ofek Rachel Ltd and M.M.N. Yad David USA Ltd ("Ofek Rachel") move (under mot. seq. 6) for an order granting defendants leave to reargue the portion of this court's May 7, 2024 order, which denied defendants' motion (mot seq. 5) for summary judgment.

**Background**

This action was commenced on August 17, 2022 to foreclose on a tax lien encumbering the subject property located at 288 Whitman Drive, Brooklyn, NY 11234.

Defendant HSBC National was named as a defendant because it held a mortgage encumbering the subject property and defendants Ofek Rachel were added as named defendants because they had a lien on the subject property. Parties stipulated to extend the time to file an answer to March 22, 2023, and Ofek Rachel filed an answer on August 1, 2023, with cross-claims against defendant HSBC National alleging that HSBC National's mortgage was time barred.

Thereafter, on April 4, 2023, plaintiff moved for an order of reference, but before the motion's return date, the tax lien was redeemed, and plaintiff withdrew its motion. Plaintiff then moved on October 24, 2023 to discontinue the action, and defendants Ofek Rachel cross-moved to consolidate their cross-claims in this action into the related foreclosure action where HSBC National was moving to foreclose on the subject property. Defendant HSBC National soon after, filed a motion to dismiss defendants Ofek Rachel's cross-motion.

On the return date of March 12, 2024, the court granted plaintiff's motion to discontinue the action, and marked off Ofek Rachel's cross-motion for non-appearance. By order dated March 21, 2024, this action was expressly discontinued. Ofek Rachel then moved again, on April 30, 2024, for the same relief as their cross-motion.

Pursuant to this court's May 7, 2024 order, defendant HSBC National's motion was denied as moot, since Ofek Rachel's first cross-motion was marked off, and Ofek Rachel's second motion was denied because its answer and cross-claims were rejected as untimely.

Ofek Rachel now files this instant motion to reargue the court's May 7, 2024 decision.

*Discussion*

Pursuant to CPLR §2221(d)(2), a motion for leave to reargue shall be based on matters of fact or law allegedly overlooked or misapprehended by the Court in determining the prior motion. Here, Ofek Rachel contends that the court erroneously concluded that its cross-claim was untimely, and upon reargument, the court should grant its motion for summary judgment. Defendant HSBC National, in opposition, asserts that because this instant action was discontinued, and no longer pending by order dated March 21, 2024, the court lacked jurisdiction to consider Ofek Rachel's prior motion for summary judgment.

"A motion must be addressed to a pending action, and a court lacks jurisdiction to entertain a motion after the action has unequivocally terminated [by the execution of] an express, unconditional stipulation of discontinuance, or actual entry of judgment in accordance with the terms of the settlement" (*Riccio v. Kukaj*, 219 A.D.3d 1540, 1541–42 (2023); see also *Teitelbaum Holdings v. Gold*, 48 N.Y.2d 51; *Urso v. Panish*, 94 A.D.2d 701; *Beneficial Homeowner Serv. Corp. v. Francis*, 209 A.D.3d 957; *Cambridge Integrated Servs. Group, Inc. v. Johnson*, 107 A.D.3d 1588).

Here, the court properly denied Ofek Rachel's motion for summary judgment, although relying on a different reason, as the court did not have jurisdiction to consider the motion in an action that was expressly discontinued.

Accordingly, it is

**ORDERED** that defendants Ofek Rachel's motion for leave to reargue is granted, however upon reargument, the court adheres to its prior determination albeit on different grounds, denying Ofek Rachel's prior motion for summary judgment because the court lacked jurisdiction to consider the motion.

This constitutes the decision and order of the court.

E N T E R,



HON. DEREKIM B. NECKLES  
A. J. S. C.

KINGS COUNTY CLERK  
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