

Deutsche Bank Natl. Trust Co. v Small

2025 NY Slip Op 31837(U)

May 20, 2025

Supreme Court, Kings County

Docket Number: Index No. 508767/18

Judge: Cenceria Edwards

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FRP-1 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 20th day of May, 2025.

P R E S E N T:

HON. CENCERIA EDWARDS,

Justice.

-----X
DEUTSCHE BANK NATIONAL TRUST COMPANY, AS
INDENTURE TRUSTEE, FOR NEW CENTURY HOME
EQUITY LOAN TRUST 2006-1,

Plaintiff,

- against -

Index No. 508767/18

ROLAND SMALL, JR.; LYDIA SAWYERS; THE BOARD OF DIRECTORS OF NEHEMIAH HOMEOWNERS ASSOCIATION, INC.; DEUTSCHE BANK NATIONAL TRUST COMPANY AS INDENTURE TRUSTEE FOR NEW CENTURY HOME EQUITY LOAN TRUST, SERIES 2006-1; CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD; CITY OF NEW YORK PARKING VIOLATIONS BUREAU; CITY OF NEW YORK TRANSIT ADJUDICATION BUREAU and "JOHN DOE", said name being fictitious, it being the intention of Plaintiff to designate any and all occupants of premises being foreclosed herein, and any parties, corporations or entities, if any, having or claiming an interest or lien upon the mortgaged premises,

Defendants.

-----X
The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/Cross Motion and Affidavits (Affirmations) _____	<u>31, 33-50</u>	<u>52-60</u>
Opposing Affidavits (Affirmations) _____	<u>53-60</u>	<u>62-63</u>
Reply Affidavits (Affirmations) _____	<u>62-63</u>	<u>64</u>

Upon the foregoing papers in this action to foreclose a mortgage encumbering the residential property at 532 Belmont Avenue in Brooklyn (Block 4026, Lot 111) (Property),

[*1]

plaintiff Deutsche Bank National Trust Company, as Indenture Trustee, for New Century Home Equity Loan Trust 2006-1 (Deutsche Bank or Plaintiff) moves (in motion sequence [mot. seq.] one) for an order: (1) appointing a referee to compute the amount due to Plaintiff and to examine whether the Property can be sold in parcels and make his/her computation and report with all convenient speed, pursuant to RPAPL § 1321; (2) discontinuing this action as against defendant mortgagor Roland Small, Jr. (Small or Defendant Borrower); (3) striking Defendant Borrower Small's answer "as moot"; (4) amending the caption to remove Defendant Borrower Small as a defendant; (5) amending the caption to substitute Runako Williams and "John Doe" in place of the John Doe defendant; and (6) granting Deutsche Bank a default judgment against the non-appearing and non-answering defendants (NYSCEF Doc No. 31).

Defendant Borrower Small cross-moves (in mot. seq. two) for an order granting him summary judgment dismissing this action as time-barred (NYSCEF Doc No. 52).

Background

On April 30, 2018, *more than four years after* a prior foreclosure action commenced by Deutsche Bank on October 16, 2009 (2009 Foreclosure Action),¹ was dismissed by a July 8, 2013 decision and order (NYSCEF Doc No. 58),² Deutsche Bank commenced this

¹ See *Deutsche Bank National Trust Company, as Indenture Trustee, for New Century Home Equity Loan Trust 2006-1 v Small, Jr., et al*, Kings County index No. 26181/2009.

² The court (Martin, J.) dismissed the 2009 Foreclosure Action on the grounds that Deutsche Bank failed to comply with the pre-foreclosure notice requirements set forth in RPAPL § 1304 (NYSCEF Doc No. 58).

action to foreclose the same mortgage encumbering the Property by e-filing a summons, a complaint and a notice of pendency against the Property (NYSCEF Doc Nos. 1-3).

The complaint in this 2018 action alleges that Defendant Small executed a note in the principal amount of \$280,000.00 in favor of the original lender, New Century Mortgage Corporation (New Century), which was secured by a mortgage encumbering his Property (NYSCEF Doc No. 2 at ¶¶ 4-5). The complaint alleges that Small “failed and neglected to comply with the conditions of said mortgage, bond or note by omitting and failing to pay the monthly payments of principal, interest, taxes, assessments, water rates, insurance premiums, escrow and/or other charges [on May 1, 2012], and accordingly, the plaintiff has duly elected and does hereby elect to call due the entire amount presently secured by the mortgage . . .” (*id.* at ¶ 8 and Schedule C).

On June 20, 2018, Small answered the complaint, denied the material allegations therein and asserted affirmative defenses, including that “Plaintiff is time barred from bringing this action by the applicable six-year statute of limitations” (NYSCEF Doc No. 22 at ¶ 5). Small asserted a counterclaim against Lydia Sawyers alleging that she fraudulently induced him into transferring the Property to her after executing the mortgage (*id.* at 7-8).

This action subsequently laid dormant due to the Covid-19 pandemic.

Deutsche Bank’s Motion for an Order of Reference

On February 4, 2022, Deutsche Bank moved for an order of reference, to discontinue the 2018 action as against Defendant Borrower Small, to strike Small’s answer,

for a default judgment against all non-answering defendants and to amend the caption (NYSCEF Doc No. 31).

Deutsche Bank submits an affidavit from Elizabeth Gonzales (Gonzales), the Default Fulfillment Manager of Carrington Mortgage Services, LLC (Carrington), the servicer of the subject mortgage and attorney-in-fact for Deutsche Bank, pursuant to a Limited Power of Attorney (NYSCEF Doc No. 47 at ¶ 1 and NYSCEF Doc No. 49). Gonzales attests that she makes the affidavit based on her review of Carrington's business records, which include those of a prior servicer (NYSCEF Doc No. 47 at ¶ 1). Gonzales submits copies of the note and mortgage and reiterates the allegations in the complaint regarding their execution (*id.* at ¶ 3). Gonzales attests that “[t]he instant loan is due for the May 1, 2012 installment and all subsequent installments, and by reason thereof, the Note and Mortgage are in default” and “[a] copy of Carrington Mortgage Services, LLC's business record showing [the] amount due and the delinquency date is attached here as Exhibit A” (*id.* at ¶ 7 and pages 10-15). Notably, Exhibit A to the Gonzales Affidavit is an entirely illegible and blurry computerized printout without any headings reflecting that it came from Carrington's business records (NYSCEF Doc No. 47 at 10-15).

Deutsche Bank also submits an attorney affirmation asserting that “[s]ubsequent to the origination of the concerned Mortgage, the real property was transferred from Defendant/Mortgagor, Ronald Small, Jr., to Defendant, Lydia Sawyers, by Quitclaim Deed, dated March 23, 2006 . . .” and consequently, Deutsche Bank seeks to discontinue this action against Small and have his answer stricken (NYSCEF Doc No. 35 at ¶¶ 17-18).

Defendant Small's Summary Judgment Cross-Motion

On September 14, 2022, Defendant Borrower Small opposed Deutsche Bank's motion and cross-moved for summary judgment dismissing this 2018 action based on the expiration of the statute of limitations (NYSCEF Doc No. 52).

Defense counsel submits an affirmation asserting that Deutsche Bank accelerated the loan by filing the summons and complaint in the 2009 Foreclosure Action on October 16, 2009, and thus, the statute of limitations began to run on that date and expired six years later on October 16, 2015, prior to the commencement of this 2018 foreclosure action (NYSCEF Doc No. 53 at ¶¶ 14-16). Defense counsel asserts that "no evidence has been proffered by the Plaintiff to indicate that the 2009 acceleration of the debt was unequivocally revoked" (*id.* at ¶ 15).

Small submits an affidavit attesting that "[i]t was never my intention to permanently relinquish title to the property" and explains that he was the victim "of a fraud perpetrated by Sawyers" who induced him into transferring title to the Property in March 2006 (NYSCEF Doc No. 55 at ¶¶ 4-6). Small further attests that:

"[o]n or about July 3, 2013, Sawyers admitted her wrongdoing to me and signed over a deed to the property to me. The deed and the transfer documents were signed and notarized, but they were never recorded. Copies that I have of the deed and transfer documents are attached as Exhibit E" (*id.* at ¶ 5 and NYSCEF Doc No. 60 [Exhibit E]).

Thus, Small asserts that he is a proper Defendant to this action since he is the fee owner of the Property.

Deutsche Bank's Opposition and Reply

Deutsche Bank, in opposition and in reply, submits an attorney affirmation asserting that Defendant Borrower Small's summary judgment cross-motion should be denied as moot since Deutsche Bank seeks to discontinue this action as against Small since he has an unrecorded interest in the Property (NYSCEF Doc No. 62 at ¶ 12).

Discussion

Summary judgment is a drastic remedy that deprives a litigant of his or her day in court and should, thus, only be employed when there is no doubt as to the absence of triable issues of material fact (*Kolivas v Kirchoff*, 14 AD3d 493 [2d Dept 2005]; *see also Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). “The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment, as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Manicone v City of New York*, 75 AD3d 535, 537 [2d Dept 2010], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *see also Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). If it is determined that the movant has made a prima facie showing of entitlement to summary judgment, “the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493 [2d Dept 1989]).

A mortgage foreclosure action is subject to a six-year statute of limitations (*see* CPLR 213 [4]). “The statute of limitations in a mortgage foreclosure action begins to run six years from the due date for each unpaid installment or the time the mortgagee is entitled to demand full payment, or when the mortgage debt has been accelerated” (*Zinker v Makler*, 298 AD2d 516, 517 [2d Dept 2002]). “[O]nce a mortgage debt is accelerated, the entire amount is due and the Statute of Limitations begins to run on the entire debt” (*Nationstar Mortg., LLC v Weisblum*, 143 AD3d 866, 867 [2d Dept 2016] [internal quotations omitted]). “Acceleration occurs . . . by the commencement of a foreclosure action” and “[a] lender may revoke its election to accelerate the mortgage debt, but it must do so by an affirmative act of revocation occurring during the six-year statute of limitations period” (*Pennymac Corp. v Holcomb*, 198 AD3d 978, 980 [2d Dept 2021]).

Here, the court’s dismissal of the 2009 Foreclosure Action did not serve to de-accelerate the mortgage debt, or revive, or reset the statute of limitations and Deutsche Bank has failed to demonstrate that it ever de-accelerated the debt. Deutsche Bank does not dispute that the six-year statute of limitations began to run on October 15, 2009, when Deutsche Bank accelerated the mortgage debt by commencing the 2009 Foreclosure Action. The six-year statute of limitations thus expired on October 15, 2015, *more than two years before* Deutsche Bank commenced this second foreclosure action on April 30, 2018. Dismissal of this foreclosure action is warranted based on the expiration of the six-year statute of limitations. Consequently, Deutsche Bank’s motion for an order of reference

and a default judgment against the non-answering defendants is denied as moot.

Accordingly, it is hereby

ORDERED that Deutsche Bank's motion (mot. seq. one) is denied as moot; and it is further

ORDERED that Defendant Borrower Small's summary judgment cross-motion (mot. seq. two) is granted and the complaint is dismissed with prejudice as time-barred, pursuant to CPLR 3212.

This constitutes the decision, order and judgment of the court.

E N T E R,



J. S. C. Cenceria P. Edwards, CPA

[*8]