

**U.S. Bank N.A. v Salvodon**

2025 NY Slip Op 31838(U)

May 20, 2025

Supreme Court, Kings County

Docket Number: Index No. 514009/17

Judge: Cenceria Edwards

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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  
U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE  
FOR THE HOLDERS OF THE GSAA HOME EQUITY  
TRUST 2006-20,

Plaintiff,

- against -

Index No. 514009/17

CLIFTON SALVODON, BETHPAGE FEDERAL CREDIT  
UNION, STATE OF NEW YORK, NEW YORK CITY  
PARKING VIOLATIONS BUREAU, "JANE DOE",  
"JOHN DOE", "JANE DOE",

Defendants.

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

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/Cross  
Motion and Affidavits (Affirmations) \_\_\_\_\_  
Opposing Affidavits (Affirmations) \_\_\_\_\_  
Reply Affidavits (Affirmations) \_\_\_\_\_

92-96 98-102  
104-113  
114

Upon the foregoing papers in this action to foreclose a mortgage encumbering the residential property at 1358 66<sup>th</sup> Street in Brooklyn (Block 8365, Lot 166) (Property), plaintiff U.S. Bank National Association, as Trustee for the Holders of the GSAA Home Equity Trust 2006-20 (US Bank or Plaintiff) moves (in motion sequence [mot. seq.] four) for an order appointing a substitute referee to ascertain the amount due and relieving the referee appointed on January 28, 2019 (NYSCEF Doc No. 92).

[\*1]

Defendant Clifton Salvodon (Solvodon or Defendant) moves (in mot. seq. five) for an order: (1) dismissing the complaint, pursuant to CPLR 3211 (a) (7), or (2) dismissing this action, pursuant to Kings County Supreme Court Uniform Civil Term Rules, Part F, Rule 8 (NYSCEF Doc No. 98).

### **Background**

On July 20, 2017, US Bank commenced this action to foreclose a mortgage in the principal amount of \$460,000.00 encumbering the Property, which was allegedly executed by Defendant Solvodon and his wife and former defendant, Naudia Vassell (Vassell) (NYSCEF Doc No. 1 at ¶ 3). The complaint alleges that “Clifton Solvodon and Naudia Vassell failed to comply with the conditions of the note and mortgage by not making the payment that was due on August 1, 2011 and subsequent payments” (*id.* at ¶ 5).

On August 21, 2017, Vassell answered the complaint, denied the material allegations therein and asserted affirmative defenses, including the statute of limitations (NYSCEF Doc No. 22). However, Defendant Solvodon failed to answer or otherwise respond to the complaint.

On June 5, 2018, US Bank moved for summary judgment, an order of reference and a default judgment against the non-appearing and non-answering defendants, including Defendant Solvodon (NYSCEF Doc No. 26). On October 23, 2018, Defendants Solvodon and Vassell cross-moved for summary judgment dismissing the complaint based on the statute of limitations (NYSCEF Doc No. 51). By a January 28, 2019 decision and order, the court (Dear, J.) held that “Salvodon is in default and cannot raise the statute of limitations” (NYSCEF Doc No. 75 at 1). However, the court granted Vassell summary

judgment and *dismissed the complaint as against Vassell only* because a prior action commenced on June 28, 2007, accelerated the loan and this action was not commenced for more than a decade later (*id.*). Notably, the court held that “Plaintiff’s claims against Salvodon, if separable, survive” and dropped a footnote noting that:

“[i]t is unclear whether Defendants’ interest in the property is separable such to allow Plaintiff to foreclose on Salvodon’s interest. Even if it cannot, *its claim for monetary relief survives* (see, *Beltway Capital v Soleil*, 104 AD3d 628 [2d Dept 2013])” (NYSCEF Doc No. 75 at 2 and fn.1 [emphasis added]).

The court issued a January 28, 2019 Order of Reference appointing a referee to compute the amount due and owing to US Bank, amending the caption to eliminate Vassell and granting US Bank a default judgment against the non-answering defendants, including Salvodon (NYSCEF Doc No. 76).

Thereafter, the action remained inactive during the Covid-19 pandemic.

### ***US Bank’s Instant Motion***

On May 9, 2022, after the Covid-19 pandemic, US Bank moved for an order relieving the referee appointed on January 28, 2019, and appointing a substitute referee to ascertain the amount due and owing to US Bank (NYSCEF Doc No. 92). US Bank’s counsel submits an affirmation explaining that the appointed referee is unwilling to accept the assignment unless his fee is increased by \$100; otherwise, the referee requests that a substitute referee be assigned (NYSCEF Doc No. 93 at ¶¶ 3-4).

### ***Defaulting Defendant Salvodon’s Cross-Motion***

Defendant Savodon cross-moved to dismiss the complaint, pursuant to CPLR 3211 (a) (7), or, alternatively, to dismiss the complaint pursuant to Kings County Supreme Court

Uniform Civil Term Rules, Part F, Rule 8 (NYSCEF Doc No. 98). Defense counsel submits an affirmation asserting that the mortgage cannot be foreclosed upon if the action is time-barred against Vassell, one of the mortgagors (NYSCEF Doc No. 99 at ¶ 14).

### Discussion

Defendant Salvodon remains in default, and thus, is barred from seeking any affirmative relief from the court without first vacating his default (*Wells Fargo Bank, N.A. v. Laporte*, 235 AD3d 936, 938 [2d Dept 2025] [holding that trial court “properly denied that branch of the defendant’s motion which was pursuant to CPLR 3211 (a) (5) to dismiss the complaint insofar as asserted against him as time-barred” because “the defendant did not seek to vacate his default in failing to appear or answer the complaint”]). Having failed to move for vacatur of his default, Salvodon cannot seek dismissal of the complaint, as a matter of law. Accordingly, it is hereby

**ORDERED** that US Bank’s motion (mot. seq. four) is granted without opposition; a new order of reference relieving the referee and appointing a substitute referee shall be settled on notice; and it is further

**ORDERED** that Defendant Salvodon’s cross-motion (mot. seq. five) is denied.

This constitutes the decision and order of the court.

E N T E R,



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