

U.S. Bank N.A. v Miller

2025 NY Slip Op 32021(U)

May 19, 2025

Supreme Court, Kings County

Docket Number: Index No. 29190/2008

Judge: Derefim B. Neckles

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2018 judgment of foreclosure and sale and the extensions granted under COVID orders; (3) releasing and extinguishing the lien against the property, including the notice of pendency; (4) vacating the order of reference; (5) vacating and cancelling the notice of sale and scheduled sale date of January 16, 2025 at 2:30 p.m.; and (6) dismissing the action with prejudice, awarding the estate attorney's fees, administrative costs, disbursements, and any other relief deemed just and proper.

Background

Plaintiff commenced this action on October 23, 2008, by filing a summons and complaint. Plaintiff's unopposed motion for a judgment of foreclosure and sale was granted on January 2, 2018. Since then, five foreclosure sales were scheduled but stayed due to three orders to show cause filed by movant, two with temporary restraining orders, and three Chapter 13 bankruptcy petitions.

Following these stays, and in light of the COVID-19 moratorium and FEMA holds, an order dated February 22, 2022, extended plaintiff's time to schedule a sale. A new sale was set for January 16, 2025, prompting the instant order to show cause.

Discussion

I. Plaintiff's Standing

“ ‘The doctrine of the ‘law of the case’ is a rule of practice, an articulation of sound policy that, when an issue is once judicially determined, that should be the end of the matter as far as Judges and courts of co-ordinate jurisdiction are concerned’ ” (*Clark v. Clark*, 117 A.D.3d 668, 669, 985 N.Y.S.2d 276, quoting *Martin v. City of Cohoes*, 37 N.Y.2d 162, 165, 371 N.Y.S.2d 687, 332 N.E.2d 867). “The doctrine ‘applies only to

legal determinations that were necessarily resolved on the merits in [a] prior decision”
(*Baldasano v. Bank of N.Y.*, 199 A.D.2d 184, 185, 605 N.Y.S.2d 293).

Movant now argues plaintiff lacks standing because she has not been substituted into the action as estate administrator and claims plaintiff, as an entity, does not exist. Both arguments were previously raised and rejected in this court’s order dated November 8, 2018. Movant offers no new evidence or change in law to warrant reconsideration. These issues are therefore governed by the law of the case.

II. Alleged Prejudice from Delay

Movant claims prejudice due to plaintiff’s delays. However, the record shows delays were primarily caused by movant’s own filings. A scheduled sale on April 12, 2018, was canceled due to movant’s order to show cause. That motion was denied on November 8, 2018, and a second sale was scheduled for May 2, 2019. On May 1, 2019, movant filed another order to show cause, that was denied without a temporary restraining order, prompting her to file a Chapter 13 petition that stayed the sale. A third scheduled sale for December 5, 2019, was canceled after a second bankruptcy filing on December 3, 2019. That bankruptcy was dismissed on January 28, 2020, after which the foreclosure was paused due to the COVID-19 moratorium and FEMA holds. A fourth sale, scheduled for November 9, 2023, was canceled following movant’s third bankruptcy filing on October 27, 2023. After that stay lifted, a fifth sale was scheduled for January 16, 2025, but was again stayed by the present order to show cause.

All five scheduled sales were stayed by movant’s filings, two orders to show cause with temporary restraining order and three bankruptcy petitions. Combined with the

pandemic, the delays were not attributable to plaintiff. Moreover, the February 22, 2022, order already granted plaintiff an extension to reschedule the sale. Whether to grant such an extension under CPLR 2004 lies within the court's discretion (*Leader v. Steinway, Inc.*, 186 A.D.3d 1207). The court may consider the length and cause of delay and potential prejudice (*U.S. Bank N.A. v. Adler*, 148 A.D.3d 858). The court has already determined that any delay was excusable and not prejudicial. Any additional delay after that date again stems from movant's own filings. Thus, the court finds movant's claim of prejudice unpersuasive.

Accordingly, it is

ORDERED that movant's order to show cause (mot. seq. 6) is denied in all respects as her arguments regarding plaintiff's standing and her substitution as estate administrator have already been addressed, and no delay attributable to plaintiff resulted in prejudice to movant.

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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