

U.S. Bank N.A. v Cadoo

2025 NY Slip Op 32108(U)

February 4, 2025

Supreme Court, Kings County

Docket Number: Index No. 507655/2014

Judge: Derefim B. Neckles

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-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 4th day of February, 2025.

P R E S E N T:

HON. DEREKIM B. NECKLES,
Acting Justice.

-----X
U.S. BANK NATIONAL ASSOCIATION,

Plaintiff,

- against -

Index No. 507655/2014

DONMACKIMBER CADOO A/K/A D. CADOO
A/K/A SON CADOO, ET AL,

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Affidavits (Affirmations) Annexed	<u>302-328</u>
Notice of Cross-Motion/Affidavits (Affirmations) Annexed	<u>330-339</u>
Response to Plaintiff Statement of Material Facts	<u>340</u>
Opposition Affirmation to Cross-Motion	<u>343; 214</u>
Reply Affirmation to Opposition to Cross-Motion	<u>344</u>

Upon the foregoing papers in this proceeding, plaintiff moves (under mot. seq. 8) for an order (1) adding a party in the caption as a defendant, (2) awarding plaintiff summary judgment against defendant David Cohen, (3) appointing a referee to compute the amount due to plaintiff, (4) declaring all non-appearing and non-answering defendants are in default, and (5) deeming the refiled Notice of Pendency timely files, *nunc pro tunc*.

Defendant cross-moves (under mot. seq. 9) for an order dismissing the instant action.

Background

Plaintiff commenced the instant action on August 20, 2014 to foreclose on a mortgagee executed by defendant Donmackimber Cadoo, encumbering the subject property located at 761 Georgia Avenue, Brooklyn, New York. Plaintiff filed its first amended notice of pendency on January 6, 2015. On October 13, 2016, the court signed a conditional order of dismissal, holding that if plaintiff does not move for entry of judgment within 90 days, the action would be dismissed as abandoned. By order dated August 15, 2017, the court vacated the October 13, 2016 order dismissing the action, restored the matter to the court's active calendar, and reinstated the notice of pendency.

On February 21, 2018, plaintiff moved for an order of reference, and on August 30, 2018, defendant cross-moved to dismiss the action. By order dated October 16, 2018, plaintiff's motion for an order of reference was withdrawn, and defendant's cross-motion was granted to the extent that defendant David Cohen's proposed answer is deemed accepted. Plaintiff then filed another notice of pendency on April 25, 2019. The remaining arguments of defendant's cross-motion were denied by order dated May 8, 2019, where the court found that defendant waived his jurisdictional objection.

Defendant appealed the court's May 8, 2019 decision, denying defendant's cross-motion to dismiss, and the appellate division affirmed the decision, by order dated May 3, 2021.

On March 2, 2022, plaintiff moved for summary judgment, and on June 1, 2022, defendant cross-moved to dismiss the action because a satisfaction of mortgage was recorded with the city register. In response to defendant's cross-motion, plaintiff moved

for an order (1) vacating the erroneous satisfaction of mortgage and (2) granting plaintiff leave to amend its complaint. By order dated November 3, 2022, the court granted plaintiff's motion to the extent that it was granted leave to amend its complaint, and denied both plaintiff's motion for summary judgment, and defendant's cross-motion to dismiss, without prejudice and with leave to renew.

Plaintiff then moved for an order appointing a guardian ad litem for defendant Donmackimber Cadoo, and it was granted by order dated March 20, 2024.

Plaintiff now files the instant motion for summary judgment and defendant cross-moves to dismiss the complaint.

Discussion

I. Summary Judgment

To establish prima facie entitlement to judgment as a matter of law in an action to foreclose a mortgage, a plaintiff must produce the mortgage, the unpaid note, and evidence of default (*see Bethpage Fed. Credit Union v. Caserta*, 154 A.D.3d 691, 692 [2d Dept 2017]; *Wells Fargo Bank, N.A. v. Thomas*, 150 A.D.3d 1312; *Hudson City Sav. Bank v. Genuth*, 148 A.D.3d 687).

Here, plaintiff established its prima facie entitlement to judgment as a matter of law through production of the mortgage, note, and evidence of default through production of the notice of default, and an affidavit of Shannon M Bevins, an officer of the bank, testifying as to defendant's default.

II. Caption Amendment

In opposition to plaintiff's motion for summary judgment, defendant contends that the action should be dismissed because the action has been discontinued as to defendant David Cohen. In reply, plaintiff asserts that, to date, there has not been an order discontinuing the action as to defendant David Cohen. Instead, defendant relies on the clerical error from the March 20, 2024, which inadvertently omitted David Cohen's name from the amended caption.

Pursuant to CPLR §2001, a court may, at any stage of an action, "permit a mistake, omission, defect or irregularity ... to be corrected, upon such terms as may be just" (*see Dinstber v. Allstate Ins. Co.*, 96 A.D.3d 1198, 1199 [3d Dept 2012]). Here, despite omitting the name of defendant David Cohen, the original caption did identify him as a party defendant. Moreover, the complaint and amended complaints provided defendant with actual notice of the party defendants.

III. Satisfaction of Mortgage

Defendant further seeks dismissal based on a satisfaction of mortgage that was recorded on February 14, 2022. In reply, plaintiff asserts that the subject satisfaction of mortgage was erroneously generated and recorded, and the debt remains unpaid. Plaintiff offers the affidavit of Dustin L. Reesman, an officer for U.S. Bank, who testifies that in the ordinary course of business, U.S. Bank intended to write-off part of the escrow advances, but inadvertently issued a satisfaction of mortgage. Reesman attests that the debt has never been satisfied and remains outstanding. In support of its instant motion, plaintiff proffers the affidavit of Ms. Bevins, an officer for U.S. Bank, that attests that the

unpaid principal balance of the loan is \$518,322.97, and attaches a copy of the payment history of the mortgage in support.

Defendant here fails to raise a genuine issue of fact to rebut plaintiff's prima facie showing of summary judgment in this action.

Accordingly, it is

ORDERED that plaintiff's motion for summary judgment (mot. seq. 8) is granted in all respects; and it is

ORDERED that defendant's cross-motion to dismiss (mot. seq. 9) is denied in all respects.

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
FILED
2025 JUN - 6 A 9:51