

**U.S. Bank Trust N.A. v Erin Invs. LLC**

2025 NY Slip Op 32694(U)

July 24, 2025

Supreme Court, Warren County

Docket Number: Index No. EF2024-73300

Judge: Robert J. Muller

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK  
SUPREME COURT COUNTY OF WARREN

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U.S. BANK TRUST NATIONAL ASSOCIATION,  
AS TRUSTEE OF THE LB IGLOO SERIES IV TRUST,

Plaintiff

v.

**DECISION AND ORDER**

Index No. EF2024-73300

RJI No. 56-1-2025-0062

ERIN INVESTMENTS LLC; ERNEST G. BADCOCK, III;  
THE HACKER BOAT COMPANY, LLC;  
NEW YORK STATE DEPARTMENT OF TAXATION  
AND FINANCE; "JOHN DOE" and "JANE DOE"  
said names being fictitious, it being the intention of  
Plaintiff to designate any and all occupants of premises  
being foreclosed herein,

Defendants.

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*Friedman Vartolo, LLP*, Garden City (*Stephen J. Vargas* of counsel) for plaintiff.

*Stafford, Carr & McNally, P.C.*, Lake George (*Nathan Hall* of counsel) for defendants Erin Investments, LLC, Earnest G. Badcock, III and The Hacker Boat Company, LLC.

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ROBERT J. MULLER, J.S.C.

Plaintiff commenced this action on November 8, 2024 to foreclose a mortgage securing the premises known as 101 Green Harbour Lane, Lake George, New York 12845 (hereinafter “property”). Defendants Erin Investments, LLC, Ernest G. Badcock, III and the Hacker Boat Company, LLC (collectively “defendants”) filed an answer and asserted the following affirmative defenses: failure to state a cause of action upon which relief may be granted; failure to comply with RPAPL 1304 by providing defendant with the required pre-foreclosure notice at least ninety (90) days prior to commencing an action, failure to comply with this condition precedent by not providing defendant with pre-foreclosure notices to their various addresses and providing differing amounts due thereby frustrating defendants ability to work toward

reinstatement; and lack of standing.

It is alleged that on January 16, 2019 , Defendant, Erin Investments, LLC through its managing member Ernest G. Badcock III , executed and delivered to Wall Street Mortgage Bankers, Ltd. dba Power Express a promissory note and guaranty in the principal sum of \$2,500,000.00 secured by a mortgage on the property. Defendant Badcock also executed a Second Home Rider and acknowledged the property was to be occupied and used only as a second home. Thereafter the mortgage was assigned from Mortgage Electronic Registration Systems, Inc., as nominee for Wall Street Mortgage Bankers, LTD dba Power Express to HOF I Legal Title Trust 4 and then to plaintiff on April 5, 2022. Said assignments were recorded in the Warren County Clerk's Office on April 7, 2020 and July 14, 2022, respectively.

On or about January 31, 2023, defendant, The Hacker Boat Company, Inc., executed to U.S. Bank Trust National Association, as Trustee of the LB Igloo Series IV Trust, a guaranty agreement whereby The Hacker Boat Company, Inc. agreed to guaranty borrower's performance of payment of the note, as secured by the mortgage (hereinafter "Second Guaranty Agreement"). The Hacker Boat Company, Inc. therefore joined Ernest G. Badcock, III, as guarantors under the note. Defendants and SN Servicing Corporation, as servicing agent for U.S. Bank Trust National Association, as Trustee of LB-Igloo Series IV Trust amended and supplemented the mortgage by execution of a loan modification agreement, which capitalized all arrears to form a total unpaid principal balance of \$2,835,251.70 (hereinafter "Loan Modification Agreement"). The Loan Modification Agreement amended the interest rate of the Mortgage such that interest would accrue at a fixed rate of 7.21000% per annum from November 1, 2022, until the modified maturity date, August 1, 2049.

Plaintiff now moves for summary judgment (CPLR 3212) , dismissal of defendants'

affirmative defenses (CPLR 3211(b), default judgment against the non-appearing defendants (CPLR 3215), appointment of a Referee (RPAPL 1321[1]), and substitution of Kathleen B. Adcock s/h/a John Doe and amendment of the caption.

Motions for summary judgment are governed by CPLR §3212, where the proponent must establish the absence of a question of material fact which would preclude such an award. [*see* §CPLR 3212; *Zuckerman v. City of New York*, 49 N.Y.2d 557 (Ct. App. 1980); *St Claire v. Empire General Contracting & Painting Corp.*, 33 A.D.3d 611 (2nd Dept 2006)]. A movant has the initial burden of showing that no genuine issue of material fact exists. [*Ayotte v. Gervasio*, 81 N.Y.2d 1062, 1063 (1993); *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 (1986)] If this burden is met, the burden shifts to the opponent of the motion to demonstrate that a triable issue of fact exists. (*see DiBartolomeo v St. Peter's Hosp. of City of Albany*, 73 Ad3d 1326, 1326 [3d Dept 2010]).

Moreover, in a foreclosure action, “[a] plaintiff can establish entitlement to summary judgment by producing evidence of the mortgage, the unpaid note and the defendant’s default” (*Wells Fargo Bank, N.A. v Walker*, 141 AD3d 986, 987 [2016]; *see Deutsche Bank Natl. Trust Co. v Monica*, 131 AD3d 737, 738 [2015]; *Wells Fargo Bank, NA v Ostiguy*, 127 AD3d 1375, 1376 [2015]).

Here, plaintiff has submitted the affidavit of Skyler Robison, Asset Manager of SN Servicing Corporation, plaintiff’s servicer and attorney-in-fact. Attached to this affidavit are, *inter alia*, copies of the limited power of attorney authorizing SN Servicing to act on plaintiff’s behalf; the note; the mortgage, together with proof of recording; the Guaranty Agreements; the Loan Modification Agreement; the assignments, together with proof of

recording; and SN Servicing's records relative to defendants' payments and the amount due and owing.

The Court finds that plaintiff has submitted ample evidence of defendants' default under the loan documents and prima facie entitlement summary judgment. Indeed, there appears to be little dispute in this regard.

The burden now shifts to the Defendants to substantiate a defense with evidentiary proof in admissible form sufficient to require a trial of defenses. (*See Metro. Distrib. Servs, Inc. v. DiLascio*, 176 A.D. 2d 312 [2d Dept. 1991])

Defendants first affirmative defense alleges the Complaint fails to state a cause of action upon which relief can be granted. As stated above, the Plaintiff established its prima facie entitlement to judgment as a matter of law by submitting the mortgage and unpaid note, along with evidence of the mortgagors' loan repayment default. (*Deutsche Bank Natl. Trust Co. v. Posner*, 89 A.D. 3d 674 [2d Dept. 2011]). The complaint alleges there is a mortgage, an unpaid promissory note and the mortgagor defaulted in repayment of the loan. Accordingly, plaintiff stated a claim upon which relief may be granted and defendants' first affirmative defense must be dismissed.

Defendants' second affirmative defense alleges plaintiff failed to comply with the conditions precedent by failing to provide them with required pre-foreclosure notice at least ninety (90) days prior to commencement of the foreclosure action. As their third affirmative defense, the defendants alleged plaintiff failed to comply with all conditions precedent to this action by providing defendants with pre-foreclosure notices to different addresses and in different amounts, thereby frustrating Defendants' ability to meaningfully work towards reinstatement

Specifically, defendant Badcock contends Erin Investments, LLC received a letter dated August 28, 2024 from SN Servicing Corporation advising the mortgage was in default and that the default could be cured within 90 days of the letter. (NYSCEF Doc. No. 37, ¶2-3) He further asserts that in reliance on that letter he believed he had until November 26, 2024 to cure the default, but he was not given the full ninety (90) days as the action was commenced on November 8, 2024. Defendant Badcock affirms he has been residing at the property as his principal residence for two years. (id. ¶4)<sup>1</sup>

With regard to a home loan, at least ninety days before a lender, assignee, or mortgage loan servicer commences legal action against the borrower, including mortgage foreclosure, the lender or mortgage loan servicer shall give notice to the borrower in at least fourteen-point type which shall include certain statutorily mandated content. (See RPAPL §1304; *Federal Natl. Mtge. Assn. v. Johnson*, 177 A.D. 3d 1149 [3d Dept. 2019]) In contrast, if a loan is not a “home loan”, then such notice is not required. (*Vanderbilt Mtge. & Fin., Inc. v. Ammon*, 118 N.Y.S. 3d 125, 128 [2d Dept. 2020])

Here, RPAPL §1304 is inapplicable because the loan was not a “home loan” since the “borrower” was defendant Erin Investments, LLC - a limited liability company - and not a natural person. (See RPAPL §1304[6][1][a][i]). Therefore, plaintiff was not required to allege or comply with these notice provisions and defendants second affirmative defense must be dismissed.

In the alternative, defendant Badcock asserts even if not required, plaintiff sent notices pursuant to RPAPL 1304 and he justifiably relied upon the language of the 90-day notice in good faith. Therefore, when plaintiff prematurely commenced this action defendant Badcock’s ability

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<sup>1</sup> Defendant Badcock claims to have retained Davies & Davies Associates to list the property for sale and they suggested listing it for \$9,950,000.00.

to cure the default was impeded. To the extent defendant Badcock asks the Court to conjure equity out of a statute which must be strictly construed, the Court declines to do so. (see generally, *U.S. Bank N.A. v Zakarin*, \_\_\_AD3d\_\_\_, 2025 NY Slip Op 03219 [2025]) Accordingly, defendants' third affirmative defense is dismissed.

Insofar as defendant Badcock contends the matter was subject to a mandatory settlement conference pursuant to CPLR 3408, only actions involving a "home loan" - as discussed above - are subject to said conference.

Defendants remaining affirmative defense alleged in the answer claims plaintiff lacks standing to bring this action. However, defendants are considered to have abandoned all the affirmative defenses that were alleged in the responsive pleading if, as here, they failed to raise them in opposition to the motion. (See *U.S. Bank N.A. v. Gonzalez*, 172 A.D. 3d 1273 [2d Dept. 2019]. Therefore, defendants affirmative defense based upon lack of standing is dismissed as abandoned.

Thus, having considered NYSCEF document numbers 20 through 27 and 30 through 39, it is hereby

**ORDERED**, that the Plaintiff's motion for summary judgment on its complaint against the answering defendants pursuant to CPLR §3212, dismissal of the Defendant's affirmative defenses pursuant to CPLR §3211(b), default judgment against the non-appearing Defendants pursuant to CPLR §3215, appointment of a referee to compute pursuant to RPAPL §1321(1), amendment of the caption, and related relief is granted in all respects; and it is further

**ORDERED**, that the Defendants' verified answer is limited to notices of appearance and waiver of all papers and notices of all proceedings in said action except a copy of Referee's Oath and Report of Amount Due, a copy of the Judgment of Foreclosure and Sale, Notice of Entry of

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Judgment, Notice of Sale, Referee’s Report of Sale, and Notice of Proceedings to Obtain Surplus Monies; and it is further

**ORDERED**, that default judgment against the non-appearing Defendants is granted pursuant to CPLR §3215; and it is further

**ORDERED**, that Kathleen Badcock s/h/a John Doe is substituted in place and stead of “JOHN DOE” and “JANE DOE” and the caption of the action is amended as follows:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WARREN

-----X  
U.S. BANK TRUST NATIONAL ASSOCIATION, AS  
TRUSTEE OF THE LB IGLOO SERIES IV TRUST,  
Plaintiff

Index No. EF2024-73300

Mortgaged Premises:  
101 Green Harbour Lane  
Lake George, NY 12845

-against

ERIN INVESTMENTS LLC; ERNEST G. BADCOCK,  
III; THE HACKER BOAT COMPANY, LLC; NEW  
YORK STATE DEPARTMENT OF TAXATION AND  
FINANCE; KATHLEEN BADCOCK S/H/A JOHN DOE,  
Defendants

**Section** 239.00  
**Block:** 1  
**Lot:** 1.12

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And it is further;

**ORDERED** that this action be, and the same is referred to Jesse Ashdown, Esq., with an address of 1119 Route 29, Schuylerville, NY 12871 as Referee to ascertain and compute the amount due except as to attorney’s fees upon the Note and Mortgage upon which this action was brought and to examine and report whether or not the Mortgaged Premises as further described in the Complaint should be sold in one parcel, and that the Referee make his/her report with all convenient speed; and it is further

**ORDERED**, that, if required, said Referee take testimony pursuant to RPAPL §1321(1); and it is further

**ORDERED**, that by accepting this appointment, the Referee certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to, 36.2(c) (“Disqualification from appointment”) and 36.2(d) (“Limitations on appointments based on compensation”); and it is further

**ORDERED**, that a copy of this Order with Notice of Entry shall be served upon the owner of the equity redemption, any tenants named in this action, and any other party entitled to notice; and it is further

**ORDERED**, that pursuant to CPLR §8003(a) the statutory fee of \$350.00 shall be paid to the Referee for the computation stage and upon the filing of his/her report; and it is further

**ORDERED**, that the Referee appointed herein is subject to the requirements of Rule 36.2(c) of the Chief Judge and, if the referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall notify the Appointing Judge forthwith; and it is further

**ORDERED**, that the Referee is prohibited from accepting or retaining any funds for himself/herself or paying funds to himself/herself without compliance with Part 36 of the Rules of the Chief Administrative Judge, and it is further

**ORDERED**, that on the filing of the Referee’s Oath and Report, and confirmation thereof, the Plaintiff shall have Final Judgment of Foreclosure and Sale.

**ORDERED** that any relief not specifically addressed has nonetheless been considered and is hereby expressly denied.

The above constitutes the Decision and Order of this Court.

The original of this Decision and Order has been filed by the Court. Counsel for plaintiff is directed to serve all parties with notice of entry.

Date: July 24, 2025  
Lake George, New York



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ROBERT J. MULLER, J.S.C.

Index No. EF2024-73300  
RJI No. 56-1-2025-0062

ENTER: