

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

2025 NY Slip Op 33063(U)

August 4, 2025

Supreme Court, Kings County

Docket Number: Index No. 514629/2023

Judge: Anne J. Swern

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This opinion is uncorrected and not selected for official publication.

At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 4<sup>th</sup> day of August 2025.

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

MAUREEN JARRETT A/K/A MAUREEN A. LEE  
JARRETT, HUGH D. JARRETT A/K/A HUGH JARRETT,

*Plaintiffs,*

*-against-*

U.S. BANK NATIONAL ASSOCIATION AS  
LEGAL TITLE TRUSTEE FOR TRUMAN 2016  
SC6 TITLE TRUST,

*Defendants,*

**DECISION & ORDER**

Index No.: 514629/2023

Calendar No.: 35, 36 & 37

Motion Seq.: 001, 002 & 003

Return Date: 5/15/2025

*Recitation of the following papers as required by CPLR 2219(a):*

	<b>Papers Numbered</b>
001 Plaintiff's Notice of Motion, Affirmation, Affidavits and Exhibits (NYSCEF 7-26).....	1, 2
Interim Orders and Letters to the Court (53, 56, 49-68).....	3
002 Defendants' Notice of Cross-Motion, Affirmation in Opposition to MS#1 and in Support of Cross-Motion, and Exhibits (NYSCEF 27-50).....	4, 5
Affirmation in Opposition (NYSCEF 55).....	6
Letter to the Court (NYSCEF 69).....	7
003 Defendants' Notice of Motion, Affirmation and Exhibits (NYSCEF 70-98).....	8, 9
Affirmation and Exhibit in Opposition (NYSCEF 99-100).....	10
Post-Oral Argument Letters to the Court and Memorandums of Law (NYSCEF 105-108, 112-113).....	11

*Upon the foregoing papers, the decision and order of the Court is as follows:*

### **Background**

This is an action to discharge the mortgage of record, together with all assignments, on plaintiff's property and quiet title under RPAPL Article 15, and void the Note executed simultaneously therewith. It is undisputed that the underlying foreclosure actions under index numbers 18545/2011 and 502829/2020 have been dismissed with prejudice. The first foreclosure action was dismissed by an order dated 11/22/2016 based on defendants' predecessor's failure to prosecute the action. The motion to vacate the dismissal was denied by an order dated 7/5/2019. Although a Notice of Appeal was filed with respect to the 7/5/2019 order, an appeal was never perfected. Instead, defendants commenced a second action invoking the saving provisions of CPLR § 205 [a]. The second action was dismissed as untimely by an order dated 3/27/2023 and affirmed by the Appellate Division, Second Department (*U.S. Bank N.A. v. Jarrett*, 233 AD3d 731 [2d Dept 2024]). Defendants have filed a motion to reargue in the Second Department that has not been decided.

### **The Motions**

Plaintiffs have moved this Court for an order (1) granting summary judgment per CPLR § 3212, (2) voiding and cancelling and discharging a mortgage encumbering their real property located at 1054 East 38th Street, Brooklyn, New York, in the original amount of \$505,750.00, (3) voiding and cancelling the Notice of Pendency dated 11/14/2019, and (4) granting plaintiff legal fees under RPL §282. (MS 001).

Defendants have moved this Court for an order (1) per CPLR § 3211 [a] [4] dismissing the complaint based on the prior action pending under index number 502829/2020, or in the

alternative, (2) staying this action under the appeal of the 3/27/2023 order was decided by the Appellate Division. (MS 002).

After the Appellate Division affirmed the dismissal of the second foreclosure action, defendants moved this Court for an order staying this action until such time as the Appellate Division decides defendants' motion to reargue the affirmance of the order dated 3/27/2023 dismissing the second foreclosure action as untimely.

After the motions were fully briefed, defendants then submitted "letter briefs" and exhibits without permission of the Court based on questions certified by the United States Court of Appeals for the Second Circuit to the New York State Court of Appeals (*Article 13 LL v Ponce De Leon Federal Bank*, 43 NY3d 982 [2025]).<sup>1</sup> Therefore, plaintiffs were granted permission to submit a response.

Plaintiff's motion for summary judgment is denied without prejudice and with leave to renew after the Appellate Division, Second Department decides defendants' motion for reargument. Defendants' first motion for a stay pending a determination on its appeal was rendered moot by *U.S. Bank N.A. v. Jarrett*, 233 AD3d 731 [2d Dept 2024] (MS#2). Defendants' second motion is rendered academic by this Court's decision on plaintiff's motion. It is noted that defendants' letter request for a stay is denied. A letter application cannot be a substitute for a formal motion.

The Court has considered the parties' remaining arguments and finds same to be without merit.

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<sup>1</sup> 1. Whether, or to what extent does, Section 7 of the Foreclosure Abuse Prevention Act, codified at N.Y. C.P.L.R. § 213(4)(b), apply to foreclosure actions commenced before the statute's enactment?

2. Whether FAPA's retroactive application violates the right to substantive and procedural due process under the New York Constitution, N.Y. Const., art. I, § 6?

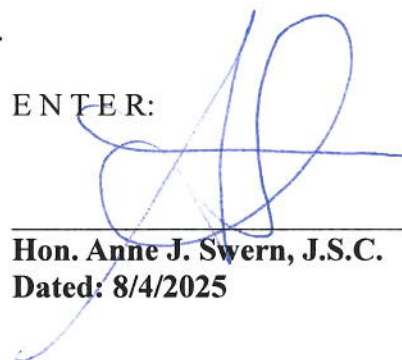
Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment is denied without prejudice and with leave to renew after the Appellate Division, Second Department has decided defendants' motion for reargument (MS 001), and it is further

ORDERED that defendants' motions for a stay are denied (MS 002 and 003).

This constitutes the decision and order of the Court.

ENTER:



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**Hon. Anne J. Swern, J.S.C.**  
**Dated: 8/4/2025**

For Clerks use only:

MG \_\_\_\_\_

MD \_\_\_\_\_

Motion seq. # \_\_\_\_\_