

U.S. Bank N.A. v Adames

2025 NY Slip Op 33092(U)

June 23, 2025

Supreme Court, Kings County

Docket Number: Index No. 524514/2023

Judge: Derefim B. Neckles

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FSMP 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 23rd day of June, 2025.

P R E S E N T:

HON. DEREKIM B. NECKLES,
Acting Justice.

-----X
U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE
FOR STRUCTURED ADJUSTABLE RATE
MORTGAGE LOAN TRUST, MORTGAGE PASS-
THROUGH CERTIFICATES, SERIES 2006-10

Plaintiff,

ms#2

- against -

Index No. 524514/2023 ✓

✓ FAUSTO ADAMES, ACSCA CORP., PEOPLE OF THE STATE OF NEW YORK, NEW YORK CITY TRANSIT ADJUDICATION BUREAU, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD JOHN DOE (Those unknown tenants, occupants, persons or corporations or their heirs, distributees, executors, administrators, trustees, guardians, assignees, creditors or successors claiming an interest in the mortgaged premises.)

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Affidavits (Affirmations) Annexed
Opposition Affirmation to Motion
Affirmation in Reply

55, 56, 57, 58, 60
74
77

Upon the foregoing papers in this action, plaintiff moves (under mot. seq. 2) for an order, (1) Granting summary judgment pursuant to CPLR §3212; (2) Dismissing the defenses asserted in the answer filed by defendants Fausto Adames and ACSCA CORP. pursuant to CPLR §3211(b); (3) Permitting the answer to be treated as a limited notice of

appearance requiring plaintiff to serve the answering defendants, without prior notice, a copy of the entered judgment of foreclosure and sale, notice of sale, notice of discontinuance, and notice of surplus money proceedings pursuant to CPLR § 320; (4) Appointing a referee to compute the amount due to the plaintiff pursuant to RPAPL §1321; (5) Amending the caption to substitute Pamela McCray, Carlos Santos and Jorge Hernandez as a party defendant in place of “John Doe” pursuant to RPAPL § 1311; (6) Granting a default judgment against all non-appearing and non-answering defendants pursuant to CPLR § 3215; and for such other and further relief as to the court may deem just and proper.

Background

Defendant Fausto Adames executed and delivered a Consolidated Note dated September 22, 2006, for the amount of \$472,000.00. Defendant Fausto Adames defaulted by failing to make the April 1, 2020, and subsequent payments. A RPAPL § 1304 90-day notice and a notice of default was mailed to Fausto Adames at 964 Glenmore Avenue, Brooklyn, New York, on March 26, 2021. On August 23, 2023, the plaintiff commenced this action by filing the summons, complaint, notice of pendency and certificate of merit.

In opposition to the motion, Fausto Adames and ACSCA Corp (“defendants”) argue that plaintiff has failed to come forward with admissible evidence that establishes that defendants defaulted on their contractual obligations. Defendants contend that plaintiff’s affiant, Minh Nghiem, an employee of Nationstar Mortgage, LLC, fails to identify the documents attached to his affidavit as alleged proof of defendants’ default. Lastly, defendant argues that the affiant does not state whether the documents attached

are the servicer's documents or another entity.

Discussion

“To establish a prima facie case in an action to foreclose a mortgage, a plaintiff must produce ‘the mortgage, the unpaid note, and evidence of default’” (*Flagstar Bank, FSB v. Mendoza*, 139 A.D.3d 898, 899, quoting *Emigrant Mtge. Co., Inc. v. Beckerman*, 105 A.D.3d 895, 895). An affiant must attest that they are personally familiar with the record-keeping practices and procedures of the plaintiff to demonstrate the admissibility of the records relied upon by the affiant under the business records exception to the hearsay rule under CPLR 4518 [a] (*Aurora Loan Servs., LLC v. Baritz*, 144 A.D.3d 618, 620 [2016]).

Here, plaintiff has not met its prima facie burden for summary judgment because it fails to produce sufficient evidence of defendant's default. Plaintiff proffers the affidavit of Minh Nghiem, the document executive assistant of its servicer, Nationstar Mortgage LLC. Minh Nghiem provides in his affirmation that he has personal knowledge of the facts contained in the affidavit by virtue of his position at Nationstar, his familiarity with Nationstar's processes and based upon his review of the relevant business records. He, however, does not specifically show that the loan history document that he relied upon (Exhibit 5) as evidence of defendant's default was created by plaintiff. Nor does the document itself indicate that it was created by Nationstar or Aurora Loan Services, the prior servicer of the mortgage loan. Thus, plaintiff is not entitled to summary judgment as it failed to produce sufficient evidence of defendant's default.

Accordingly, it is

ORDERED that plaintiff's motion (mot. seq. two) is granted to the extent that the caption is amended. All other requested relief are denied.

ORDERED, that the caption shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
U.S. BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR STRUCTURED ADJUSTABLE
RATE MORTGAGE LOAN TRUST,
MORTGAGE PASS-THROUGH CERTIFICATES,
SERIES 2006-10

Plaintiff,

vs.

FAUSTO ADAMES, ACSCA CORP., PEOPLE OF THE
STATE OF NEW YORK, NEW YORK CITY TRANSIT
ADJUDICATION BUREAU, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD, PAMELA
MCCRAY, CARLOS SANTOS, JORGE HERNANDEZ

Defendant(s).

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MORTGAGED PREMISES:
964 Glenmore Avenue
BROOKLYN, NY 11208

This constitutes the decision and order of the court.

E N T E R,



HON. DEREFIM B. NECKLES
A. J. S. C.