

U.S. Bank N.A. v Rhoden

2025 NY Slip Op 33238(U)

July 9, 2025

Supreme Court, Kings County

Docket Number: Index No. 524607/2019

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 9th day of July, 2025.

P R E S E N T:

HON. DEREKIM B. NECKLES,
Acting Justice.

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE
FOR THE ADJUSTABLE RATE MORTGAGE TRUST
2006-2, ADJUSTABLE RATE MORTGAGE-BACKED
PASS-THROUGH CERTIFICATES, SERIES 2006-2,

Plaintiff,

- against -

BRENDA RHODEN; ANN MARIE MASON A/K/A
ANN-MARIE MASON; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS AS NOMINEE FOR FIRST
MERIDIAN MORTGAGE, LLC; BOARD OF
MANAGERS OF THE NEWSWALK CONDOMINIUM;
CITY OF NEW YORK ENVIRONMENTAL CONTROL
BOARD; CITY OF NEW YORK PARKING
VIOLATIONS BUREAU; CITY OF NEW YORK
TRANSIT ADJUDICATION BUREAU AND "JOHN
DOE", said name being fictitious, it being the intention of
Plaintiff to designate any and all occupants of premises
being foreclosed herein, and any parties, corporations or
entities, if any, having or claiming an interest or lien upon
the mortgaged premises,

Defendants.

MS#3

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The following e-filed papers read herein:

NYSCEF Doc Nos.

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

86, 87, 88, 89, 90
97, 99, 102

Upon the foregoing papers in this action to foreclose on a mortgage encumbering

the subject property at 700 Pacific Street a/k/a 535 Dean Street, Unit 213 in Brooklyn, Brenda Rhoden (“Defendant”) moves (under mot. seq. 3) for an order (1) vacating and setting aside the notice of sale for lack of personal jurisdiction; (2) cancelling the foreclosure auction scheduled for February 13, 2025; (3) in the alternative, staying the foreclosure sale pending the determination of the within order to show cause; and (4) for such other and further relief as this court may deem just and proper.

Background

On November 11, 2019, plaintiff commenced the instant action. A decision and order granting plaintiff’s motion for order of reference was filed on December 27, 2023. A judgement of foreclosure and sale was filed on June 13, 2023. A sale was scheduled pursuant to the judgement, yet on February 2, 2025, defendant filed the instant order to show cause resulting in a stay.

In support of the order to show cause, defendant argues that she was never served the notice regarding availability of electronic filing & summons with notice & mortgage foreclosure complaint & certificate of merit. Defendant in her affidavit provides that on the date the process server alleges service was effectuated, she was home most of the day and all of the morning with her two children and grandchild. Despite four people being home at the alleged time of service, defendant claims that no one came to the door to provide documents and none of her children received documents on that morning or on that day. Further, defendant contends that the description of the woman that was allegedly served, a black 60 year old female, weighing 130-150 pounds, 5 feet 4 - 7 inches tall and with black hair, matches no one who lives in the home. Despite

defendant's contentions, defendant's daughter in her affidavit asserts that her nor anyone living in the household were home when the process server says that he served defendant.

In opposition, co-defendant Ann-Marie Mason ("Mason"), argues that defendant Brenda Rhoden did not contribute or pay anything for the purchase of the subject property, for the mortgage loan or real estate taxes, or for any of the related expenses for the property. Mason claims that in the event that there are surplus funds that result from the property being sold at foreclosure, she would file a claim to the surplus as defendant Brenda Rhoden would not be entitled to any portion of the surplus.

In opposition, plaintiff argues that defendant has failed to provide any documentary evidence to support her claim that no one matching the description of the person served was at her home when service was effectuated. Additionally, plaintiff provides that defendant waived a defense of lack of service when she appeared through multiple counsels and did not challenge service. Further, plaintiff argues that defendant has not sought to vacate her default. In the event that the court treats her motion as such plaintiff contends that defendant has not raised any defense to the action other than jurisdiction, nor did she file a proposed answer. Lastly, plaintiff argues that defendant has not presented any valid basis to vacate the prior order of reference or judgment of foreclosure and sale under an interests of justice standard, as she fails to provide any evidence of fraud, mistake, inadvertence, surprise, or excusable neglect that would warrant vacatur in the interest of substantial justice.

Discussion

"The filing of a notice of appearance in an action by a party's counsel serves as a

waiver of any objection to personal jurisdiction in the absence of either the service of an answer which raises a jurisdictional objection, or a motion to dismiss pursuant to CPLR 3211 (a) (8) for lack of personal jurisdiction” In *JP Morgan Chase Bank v. Jacobowitz*, 176 AD3d 1191, 1192, 111 N.Y.S.3d 391 [2nd Dept. 2019], the court held that personal jurisdiction was waived when defendant waited 10 months after the notice of appearance to make motion to dismiss. Similarly, the court in *U.S. Rof III Legal Title Trust 2015-1 v. John*, 189 AD3d 1645, 1649, 140 N.Y.S.3d 59 [2nd Dept. 2020] held that an 8 month delay between notice of appearance and motion to dismiss for lack of personal jurisdiction waived the defense.

Here, the first notice of appearance was filed on September 7, 2022. Defendant did not answer the complaint and only brought the defense of personal jurisdiction in the instant motion filed on February 2, 2025, more than two years after first appearing by counsel.

Accordingly, it is

ORDERED that defendant Brenda Rhoden’s motion (mot. seq. 3) is denied as the defense of personal jurisdiction has been waived.

E N T E R,



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