

**HSBC Bank USA N.A. v DeAngelis**

2025 NY Slip Op 33443(U)

September 11, 2025

Supreme Court, Kings County

Docket Number: Index No. 511598/2015

Judge: Cenceria P. Edwards

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At an IAS Term, Part FRP1 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, on the 11th day of September 2025.

P R E S E N T:

HON. CENCERIA P. EDWARDS, CPA,

Justice.

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HSBC BANK USA N.A.,

Plaintiff(s),

-against-

MICHAEL DEANGELIS, ENZA GATTO a/k/a ENZA M. VITIELLO as voluntary administratrix and heir to the Estate of Angelina Vitiello, HENRY VITIELLO, JOHN VITIELLO, UNITED STATES OF AMERICA, o/b/o INTERNAL REVENUE SERVICE, NEW YORK STATE DEPT OF TAXATION AND FINANCE, HSBC MORTGAGE CORP., COMMISSIONER OF LABOR OF THE STATE OF NEW YORK, FORD MOTOR CR., CITY OF NEW YORK, DEPARTMENT OF FINANCE, PARKING VIOLATIONS, ECB, JUSTIN GIAQUINTO, THERESA PEZZA, CLARA PEZZA, MICHELE PEZZA, ANTHONY PEZZA,

Defendant(s).  
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**ORDER**

Motion Calendar: 7/24/2024

Motion Cal. #(s): 5 & 6

Index #: 511598/2015

Mot. Seq. #(s): 7 & 8

The following e-filed papers read herein:

NYSCEF Doc. Nos.:

Notice of Motion, Affidavits/Affirmations, and Exhibits \_\_\_\_\_

186-187\_\_\_\_\_

Notice of Cross-Motion, Affidavits/Affirmations and Exhibits \_\_\_\_

190-201\_\_\_\_\_

Reply Affidavits/Affirmations and Exhibits \_\_\_\_\_

203\_\_\_\_\_

Upon the foregoing papers in this action to foreclose on the residential property at 119 Battery Avenue in Brooklyn (Property), defendants John and Henry Vitiello move (in motion sequence [mot. seq.] seven) for an order: (1) dismissing the amended complaint as time-barred, pursuant to CPLR 3211 (a) (5); or, alternatively, (2) directing the parties to appear for a bad faith hearing, pursuant to CPLR 3408; or, alternatively, (3) granting them 45 days within which to file an answer to the amended complaint (NYSCEF Doc No. 186).

MTGLQ Investors, L.P. (MTGLQ), successor in interest to the plaintiff, HSBC Bank USA, N.A. (HSBC), cross-moves (in mot. seq. eight) for an order: (1) denying the Vitiello Defendants' dismissal motion; (2) granting it an extension of time for completion of service of process upon Henry Vitiello, *nunc pro tunc*, pursuant to CPLR 306-b; and (3) amending the caption to substitute MTGLQ as plaintiff in place and instead of HSBC (NYSCEF Doc No. 190).

### **Background**

HSBC's predecessor loaned defendant Michael DeAngelis (DeAngelis) \$400,000.00, secured by the August 10, 2006 mortgage executed by DeAngelis and the co-owner of the Property, Angelina Vitiello, who died three years later. On September 22, 2015, HSBC commenced this action against DeAngelis and defendant Enza Gatto, a/k/a Enza M. Vitiello as voluntary administratrix and heir of the Estate of Angelina Vitiello (Gatto), to foreclose on the mortgage encumbering the Property alleging that the defendants defaulted under the mortgage by failing to pay principal, interest and other charges due on August 1, 2008 (NYSCEF Doc No. 1 at ¶ 8).

DeAngelis never answered the complaint, but Gatto, who is decedent Angelina Vitiello's daughter, submitted a November 24, 2015 letter to HSBC's counsel specifically noting that she was "not the only heir to this property" and that she had "younger brothers" (NYSCEF Doc No. 51). HSBC treated Gatto's response letter as an answer to the complaint and then proceeded with its prosecution of the action. By order dated April 5, 2019, the court (Dear, J.) granted an order extending, among other things, the time to set the date of the foreclosure sale.

On July 6, 2022, on the eve of a scheduled foreclosure sale/auction, John Vitiello, and his brother, Henry (hereinafter the Vitiello Defendants), moved, by order to show cause (OSC), to stay the foreclosure sale, dismiss the complaint for failure to include them as necessary parties and for such other and further relief as the court may deem to be just and proper (NYSCEF Doc No. 118).

By a January 12, 2024 decision and order, which was entered on February 16, 2024, this court granted the Vitiello Defendants leave to intervene in this action as of right, pursuant to CPLR 1012 (a) (3), and they were joined as defendants, pursuant to CPLR 1001 (a) (NYSCEF Doc No.

129). The decision and order directed HSBC to serve all defendants with a supplemental summons and an amended complaint adding John and Henry Vitiello as party defendants *within 30 days* after the entry thereof (or by March 18, 2024).

The supplemental summons, the amended complaint and a supplemental notice of pendency were thereafter e-filed with the court on February 27, 2024 (NYSCEF Doc Nos. 134-142). Plaintiff's affidavits of service in the record reflect that John Vitiello was served with the supplemental summons and the amended complaint by "nail and mail" service on March 9, 2024 and March 14, 2024, respectively (NYSCEF Doc Nos. 152 and 160), and Henry Vitiello was personally served with process on March 19, 2024, *one day after* the deadline (NYSCEF Doc No. 174).

### ***John and Henry Vitiello's Dismissal Motion***

On March 28, 2024, the Vitiello Defendants filed a pre-answer motion to dismiss the amended complaint, pursuant to CPLR 3211 (a) (5), based on the statute of limitations (NYSCEF Doc No. 186). The Vitiello Defendants submit a moving memorandum of law arguing that HSBC and its successor MTGLQ failed to serve them with process within six years after commencing this action and thereby accelerating the mortgage on September 22, 2015, despite the fact that "the bank was made aware of the two brothers quickly after the action was commenced" (NYSCEF Doc No. 187 at 3). The Vitiello Defendants argue that "the statute of limitations expired no later than September 22, 2021, and this new amended complaint is time barred" (*id.* at 6).

The Vitiello Defendants also argue that Plaintiff failed to establish an entitlement to an extension of the 120-day service deadline, which requires a showing of "good cause" (*id.* at 9). Specifically, they contend that:

"[t]he good cause standard was not met here, as the plaintiff's counsel never described what serious efforts were made, if any, to timely locate John and Henry Vitiello for service upon learning their name[s], including the search of potential relevant databases or the conduct of other investigation[s]. As noted in Judge Edwards decision, Plaintiff received a letter from Co-Defendant Gatto on November 24, 2015, notifying them of her brothers. They utilized the letter as a de-facto answer. Moreover, the Voluntary Administratrix paperwork that was filed in the surrogate Court

provided the information on John and Henry Vitiello, including their addresses. Plaintiff simply ignored all information being presented and ostentatiously proceeded without attempting to notify the owners of the property.

\* \* \*

“The length of the delay in service is particularly egregious under the circumstances considering it is now ten years since the filing of the service of the original complaint and the loan has incurred years of default interest, and Plaintiff had to be prompted by the Court to file an amended complaint, never taking it upon itself to request additional time and or the appointment of a Guardian Ad Litem” (*id.* at 9-10).

Due to the delays, the Vitiello Defendants alternatively seek a bad faith hearing, pursuant to CPLR 3408 or, an extension of time to answer the amended complaint.

#### ***Plaintiff's Opposition and Cross-Motion***

On April 18, 2024, MTGLQ, as successor to HSBC, opposed the Vitiello Defendants' motion and cross-moved for an order “to deem service upon Defendant Henry Vitiello timely *nunc pro tunc* in accordance with the Court's Decision and Order entered on February 16, 2024[,]” pursuant to CPLR 306-b, and amending the caption to substitute MTGLQ in place of HSBC as plaintiff (NYSCEF Doc No. 191 at ¶ 2). MTGLQ submits an attorney affirmation asserting that:

“Defendants appear to seek to reargue without basis for doing so the Court's prior Decision and Order entered on February 16, 2024 which specifically permitted Plaintiff to file amended pleadings naming the Defendants. This action was timely commenced in 2015, and the Amended Complaint filed herein does not constitute a new action. As such, this action can in no way be deemed untimely. Defendants' claims alleging bad faith and seeking Attorney's Fees must also fail as no merit to Defendant's claims has been established. Lastly, it is respectfully submitted that Plaintiff's cross motion to deem service of the Amended Complaint upon defendant Henry Vitiello, which occurred on the thirty-first day after the Court's Order directing service upon the natural defendants within thirty days of entry of said Order, must be granted as Plaintiff can establish good cause for the minimal delay and such an extension is in the interests of justice” (*id.* at ¶ 3).

Regarding the statute of limitations, counsel explains that “[t]he filing of the Supplemental Summons and Amended Complaint [on February 27, 2024] relate back to the date of filing of the original Complaint [in 2015] and therefore in no way constitute a violation of the Statute of Limitations” (*id.* at ¶ 13). Counsel asserts that “Defendants’ motion wholly ignores the relation back doctrine and its applicability here, which clearly holds that this action is timely” (*id.* at ¶ 14).

In support of the cross-motion, counsel asserts that “[u]pon completion of a search for the address of Defendant Henry Vitiello, service was thereafter completed on him personally at a residence in New Jersey on March 19, 2024, the thirty-first day after entry of the Order permitting Plaintiff to serve defendants with amended pleadings” (*id.* at ¶ 20). Counsel asserts that “Plaintiff now moves to deem the service upon Defendant Henry Vitiello, which occurred one day after the time period proscribed by said Order expired, timely nunc pro tunc” (*id.*). Counsel explains that “the need to conduct [an] investigation and serve Henry Vitiello out of state caused service to be completed one day later than the thirty-day time period set forth in the Court’s Order” (*id.* at ¶ 24).

In addition to counsel’s affirmation, MTGLQ submits a supplemental affirmation from Christie McNally, an employee of ProVest LLC, a process serving company, who affirms that it was engaged by plaintiff’s counsel to “manage” service of process upon Henry Vitiello, and that significant efforts were made to locate Henry Vitiello’s correct address and effectuate service upon Henry Vitiello in New Jersey (*see* NYSCEF Doc No. 199).

Finally, MTGLQ seeks to amend the caption to substitute MTGLQ in place of HSBC as the proper plaintiff. Counsel asserts that “[a]fter the commencement of this action, the Note and Mortgage were transferred and assigned to MTGLQ as evidenced by an Assignment of Mortgage dated July 6, 2017 and recorded with the Kings County City Register on August 4, 2017 as CRFN 2017000287542” (NYSCEF Doc No. 191 at ¶ 28).

In response to MTGLQ’s opposing/cross-moving papers, the Vitiello Defendants submit a reply memorandum of law, wherein they argue, inter alia, that MTGLQ should not benefit from the “relation back” doctrine because the record shows that the original plaintiff knew about their existence from the inception of this lawsuit and still, inexplicably, chose not to name them as defendants until ordered to do so by this Court in 2024 (*see* NYSCEF Doc. #203, pp. 2-4). In the alternative, the Vitiello Defendants argue that should this Court decline to dismiss the complaint

against them as time-barred, then it should toll all interest and fees because the nearly decade-long delay has caused the property to be financially “underwater,” thereby preventing them from attempting to redeem it (*see id.* at pp. 4-8).

Insofar as the Vitiello Defendants’ reply memorandum of law also functions as their opposition to MTGLQ’s cross-motion, MTGLQ does not submit any papers in response thereto.

### Discussion

Although the Vitiello Defendants acknowledge that this foreclosure action was timely commenced in September 2015 as against “Enza Gatto a/k/a Enza M. Vitiello As Voluntary Administratrix and Heir to the Estate of Angelina Vitiello,” they now claim that the amended complaint asserted against them, *as individual heirs*, is time-barred because the statute of limitations expired six years after the commencement of this action.

However, in *OneWest Bank N.A. v Muller* (189 Ad3d 853 [2020]), a factually analogous foreclosure action, the Second Department applied the relation back doctrine when the complaint was amended to add individual heirs to the defendant estate as party defendants along with the estate, pursuant to CPLR 203 (f), which provides that “[a] claim asserted in an amended pleading is deemed to have been interposed at the time the claims in the original pleading were interposed, unless the original pleading does not give notice of the transactions, occurrences, or series of transactions or occurrences, to be proved pursuant to the amended pleading” (*id.* at 885). In that case, the Second Department held that “[t]he relation-back doctrine ‘enables a plaintiff to correct a pleading error – by adding either a new claim or a new party – after the statutory limitations period has expired’” (*id.* [quoting *Buran v Coupal*, 87 NY2d 173, 177 (1995)]).

“A plaintiff must establish the applicability of the relation-back doctrine by demonstrating that (1) the causes of action arose out of the same conduct, transaction, or occurrence; (2) the new party is united in interest with one or more of the original defendants, and by reason of that relationship can be charged with such notice of the institution of the action that he or she will not be prejudiced in maintaining his or her defense on the merits; and (3) the new defendant knew or should have known that, but for a mistake by the plaintiff as to the identity of the proper parties,

the action would have been commenced against him or her as well” (*Petruzzi v Purow*, 180 AD3d 1083, 1084 [2d Dept 2020]; *OneWest Bank N.A. v Muller*, 189 AD3d at 856 [same]).

Here, the relation back doctrine is applicable because all three prongs of the foregoing test are satisfied. Indeed, the Vitiello Defendants concede that the first and second prongs are satisfied (*see* NYSCEF Doc. #203, p. 3), and this Court fails to see how the third prong would not also apply. Rather, the Vitiello Defendants contend that relation-back doctrine should not apply because this case falls within the exceptions articulated by the Court of Appeals, namely, that their omission from this case by the original plaintiff was part of an intentional strategy and, thus, was not a “mistake” at all, and the passage of nearly a decade before rectifying same will necessarily prejudice them (*see id.*, citing, inter alia, *Buran v Coupal*, 87 NY2d 173, 181 [1995]).

While there is no direct evidence indicating that the original plaintiff intentionally omitted the Vitiello Defendants, they correctly contend that said plaintiff’s counsel knew of their existence no later than November 2015, three months after commencing this action, when counsel received the aforementioned letter from their sister, codefendant Gatto, advising that she and her brothers inherited equally from their mother’s half of the property. The Court also notes that Gatto is named in her capacity as the voluntary administratrix of decedent Angelina Vitiello’s estate, a title necessarily gleaned from Gatto’s petition filed with the Surrogate’s Court in 2009, a copy of which plaintiff included as an exhibit with its motion for default judgment, summary judgment, and an order of reference back in January of 2017 (*see* NYSCEF Doc. #53). Moreover, as noted in this Court’s prior decision and order, those petition papers include additional affidavits by Gatto in which she identified the Vitiello Defendants by their full names and provided their addresses (*see id.*, at pp. 3-5, 7-8). This strongly suggests that the original plaintiff knew of the Vitiello Defendants’ existence, location, and their status as co-owners of the mortgaged premises even before this action was commenced.

On the other hand, as recently as the last motion practice which yielded the prior decision/order, Plaintiff argued, albeit incorrectly, that the Vitiello Defendants were not necessary parties because Gatto, as the purported administratrix of the decedent’s estate, adequately represented their interests. Although this Court has already explained why this was incorrect for multiple reasons (*see* NYSCEF Doc. #129, at p. 7), this suggests that the original plaintiff’s

omission of the Vitiello Defendants was rooted in their attorney's lack of legal acumen, *i.e.*, a mistake of law, rather than an intentional tactical decision, which would qualify under the "relation-back" doctrine (*see Matter of Nemeth v K-Tooling*, 40 NY3d 405 [2023] [holding that the qualifying mistake may be "a simple oversight or a mistake of law (i.e., that the amending party failed to recognize the other party as a legally necessary party)"]).

For the reasons articulated above, this Court finds that the record is insufficient to determine whether the original plaintiff's omission of the Vitiello Defendants was intentional, in order to obtain a tactical advantage (*see id.*, citing *Buran*, 87 NY2d at 181). Additionally, while the Court takes seriously the Vitiello Defendant's argument that the extended delay has caused the accumulation of significant interest and fees which have likely eroded the equity in the mortgaged premises, this potential prejudice can be ameliorated by the tolling of said interest and fees made pursuant to an appropriately made application for such relief, as indicated below. As the Court finds that the "relation-back" doctrine applies here, the amendment of the Complaint in accordance with this Court's decision and order entered on February 16, 2024, was not untimely. Consequently, the branch of the Vitiello defendants' motion seeking dismissal based on the expiration of the statute of limitations is denied.

The branches of the Vitiello defendants' motion seeking alternative relief are denied, in part, and granted, in part. First, the Vitiello Defendants request a bad faith hearing based on the "years of default interest" which they contend accrued due to Plaintiff's delays in naming all proper parties, as detailed in the papers comprising mot. seq. #6, and this Court's resultant decision and order dated January 12, 2024, and entered on February 16, 2024. This request is denied as premature, since they have yet to even answer the complaint, and no preliminary or settlement conferences have occurred. Relatedly, the branch of the Vitiello defendants' motion seeking an extension of time to file an answer is granted to the extent indicated below.

The branch of MTGLQ's cross-motion seeking an order excusing the one-day delay in serving Henry Vitiello with process upon a showing of due diligence in ascertaining his address for service and effectuating out-of-state service is granted. Considering the minimal delay of one day, the Vitiello Defendants' failure to articulate any arguments in opposition to this relief in their reply memorandum of law, and the absence from the record of any showing that this *de minimis*

delay prejudiced Henry Vitiello, the Court finds that the interest of justice warrants deeming the March 19, 2024, service of process upon Henry Vitiello timely, *nunc pro tunc*. Additionally, the branch of the cross-motion to amend the caption to substitute MTGLQ as the named plaintiff in place of HSBC, and to remove defendants THERESA PEZZA, ANTHONY PEZZA, CLARA PEZZA, and MICHELE PEZZA (originally named as “John/Jane Doe” occupants) from the caption, is also granted without opposition.

Accordingly, the above referenced motion by the Vitiello defendants (mot. seq. #7) and cross-motion by MTGLQ (mot. seq. #8) are, each, **GRANTED solely to the extent indicated below**, and it is hereby:

**ORDERED**, that the Vitiello Defendants shall file an answer to the amended complaint within ten (10) days after service of this Decision and Order with notice of entry thereof, pursuant to CPLR 3211 (f); and it is further

**ORDERED**, that the March 19, 2024, service of process upon defendant Henry Vitiello is deemed timely, *nunc pro tunc*, and the caption shall be amended to substitute MTGLQ for HSBC as the named plaintiff and to remove the former “John/Jane Doe” defendants, and shall read as follows:

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MTGLQ INVESTORS, L.P.,

Plaintiff(s),

-against-

MICHAEL DEANGELIS, ENZA GATTO a/k/a ENZA M. VITIELLO as voluntary administratrix and heir to the Estate of Angelina Vitiello, HENRY VITIELLO, JOHN VITIELLO, UNITED STATES OF AMERICA, o/b/o INTERNAL REVENUE SERVICE, NEW YORK STATE DEPT OF TAXATION AND FINANCE, HSBC MORTGAGE CORP., COMMISSIONER OF LABOR OF THE STATE OF NEW YORK, FORD MOTOR CR., CITY OF NEW YORK, DEPARTMENT OF FINANCE, PARKING VIOLATIONS, ECB, JUSTIN GIAQUINTO,

Defendant(s).

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The foregoing constitutes the Decision and Order of this Court.

**ENTER,**

**Dated:** September 11, 2025



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**Hon. Cenceria P. Edwards, JSC, CPA**