

U.S. Bank Trust, N.A. v Campbell

2025 NY Slip Op 33683(U)

September 22, 2025

Supreme Court, Kings County

Docket Number: Index No. 513587/19

Judge: Cenceria P. Edwards

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This opinion is uncorrected and not selected for official publication.

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 22nd day of September, 2025.

P R E S E N T:

HON. CENCERIA P EDWARDS,
Justice.

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U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF9 MASTER PARTICIPATION TRUST,

Plaintiff,

-against-

Index No.: 513587/19
MS 2 & 3

DANNY C. CAMPBELL, et al,

Defendant,

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The following e-filed papers read herein:

NYSEF Nos.:

Notice of Motion and Affidavits (Affirmations)
Annexed _____

62-82 84-95

Opposing Affidavits (Affirmations) _____

98-117

Affidavits/ Affirmations in Reply _____

118-120

Upon the foregoing papers in this action to foreclose a mortgage encumbering the residential property located at 77 Desales Place in Brooklyn (Block 3469, Lot 38), Plaintiff US Bank moves for an order declaring all non-appearing and non-answering defendants in default, amending the caption to substitute the tenants in place of “John Doe,” and appointing a referee to compute the amount due to it. Defendant Danny C Campbell opposes the grant of judgment against him and cross-moves for an extension of time pursuant to CPLR 3012[d] and/or 2004 to serve an answer. Plaintiff opposes.

Background Facts and Procedural History

Plaintiff commenced the instant foreclosure action on June 19, 2019. All defendants were allegedly served with the summons and complaint. Defendant neither answered nor appeared at the scheduled “Pre-Settlement” conferences.

On December 5, 2019, Plaintiff filed a motion seeking default judgment, an order of reference, and judgment of foreclosure and sale. Though no opposition was filed, the requested relief was denied by order dated February 25, 2020, the Court writing that “Plaintiff’s motion is denied without prejudice to moving for an order of reference separately and prior to any motion for a final judgment of sale, per this Part’s procedure.”

Plaintiff’s Motion for an Order of Reference (MS 2)

On March 8, 2022, Plaintiff filed the instant motion. Noting that all of the defendants defaulted in answering and arguing that it has met its prima facie burden, Plaintiff seeks default judgment in its favor and, thereupon, appointment of a referee to compute the amounts due. It also seeks to amend the caption by substituting Theresa Croom, Herbert Almanza, Santos David, Kathleen Autorino, Michael Mitchell, Helen Hypolite, and Tom Farmer in place of “John Doe.”

In support, Plaintiff proffers an affidavit signed by Priscilla Serrato, an Assistant Secretary of Fay Servicing, LLC as attorney-in-fact for Plaintiff. Therein, she introduces, among other documents, copies of the note, mortgage, and payment records which she claims reflect that the loan is due for the October 1, 2011 payment. Serrato also provides business records allegedly showing that Plaintiff’s document custodian has been in possession of the original note from February 4, 2015. She also professes familiarity with Fay’s mailing practices and proffers copies of the 30-day and 90-day notices and records allegedly showing that they were sent.

Defendant’s Cross-Motion for an Extension of Time to Answer (MS 3)

On July 22, 2022, Defendant filed the instant cross-motion. Therein, he asserts that he has both a reasonable excuse for his default and potentially meritorious defenses and, thus, should be allowed to file a late answer.

More specifically, he explains that there was a prior action to foreclose the same loan filed in 2014. He timely answered through counsel therein and summary judgment was denied. He was unaware that Plaintiff discontinued it and believed that it was still active. Though he was living at the service address, he asserts that only his father (the individual allegedly served) lived in the basement (where service allegedly occurred). At the time, his father was terminally ill and heavily medicated. Even assuming that service occurred, Defendant asserts that he did not actually receive the summons and complaint and lacked knowledge of this action until an investor brought it to his attention.

Defendant further argues that Plaintiff has not demonstrated compliance with RPAPL 1304 and the default notice provisions of the mortgage. Not only does Plaintiff rely on an affidavit from an employee of Fay when the letters were ostensibly sent by Caliber Home Loans, but the supporting documentation appears to have been generated by a vendor, LenderLive. Further, Defendant asserts that the 90-day notices violate the “separate envelope” rule and, within what was allegedly sent, reflect inconsistent amounts due. Defendant further claims that Plaintiff failed to comply with numerous Federal regulations pertaining to FHA loans. As such, he claims he has potentially meritorious defenses to this action.

Claiming that he has demonstrated both a reasonable excuse for his default and potentially meritorious defenses, Defendant asserts that his default should be vacated and he should be granted leave to file a late answer.

Plaintiff's Opposition to the Cross-Motion

Plaintiff argues that Defendant fails to establish a reasonable excuse for his default. Defendant's then-counsel received via NYSCEF notice of both the motion to discontinue the 2014 action and the order granting that relief. A copy of the motion was also mailed to Defendant at the property address. No explanation has been offered why he did not follow up on the status of the prior action in the intervening four years. Nor does he provide details of when and from whom he learned about this action. Further, Plaintiff asserts, Defendant's mere denial of receipt of the summons and complaint does not constitute a reasonable excuse for his default.

He had numerous opportunities to appear and defend this action – to answer, attend settlement conferences, etc – but did not.

Plaintiff also alleges that Defendant’s potential defenses are meritless. After describing Fay’s mailing procedures, Serrato details attests that Caliber’s records were incorporated into those of Fay and proffers what Plaintiff contends is documentary evidence of mailing. Plaintiff further argues that Defendant’s reliance on the “separate envelope” rule is misguided as some courts found it in conflict with the FDCPA. Finally, Plaintiff asserts that there was no breach of FHA regulations as the property is not within 200 miles of the mortgagee, servicer, or branch office of either.

Also reiterating that it has proven its prima facie case, Plaintiff argues that its motion should be granted and Defendant’s cross-motion denied.

Defendant’s Reply

In reply, Defendant again asserts that he has a reasonable excuse for his default as he lacked knowledge that this action was commenced and that the previous one was discontinued. Defendant also argues that his defenses are potentially meritorious. The “separate envelope” rule remains viable and Plaintiff’s attempt to demonstrate mailing of the notices by a prior servicer and its vendor unavailing. He also notes that Plaintiff offers no evidence that it is exempt from the FHA mandates. As such, he argues that his cross-motion should be granted.

Analysis

Late Answer

“A motion pursuant to CPLR 3012(d) to compel a plaintiff to accept a late answer requires the movant to demonstrate both a reasonable excuse for the default and the existence of a potentially meritorious defense” (*Iyageh v Iyageh*, 240 AD3d 675, 676 [2d Dept 2025]). “Whether a proffered excuse is ‘reasonable’ is a sui generis determination to be made by the court based on all relevant factors, including the extent of the delay, whether there has been prejudice to the opposing party, whether there has been willfulness, and the strong public policy

in favor of resolving cases on the merits” (*Fried v Jacob Holding, Inc*, 110 AD3d 56, 60 [2d Dept 2013] [internal quotation marks and citation omitted]).

Defendant has articulated a reasonable excuse for his default. He claims that he never received the summons and complaint as the individual allegedly served – his father – was terminally ill and heavily medicated at the time. Though Defendant states that he would have expected his father to pass along anything he received, at that point infirmity might have prevented that from occurring. Defendant further notes that the mailed copy of the summons and complaint was sent to the basement apartment where his father resided rather than to where he resided and, thus, he did not get it. Had he known that this action existed, Defendant argues, he would have appeared through counsel to defend it as he did in the prior action and is now doing herein. Further, this action is in the early stages – Defendant has cross-moved in response to Plaintiff’s motion for default judgment – and no prejudice to Plaintiff would result from allowing a late answer. Taken with the strong public policy in favor of resolving cases on the merits, Defendant’s excuse for his default is sufficiently reasonable.

Defendant has also advanced potentially meritorious defenses. Plaintiff relies on an affidavit of an employee of Fay Servicing to demonstrate the mailing of the RPAPL 1304 and mortgage default notices – when the mailing was ostensibly done by a vendor on behalf of a prior servicer. The affiant offers no testimony even suggesting a familiarity with the mailing procedures of either relevant entity.

In light of the foregoing, Defendant’s cross-motion is granted and the portion of Plaintiff’s motion seeking default judgment against Defendant is denied.

Default Judgment Against the Non-Appearing Defendants

Plaintiff has demonstrated its entitlement to default judgment against the non-appearing defendants (other than Defendant). “On a motion pursuant to CPLR 3215 for leave to enter a default judgment, a plaintiff is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defendant’s default in answering or appearing” (*US Bank v Deblinger*, 235 AD3d 1025, 1027 [2d Dept 2025]). Plaintiff has done so.

Amendment of the Caption

The portion of Plaintiff’s motion seeking to amend the caption by substituting Theresa Croom, Herbert Almanza, Santos David, Kathleen Autorino, Michael Mitchell, Helen Hypolite, and Tom Farmer in place of “John Doe” is unopposed and the requested relief is granted. The amended caption shall read as follows:

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U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF9 MASTER PARTICIPATION TRUST

Plaintiff,

-against-

DANNY C. CAMPBELL, CAPITAL ONE BANK USA, N.A., PALISADES COLLECTION, LLC, CRIMINAL COURT OF THE CITY OF NEW YORK, KINGS SUPREME COURT, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, NEW YORK CITY PARKING VIOLATIONS BUREAU, NEW YORK CITY TRANSIT ADJUDICATION BUREAU, THERESA CROOM, HERBERT ALMANZA, SANTOS DAVID, KATHLEEN AUTORINO, MICHAEL MITCHELL, HELEN HYPOLITE, AND TOM FARMER,

Defendants,

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Conclusion

Accordingly, it is

ORDERED that Defendant’s cross-motion to vacate his default and compel acceptance of a late answer (seq. #3) is granted; and it is further

ORDERED that Defendant’s time to answer is extended until thirty days following entry of the instant Order; and it is further

ORDERED that Plaintiff’s motion for default judgment and an order of reference (seq. #2) is granted solely to the extent that default judgment is granted against the non-appearing

defendants (other than defendant Danny C. Campbell) and the caption is amended to the extent indicated above.

This constitutes the decision and order of the Court.

ENTER:



Hon. Cenceria P Edwards, J.S.C., CPA