

US Bank v Okologo

2025 NY Slip Op 33824(U)

September 22, 2025

Supreme Court, Kings County

Docket Number: Index No. 519482/18

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.

PRESENT:

HON. CENCERIA P EDWARDS,
Justice.

-----X

US BANK,

Plaintiff,

-against-

Index No.: 519482/18
MS 2&3

VICTORIA E OKOLOGO et al,

Defendant,

-----X

The following e-filed papers read herein:

NYSEF Nos.:

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and Affidavits (Affirmations)

Annexed _____

53-75 76-80

Opposing Affidavits (Affirmations) _____

81-84

Affidavits/ Affirmations in Reply _____

85

Upon the foregoing papers in this action to foreclose a mortgage encumbering the residential property located at 2410 Glenwood Road in Brooklyn (Block 7552, Lot 45), Plaintiff US Bank moves for summary judgment against Defendant Victoria Okologo, default judgment against the non-appearing defendants, substitution of Eddro Okologo and Ajueyutsi Okologo in place of the "Doe" defendants, and the appointment of a referee to calculate the amount due. Plaintiff further seeks to compel the County Clerk/City Register to record a copy of the annexed loan modification agreement upon payment of the requisite mortgage tax. Defendant opposes the requested relief and cross-moves for dismissal of the action, alleging that Plaintiff lacks standing and that personal jurisdiction is lacking. In the alternative, she seeks cancellation of the

mortgage due to waiver and/or laches or, in the alternative, reduction of the interest on the mortgage to zero. Plaintiff opposes.

Background Facts and Procedural History

Plaintiff commenced the instant foreclosure action on September 27, 2018. All defendants were allegedly served with the summons and complaint but do not appear to have timely answered.

The matter was in the Foreclosure Settlement Conference Part until August 15, 2019 but it does not appear that an amicable resolution was reached, the referee writing upon release, “The borrower has not submitted an application for modification or other offer of settlement.”

On November 17, 2019, Plaintiff filed a motion for default judgment and an order of reference. Thereafter, it agreed to accept Defendant’s answer and withdrew the motion.

Plaintiff’s Motion for Summary Judgment [MS 2]

On October 26, 2021, Plaintiff filed the instant motion for summary judgment. Therein, Plaintiff, arguing that it has met its prima facie burden and that Defendant’s affirmative defenses lack merit, seeks to strike the answer. Plaintiff further seeks default judgment against the non-appearing defendants and to have a referee appointed to compute the amount due to it. Ancillary to the main relief, it seeks to substitute the individuals served at the property in place of the “Doe” defendants and to direct the County Clerk/City Register to record a copy of the annexed loan modification agreement with payment of the requisite mortgage tax.

In support of its motion, Plaintiff proffers an affidavit signed by DeeAnna Hamilton, an Assistant Secretary employed by Rushmore Loan Management Services LLC, the attorney-in-fact and servicer for Plaintiff. Therein, she introduces, among other documents, copies of the note, mortgage, loan modification, and a payment history. Hamilton further states that the loan has been in default since December 1, 2015. The affiant further asserts based on proffered documents that Plaintiff or its agent has been in possession of the original note since July 1,

2017. She also claims a personal familiarity with Rushmore's mailing practices and appends copies of the notices and the records upon which she bases her contention that they were sent.

Defendant's Cross-Motion for Summary Judgment [MS 3]

On March 10, 2022, Defendant filed the instant cross-motion. Therein, she argues that Plaintiff admits that the owner of the loan is RMAC, the original lender was Washington Mutual, and the loan modification originated with Chase. Plaintiff, Defendant asserts, is none of those entities and, thus, lacks standing. Defendant further posits that the assignments of mortgage are defective and/or void for unspecified reasons.

Defendant also claims that the Court lacks personal jurisdiction over herself, Eddro Okoloko, and Ajueyutsi Okologo. In her case, she refers to the jurisdictional allegations in her answer.¹ As to the others, Defendant asserts that they are not named parties to this action.

Claiming that more than six years passed since the alleged default, Defendant argues that the statute of limitations bars this action. Defendant also takes issue with the accrual of interest during the COVID-19 pandemic. In the alternative, she notes that the recovery of interest is in the Court's discretion and suggests that tolling would be appropriate for unspecified reasons.

Plaintiff's Opposition to the Cross-Motion

Plaintiff argues that it has met its burden for summary judgment, noting that Defendant has not challenge that she is in default under the note and mortgage.

As to standing, Plaintiff asserts that Hamilton attests to its possession of the original note at the commencement of the action. Further, only a party to the assignments – and not Defendant – can challenge an assignment on the basis of lack of authority.

Plaintiff notes that the alleged default took place in January 2016 and the instant action was commenced in 2018, well within the six-year statute of limitations.

¹ "I was not properly served with process in this action for the following reasons(s) as I was not personally served and he follow and there was no follow-up mail service on after an attempted nail and mail type of service."

Interest tolling is only warranted when there is a finding of wrongful conduct on the part of the plaintiff. Plaintiff argues that there is no evidence that it acted improperly.

Defendant's Reply

Defendant generally asserts that the “core of her dispute concerns Plaintiff’s lack of standing to prosecute this foreclosure action, failure to serve defendant with all appropriate notices, default on the original Washington Mutual purported mortgage and the consummation of a modification of same” (Reply, para 4). More specifically, she asserts that Plaintiff has not the holder of the mortgage and note, that the assignments are improper, and that there could be no modification of an asset which Chase did not own – and, consequently, could not be a default as no payments became due.

Analysis

Summary Judgment as to Defendant

“Generally, in a mortgage foreclosure action, a plaintiff demonstrates its prima facie entitlement to judgment as a matter of law by producing the mortgage, the unpaid note, and evidence of default” (*BNY Mellon v Swift*, 213 AD3d 624, 625 [2d Dept 2023]). Plaintiff has done so here. To the extent that Defendant challenges the enforceability of the modification and, thus, of her default thereunder, it is a contract that she signed. It she did not believe that Chase was the appropriate party with whom to contract, she was not obligated to do so.

Defendant’s jurisdictional arguments are unavailing. Having failed to move for dismissal on the basis of the allegedly defective service within sixty days of filing her answer, such defense is waived and she is barred from seeking dismissal thereupon unless the court extends the time upon the ground of undue hardship (CPLR 3211[e]; *Wilmington Trust, NA v Meyerhoeffer*, 219 A.D.3d 549, 553 [2d Dept 2023]). No basis for an extension has been asserted. Even were the Court to reach the merits of Defendant’s arguments, she fails to rebut the affidavit of service, merely asserting without details or substantiation that she was not served personally and the mailing portion of the *affix-and-mail* did not occur. However, Defendant was

allegedly served by *substitute* service upon Eddro Okologo and the server claims to have thereafter mailed a copy of the summons and complaint to Defendant at the service/property address.

Even assuming arguendo that Defendant could assert jurisdictional defenses on behalf of Eddro and Ajueyutsi – and she cannot – her argument that they are not parties to the action is incorrect. They were served as “Does” and Plaintiff seeks to substitute them into the caption as part of the instant motion.

"A plaintiff establishes its standing in a mortgage foreclosure action by demonstrating that it is both the holder or assignee of the subject mortgage and the holder or assignee of the underlying note at the time the action is commenced" (*Bank of America, NA v Paulsen*, 125 AD3d 909, 910 [2d Dept 2015]). "Either a written assignment of the underlying note or the physical delivery of the note prior to the commencement of the foreclosure action is sufficient to transfer the obligation, and the mortgage passes with the debt as an inseparable incident" (*US Bank, NA v Collymore*, 68 AD3d 752, 754 [2d Dept 2009] [citations omitted]). Plaintiff attached a copy of the note (endorsed to blank) to the certificate of merit accompanying the complaint demonstrating that it has standing (*Deutsche Bank v Logan*, 146 AD3d 861, 862-863 [2d Dept 2017]; *Nationstar Mtge., LLC v. Catizone*, 127 AD3d 1151, 1152 [2d Dept 2015]).

The statute of limitations to file a foreclosure action is six years (CPLR 213). This action was filed less than three years after the alleged default and, in the absence of any evidence of an earlier acceleration, is timely.

In light of the foregoing, summary judgment in favor of Plaintiff and against Defendants is granted and the cross-motion to dismiss is denied.

Default Judgment Against the Non-Appearing Defendants

Plaintiff has demonstrated its entitlement to default judgment against the non-appearing defendants “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.

Other Relief

The portion of Plaintiff's motion seeking to amend the caption to substitute Eddro Okologo and Ajueyutsi Okologo in place of the "Doe" defendants is granted. Both appear to have been served at the property.

This Court agrees with Plaintiff that no basis for tolling has been proffered, Defendant merely requesting the relief without offering a basis therefor.

Defendant does not appear to oppose the recording of the modification and sufficient basis exists to do so.

Conclusion

Accordingly, it is

ORDERED that Plaintiff's motion for summary judgment and other relief is granted in its entirety (see accompanying order); and it is further

ORDERED that Defendant's cross-motion to dismiss is denied.

This constitutes the decision and order of the Court.

ENTER:



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

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KINGS COUNTY CLERK
FILED