

US Bank v Nicholas

2025 NY Slip Op 34273(U)

November 3, 2025

Supreme Court, Kings County

Docket Number: Index No. 501970/13

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 3rd day of November, 2025.

P R E S E N T:

HON. CENCERIA P EDWARDS,
Justice.

-----X

US BANK,

Plaintiff,

-against-

ORVILLE NICHOLAS et al,

Defendant,

-----X

Index No.: 501970/13
MS 7&8
Calendar Date:
6/28/22
Calendar No.(s):
56+57

The following e-filed papers read herein:

NYSEF Nos.:

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

174-181 182-190

Opposing Affidavits (Affirmations)_____

191-198 199

Affidavits/ Affirmations in Reply _____

200-203

Upon the foregoing papers in this action to foreclose a mortgage encumbering the residential property located at 484 Warwick Street in Brooklyn (Block 4030, Lot 21), Plaintiff US Bank moves for an order extending the time to schedule a foreclosure sale. Defendants George Coakley, Quion Coakley, and Regina Coakley (collectively, “the Coakleys”) oppose and

cross-move for a stay of the action due to the death of Co-Defendant Mark Jones.¹ Plaintiff opposes.

Background Facts and Procedural History

Plaintiff commenced the instant foreclosure action on April 18, 2013. The borrower, Orville Nicholas, did not appear. George Coakley answered through counsel. Jones, Quion Coakley, and Regina Coakley also answered via a different attorney. Following several conferences, the matter was released from the Foreclosure Settlement Conference Part as the appearing defendants were “seeking some means to pay off this debt.”

On April 10, 2015, Plaintiff moved for summary judgment and an order of reference. Oppositions were filed on behalf of both sets of answering defendants. Accepting the argument that Plaintiff needed to demonstrate compliance with RPAPL 1304 as part of its prima facie case, the Court denied the motion without prejudice by order dated May 10, 2016 – finding that Plaintiff had not shown that the notices were actually mailed to the borrower (Nicholas) as the proffered affidavits were insufficient.

Four months later, Plaintiff moved for the same relief and again both sets of answering defendants opposed. This time, the motion was granted, the Court finding by decision dated March 20, 2017 that this matter does not involve a “home loan” and, thus, that no ninety-day notices were required.

Plaintiff filed a motion for judgment of foreclosure and sale on February 22, 2018. No opposition was filed and the relief was granted by order dated May 21, 2018.

An auction was scheduled for September 20, 2018. One day before the sale, Nicholas appeared in the case for the first time and filed an order to show cause seeking a stay, alleging that his co-defendants fraudulently induced him to transfer ownership of the property to them and that he did not receive timely notice of the scheduled auction. Though the order to show cause was signed, the requested stay pending its hearing was denied by the Court and the auction went forward. Consequently, Nicholas’ counsel withdrew this motion.

¹ The Coakleys and Jones were the owners of the property at the commencement of the action.

A closing was not timely held. Consequently, on April 26, 2019, Plaintiff filed a motion seeking an extension of time to schedule the closing. No opposition was received and the motion was granted by order dated June 3, 2019.

On August 7, 2019, the Coakleys' and Jones' order to show cause² for a stay and dismissal of the action was signed. Therein, they argued that Nicholas was a straw man provided by the originator of the loan and, thus, they should not be deprived of the protections of RPAPL 1304. They also asserted that the affidavit relied upon by Plaintiff to prove its prima facie case was robo-signed and should not have been relied upon. Plaintiff opposed, noting that these arguments had substantially been raised in opposition to summary judgment and rejected by the Court. The motion was denied by decision dated December 10, 2019.

Asserting that its counsel and the successful bidder were uncomfortable holding a closing during the worst of the COVID-19 pandemic, Plaintiff filed a motion on August 31, 2020, seeking another extension of time to close. Four months later, the Coakleys opposed and cross-moved for a stay of the action in light of the December 16, 2019 death of Jones. They also requested an AO 157/20 conference, noting that the property has been the family home since the 1960s. Plaintiff responded, noting that this action was post-judgment at the time of Jones' passing and that no unadjudicated claims remain against him. Thus, it argued, the action need not be stayed. Plaintiff agreed that an AO 157/20 conference should be held. In reply, the Coakleys again noted that Jones was an owner of the property at the time of his death and that they would like a conference to again try to save their home.

Analysis

Jones died following the entry of judgment of foreclosure and sale. As such, his death did not stay this action (see *Campbell v Goldome Realty*, 209 AD2d 991 [4th Dept 1994]; *Hays v Thomae*, 56 NY 821 [1874]). Additionally, the COVID-related conference requirement of AO 157/20 is no longer in force and, thus, none needs to be scheduled. As such, the cross-motion is denied.

² All four answering defendants changed counsel at this juncture to the same (new to the case) attorney.

Plaintiff's motion for an extension of time to close is granted. It has provided sufficient justification for its failure to previously do so (motion practice and the pandemic).

Conclusion

Accordingly, it is

ORDERED that Plaintiff's motion to extend its time to schedule a closing (mot. seq. #7) is granted; and it is further

ORDERED that Plaintiff's time to close with the auction purchaser is extended until ninety days following entry of the instant order; and it is further

ORDERED that the Coakley's cross-motion for a stay and/or an AO 157/20 conference (mot. seq. #8) is denied in its entirety.

This constitutes the decision and order of the Court.

ENTER:



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