

Bayview Loan Servicing, LLC v Schwartz

2025 NY Slip Op 34430(U)

November 13, 2025

Supreme Court, Kings County

Docket Number: Index No. 511829/2015

Judge: Menachem M. Mirocznik

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At IAS Part FRP5 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, NY 11201, on the 13th of November 2025

PRESENT: HON. MENACHEM M. MIROCZNIK
JUSTICE OF THE SUPREME COURT

<p>BAYVIEW LOAN SERVICING, LLC</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">-against-</p> <p>ROSALIA SCHWARTZ, BEIS TALMUD L'RABBONIM, NATIONAL CITY BANK, CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD, "JOHN DOE #1-#50" and "MARY ROE #1-#50", the last two names being fictitious, it being intended to name all other parties who may have some interest in or lien upon the premises described in the complaint,</p> <p style="text-align: center;">Defendants.</p>

Index No. 511829/2015

**Decision and Order
(Motion Seq. 5 and 6)**

Papers	Numbered
Notice of Motion	NYSCEF Doc. 129-148
Notice of Cross-Motion	NYSCEF Doc. 149-151
Opposition to Cross-Motion and Reply	NYSCEF Doc 152
Reply to Cross-Motion	NYSCEF Doc. 153-154

Upon the foregoing papers, the motion and cross-motion are determined in accordance with this Decision and Order as follows:

Procedural History

This action was commenced on September 29, 2015. Defendants Rosalia Schwartz and Beis Talmud L'rabbonim filed an answer with counterclaims. Settlement conferences were held on March 29, 2016 and April 13, 2016 after which the matter was released from the settlement part.

On October 19, 2016 plaintiff moved for, inter alia, for summary judgment and to strike defendants' answer. Despite the motion being fully briefed, on May 9, 2017 plaintiff withdrew the motion.

On March 29, 2018, over ten months after withdrawing its previous motion, plaintiff moved again for the same relief. Defendant opposed the motion and, in an order, dated December 3, 2018

the Court denied the motion because plaintiff failed to establish prima facie entitlement to judgment as a matter of law. The Court further directed the parties to complete discovery and proceed to trial.

By order dated July 26, 2019, after a status conference, the Court issues an order determining that plaintiff unreasonably neglected to proceed with this action and ordered plaintiff to resume prosecution of this action by filing a motion or note of issue within 90 days of the order.

On October 23, 2019, over ten months after the Court denied plaintiff's second motion for summary judgment, plaintiff moved again for a third time seeking the same relief. The motion was opposed and, in an order dated February 18, 2020, the Court denied plaintiff's successive motion for summary judgment finding that the previous motion was denied with prejudice and directed the parties to complete discovery and proceed to trial.

On March 11, 2021, defendants filed a hardship declaration due to the COVID-19 emergency thereby staying the action until the stay was lifted on January 15, 2022

On March 1, 2023, almost 14 months after the stay was lifted, plaintiff filed a note of issue to schedule trial but was rejected as untimely.

On December 20, 2023, over ten months since the notice of issue was rejected, plaintiff moved to compel acceptance of the note of issue. Defendant opposed the motion and advised that defendant Rosalia Schwartz passed away and that the action was stayed. Plaintiff opposed contending the action should not be stayed. In an order dated June 25, 2024, and entered on September 24, 2024, the Court denied the motion without prejudice and stayed the action.

On December 18, 2024, over three months since the Court stayed the action, plaintiff **filed** the instant motion seeking to discontinue the action against Rosalia Schwartz, vacate the stay and amend the caption, direct the Clerk to accept its note of issue, and permit filing of yet another motion for summary judgment motion. Plaintiff argues Schwartz is no longer a necessary party since no deficiency is sought and she transferred the property to defendant Beis Talmud L'rabbonim prior to commencement of the instant action. Plaintiff further contends that the note of issue was wrongly rejected due to a clerical docketing error; and leave to file another summary judgment motion is warranted because the earlier denial hinged on Schwartz-specific notice issues that it contends are now moot.

Defendant Beis Talmud L'Rabbonim and the alleged heirs of the Estate of Rosalia Schwartz cross-move to deny plaintiff motion and to toll interest from 2011 to the present, arguing that plaintiff's repeated procedural failures and years of delay warrant the equitable tolling of interest. They contend that the law of the case-established previous orders denying plaintiff summary judgment motion with prejudice-bars any successive summary judgment motion or discontinuance against Schwartz's estate. Defendant asserts that plaintiff is attempting to circumvent multiple adverse rulings by belatedly seeking to remove Schwartz and to relitigate issues already resolved against it. They further argue that plaintiff's four-year delay in commencing the action and protracted delays in this matter warrant the tolling of interest.

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In opposition and reply, plaintiff argues that defendants' cross-motion should be denied because Rosalia Schwartz's estate is not a necessary party, having conveyed her interest long before suit, and no deficiency is sought. Plaintiff contends defense counsel lacks authority to act for the estate and that prior rulings denying summary judgment do not bar a successive motion for summary judgment or discontinuance under the law of the case doctrine. It asserts the request to toll interest is unfounded, as delays resulted from court scheduling and pandemic-related orders, not plaintiff's conduct.

In reply to the cross-motion, defendant argues that plaintiff's motion must be denied under the law of the case doctrine, as the previous orders explicitly denied plaintiff's prior motion for summary judgment with prejudice and directed the matter to trial. Defendant contends that discontinuance against the deceased Rosalia Schwartz would improperly nullify prior rulings finding plaintiff failed to prove proper notice. Defendant further emphasizes that plaintiff has ignored the Court's directive to file a note of issue within ninety days long before COVID-19, and thus cannot justify further delay or another summary judgment motion.

Discussion

Initially, plaintiff's request to compel acceptance of a note of issue and to place this matter on the trial calendar is granted. In the order dated July 26, 2019 the Court directed plaintiff to file a note of issue or file a motion. Plaintiff complied and therefore complied with the order.

"The rule is that a mortgagor who has made an absolute conveyance of all his [or her] interest in the mortgaged premises, including his [or her] equity of redemption, is not a necessary party to foreclosure, unless a deficiency judgment is sought on his [or her] bond" *JPMorgan Chase Bank, NA. v Joseph*, 193 AD3d 703 [2d Dept 2021]

"The determination of a motion for leave to voluntarily discontinue an action pursuant to CPLR 3217(b) rests within the sound discretion of the court... Generally, such motions should be granted 'unless the discontinuance would prejudice a substantial right of another party, circumvent an order of the court, avoid the consequences of a potentially adverse determination, or produce other improper results.'" *Cenlar FSB v Rabinovitz*, 241 AD3d 1261 [2d Dept 2025][internal citations and quotation marks omitted]

Here, defendant Rosalia Schwartz conveyed the subject property to defendant Beis Talmud L'Rabbonim prior to commencement of this action and plaintiff has waived the request for a deficiency judgment. Therefore, the Estate of Rosalia Schwartz is not a necessary party to this action and the request to discontinue the action against Rosalia Schwartz and amend the caption is granted.

However, plaintiff's request for leave to file, yet another summary judgment motion is denied. Court orders are not suggestions and must be complied with. This Court as a matter of policy and discretion over control of its already burdened calendar declines to permit second summary judgment motions let alone a fourth. Otherwise, this Court would invite repetitive reviews of whether good cause has been shown. This alone is sufficient cause not to entertain repetitive motion practice unless extraordinary circumstances are shown. This Court adopts a

policy of declining to entertain successive motions for summary judgment considering that the CPLR does not mandate as such and is essentially a motion sounding in renewal or reargument without justification that does not comply with CPLR 2221(d) and (e) which requires in part that the motion be specified as such. The law is well settled that a Court has broad discretion over controlling its calendar and whether to grant a successive motion for summary judgment and therefore this Court adopted the aforementioned policy.

Nevertheless, the Court previously denied plaintiffs motion for summary judgment with prejudice finding plaintiff failed to meet its burden and directed plaintiff to proceed to trial. The same is law of the case. In any case, "Successive motions for summary judgment should not be entertained in the absence of good cause, such as a showing of newly discovered evidence." *US. Bank Trust; NA. v Green-Stevenson*, 208 AD3d 1205, 1206 [2d Dept 2022]; See also *Wells Fargo Bank, NA. v Osias*, 205 AD3d 979, 981-982 [2d Dept 2022]["Successive motions for the same relief burden the courts and contribute to the delay and cost of litigation. A party seeking summary judgment should anticipate having to lay bare its proof and should not expect that it will readily be granted a second or third chance]

Here, plaintiff failed to show good cause and failed to demonstrate any such motion would be meritorious. Plaintiff will not be provided yet another opportunity to burden this court with further motion practice to delay proceedings further. All the parties substantive arguments can be raised at trial and need not be reached today.

Lastly, defendant's motion for the equitable tolling of interest due to plaintiff's unexplained delays in prosecuting this action is granted in part.

"A foreclosure action is equitable in nature and triggers the equitable powers of the court...In an action of an equitable nature, the recovery of interest is within the court's discretion. The exercise of that discretion will be governed by the particular facts in each case, including any wrongful conduct by either party,' such as where the plaintiffs conduct has prejudiced the defendant. .. Further, a tolling and cancellation of interest may also be warranted where there is an unexplained delay in prosecution of a mortgage foreclosure action" *GMAC Mtge.. LLC v Yun*, 206 AD3d 798, 798-99 [2d Dept 2022][internal citations omitted]; See also *People's United Bank v Patio Gardens Ill, LLC*, 189 AD3d 1622, 1623 [2d Dept 2020]["tolling and cancellation of interest may also be warranted where there is an unexplained delay in prosecution of a mortgage foreclosure action"]

Here, plaintiff offers no explanation why it withdrew its first motion for summary judgment despite same being fully brief. Plaintiff offers no explanation for its over ten-month delay in filing its second motion for summary judgment, for its over ten month delay in filing its third motion for summary judgment, for its close to 14 month delay in filing its first note of issue, for over ten month delay in moving for leave for the court accept its notice of issue and lastly, for waiting over three months before filing the instant motion. Therefore, the Court finds that interest should be tolled for a period of 44 months for plaintiffs unexplained and protracted delays in prosecuting this action.

However, the Court declines to toll interest for the period of time prior to commencing the instant action. See *U.S. Bank Trust, NA. v Frankfurter*, 228 AD3d 904 [2d Dept 2024]; *U.S. Bank, N.A.v Ifemesia*, 239 AD3d 1022, 1025 [2d Dept 2025];

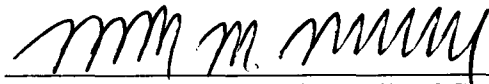
Accordingly, it is hereby

ORDERED, that plaintiff's motion is GRANTED to the extent that it is directed to file a notice of issue on or before December 22, 2025, the clerk is directed to accept same, the action discontinued as against Rosalia Schwartz and the caption is deemed amended accordingly and the motion is otherwise denied; and it is further

ORDERED, that defendant's cross-motion is GRANTED solely to the extent that interest is tolled for a period of 44 months.

This constitutes the decision and order of the Court.

ENTER:



Hon. Menachem M. Mirocznik, JSC

KINGS COUNTY CLERK
FILED
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