

US Bank v Bolshakovs

2025 NY Slip Op 34528(U)

September 22, 2025

Supreme Court, Kings County

Docket Number: Index No. 511148/15

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 22nd day of September, 2025.

P R E S E N T:

HON. CENCERIA P EDWARDS, Justice

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US BANK,

Plaintiff,

-against-

Index No.: 511148/15
MS: **2 & 3**

JURIS BOLSHAKOV'S et al,

Defendant,

-----X

The following e-filed papers read herein:
Notice of Motion/Order to Show Cause/
Petition/Cross Motion and Affidavits (Affirmations)
Annexed _____
Opposing Affidavits (Affirmations) _____
Affidavits/ Affirmations in Reply _____

NYSEF Nos.:

106-138 141-147
148-149
151 153

Upon the foregoing papers in this action to foreclose a mortgage encumbering the residential property located at 2121 Shore Parkway, Unit 2N in Brooklyn (Block 6940, Lot 1079), Plaintiff US Bank moves for summary judgment against the answering defendants, default judgment against the non-answering defendants, and the appointment of a referee to calculate the amount due. Defendant Juris Bolshakovs ("Defendant") opposes the requested relief and cross-moves for dismissal of the action, alleging that the discontinuance of the prior action during the pendency of this one deaccelerated the loan. Plaintiff opposes.

Background Facts and Procedural History

Plaintiff commenced the instant foreclosure action on September 10, 2015. All defendants were allegedly served with the summons and complaint. All defendants defaulted in answering, though a notice of appearance was filed on behalf of the Board of Managers of the 2121 Shore Condominium.

Plaintiff successfully moved for leave to serve a supplemental summons and complaint, to do so upon Ilona Galtsova by publication, and for the appointment of a guardian ad litem to represent her interests. The original order granting the requested relief appears to have been lost. A replacement order was uploaded on July 31, 2018, appointing Leonard Spector, Esq as GAL. Following service of the Supplemental Summons and Amended Complaint, the Board of Managers answered, solely asserting a cross-claim against Bolshakovs and Galtsova for unpaid charges and attorney fees. Spector appeared and answered on behalf of Galtsova, also asserting no affirmative defenses. Defendant remained in default.

On May 17, 2019, the Board of Managers filed a motion seeking the appointment of a receiver to collect reasonable rent attributable to the unit-in-suit. Plaintiff opposed solely to the extent that it asserted that it had a superior right to any funds collected. Bolshakovs then appeared for the first time and opposed through counsel, arguing that he was not properly served with the amended complaint, that Plaintiff failed to timely seek a default against him, and that a receiver was unwarranted under CPLR 6401 as there was no danger of loss or destruction. After the Board of Managers accurately replied that Defendant did not move for dismissal on jurisdictional grounds and relied solely upon an affirmation of counsel, a receiver was appointed by order dated September 26, 2019. After he declined the appointment, a substitute receiver was named by order dated December 3, 2019.

Plaintiff's Motion for Summary Judgment [MS 2]

On March 29, 2021, Plaintiff filed the instant motion for summary judgment. Therein, Plaintiff, arguing that it has met its prima facie burden and that no defendant asserted any affirmative defenses, seeks to strike the filed answers, "suppress" any potential defense, and have a referee appointed to compute the amount due to it. Plaintiff further seeks default judgment against the non-appearing defendants and to drop the "Doe" defendants.

In support of its motion, Plaintiff proffers an affidavit signed by Sally Torres, a Senior Loan Analyst employed by Ocwen Financial Corporation. The affiant explains that an indirect subsidiary of her employer is PHH Mortgage Corporation which is the successor servicer to Ocwen Loan Servicing and is, thus, authorized to execute this affidavit on behalf of Plaintiff. Therein, she introduces, among other documents, copies of the note, mortgage, and default notices. Torres further states that the loan has been in default since January 1, 2009.

Also proffering proof of service of the summons and complaint and compliance with CPLR 3215[g] and noting that Defendant appeared but failed to answer or timely move for dismissal, Plaintiff argues that it has met its burden to overcome the filed answers and for judgment to be issued in its favor and against all defendants.

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

On May 24, 2021, Defendant filed the instant cross-motion. Therein, he argues that the action should be dismissed as, under the Court of Appeals' decision in *Engel*, Plaintiff's discontinuance of the prior action during the pendency of this one revoked its acceleration of the loan. Defendant alleges that, accordingly, the complaint no longer states a cause of action and the instant action cannot proceed.

In the alternative, Defendant argues that Plaintiff's motion should be denied as Plaintiff fails to demonstrate compliance with the default notice provision of the mortgage. More specifically, Defendant asserts that the notice does not provide the required statement that, if he meets the conditions contained in paragraph 19 of the mortgage, the default would be deemed cured and enforcement efforts would cease. Defendant further asserts that Plaintiff is required to demonstrate actual receipt of the notice and has not done so.¹

Defendant also asserts that issues of fact remain as to whether Plaintiff accelerated the maturity of the loan on September 10, 2015, as stated in Plaintiff's Statement of Undisputed Material Facts. In fact, the loan was already in an accelerated state at that time based on the pendency of the prior action.

Plaintiff's Opposition to the Cross-Motion

Plaintiff argues that Defendant is in default and, thus, is barred from litigating the merits of this action. No attempt was made to vacate that default, whether in Defendant's opposition to the Board of Manager's motion for the appointment of a receiver or in the instant cross-motion.

Conceding that the prior action was discontinued during the pendency of this one, Plaintiff suggests that, under *Engel*, the unilateral Notice of Discontinuance did not deaccelerate

¹ The portion of paragraph 15 quoted by Defendant pertains to notice to the "lender" rather than to the "borrower" and, thus, is inapposite.

the loan. It further posits that the sending of a new notice of default and commencement of a second action also prevent any potential deacceleratory effect from the discontinuance from resulting.

Turning to the default notice, Plaintiff alleges that the text used includes all of the required language, including that the Borrower has the right to stop enforcement by reinstating the loan. Pointing to the correct portion of paragraph 15 of the mortgage, Plaintiff further notes that notice to the “borrower” is “considered given ... when mailed by first class mail...” and, thus, there is no need to demonstrate actual receipt.

Defendant’s Reply

Defendant argues that, if he is in default in the action, the case should be dismissed pursuant to CPLR 3215[c] as Plaintiff did not timely move to hold him in default. Defendant further suggests that issue has not been joined by him (as he still has not answered the complaint) and, thus, Plaintiff’s motion is premature. He further briefly recaps his prior arguments – that Plaintiff revoked the acceleration in 2018 and that Plaintiff has not demonstrated compliance with the mortgage default notice requirement.

Plaintiff’s Sur-Reply (and the subsequent correspondence)

On June 7, 2022, Plaintiff filed a sur-reply. Therein, it notes that Defendant advanced new arguments in his reply and argues that the new assertions lack merit. More specifically, Plaintiff suggests that law of the case bars revisiting CPLR 3215[c] and that its motions to seeking leave to serve Galtsova by publication were timely filed and indicate an intent not to abandon this action. Plaintiff further asserts that Bolshakovs’ time to answer expired long ago and he is in default – and, as such, its motion for summary judgment is not premature.

By letter dated June 16, 2022, Defendant protested Plaintiff’s filing, noting that it was an unauthorized sur-reply. He further reiterates that the Court should dismiss this action pursuant to CPLR 3215[c].

After Plaintiff uploaded a pair of letters in the Spring of 2025 seeking a conference or decision on its motion, Defendant wrote seeking a decision on his cross-motion and again

arguing that the action should be dismissed pursuant to CPLR 3215[c]. Plaintiff promptly responded, writing that the issue is not properly before the Court having first been raised in reply, that law of the case bars revisiting the issue, and that it timely took action to advance this case.

Analysis

CPLR 3215[c]

Preliminarily, this Court must address whether the issue is properly before it. It is undisputed that Defendant did not raise CPLR 3215[c] in his moving papers and it is well established that “[a]n argument raised for the first time in reply should not be considered unless there is an opportunity to respond and submit papers in surreply” (*Federal National Mortgage Association v NB 1168 Realty, LLC*, 234 AD3d 938, 939 [2d Dept 2025]). Here, Plaintiff did respond, albeit without first seeking leave of the Court. As such, Defendant’s new arguments and Plaintiff’s reply thereto have been considered.

“If the plaintiff fails to take proceedings for the entry of judgment within one year after the default, the court shall not enter judgment but shall dismiss the complaint as abandoned ... upon its own initiative or on motion, unless sufficient cause is shown why the complaint should not be dismissed.” (CPLR 3215[c]). “It is not necessary for a plaintiff to actually obtain a judgment within one year after the default to avoid a CPLR 3215(c) dismissal, so long as proceedings were undertaken to do so during the initial year after the defendant's default” (*Citibank v Kerszko*, 203 AD3d 42, 51 [2d Dept 2022]). Plaintiff accurately notes that Defendant previously appeared in the action, opposing the Board of Manager’s motion for a receiver and mentioning, but not moving based upon CPR 3215[c]. While this Court disagrees that law of the case bars Defendant’s arguments, “[a] defendant may waive the right to seek dismissal of the complaint pursuant to CPLR 3215(c) by serving an answer or taking any other steps which may be viewed as a formal or informal appearance” (*OneWest Bank v Villafana*, 231 AD3d 845, 847 [2d Dept 2024]). Here, Defendants prior appearance in the action bars his argument.

Deacceleration

As Defendant failed to timely answer, he is in default in this action. As such, he cannot raise defenses as to the merits of this action – barring his cross-motion. Were the Court to nonetheless consider his argument, the result would be no different. A de-acceleration must be clear and unambiguous (see, *Milone v US Bank*, 164 AD3d 145, 153 [2d Dept 2018]) – and a discontinuance while a second action is pending is, if anything, evidence to the contrary. To intentionally continue to prosecute a case clearly shows that the loan remains accelerated. Further, *Engel* has been statutorily overruled by FAPA (see, CPLR 3217[e]) and, thus, the discontinuance of the prior action could not serve as a deacceleration.

Defendant’s motion to dismiss is, thus, denied.

Plaintiff’s Motion for Summary Judgment

Plaintiff seeks summary judgment against Defendant despite his default in answering. That is improper (see, *JBBNY v Begum*, 156 AD3d 769, 770-771 [2d Dept 2017]). As such, that relief is denied without prejudice and Plaintiff is granted leave to file a motion for default judgment against Defendant.

Summary judgment against the Board of Managers and Galtsova, however, is granted. “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]). It is undisputed that Plaintiff has done so here and that neither answering defendant has asserted any affirmative defenses.

Default Judgment Against the Non-Appearing Defendants (Other Than Defendant)

Plaintiff has demonstrated its entitlement to default judgment against the non-appearing defendants (Criminal Court of the City of New York, the People of the State of New York, the United States of America, Marina Dubiscov, and Michael Dubiscov). “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 to drop “John Doe #3” through “John Doe #12” is unopposed and the requested relief is granted.

Conclusion

Accordingly, it is

ORDERED that Plaintiff’s motion for summary judgment and other relief is granted to the extent that summary judgment is granted in its favor against defendants Iona Galtsova and the Board of Managers of the 2121 Shore Condominium; and it is further

ORDERED that default judgment is granted against the non-answering defendants Criminal Court of the City of New York, the People of the State of New York, the United States of America, Marina Dubiscov, and Michael Dubiscov; and it is further

ORDERED that the caption is amended to drop “John Doe #3” through “John Doe #12” as defendants; and it is further

ORDERED that the portion of Plaintiff’s motion seeking summary judgment (mot. seq. #2), against Defendant is denied without prejudice to its moving for default judgment against him; and it is further

ORDERED that Defendant’s cross-motion to dismiss (mot. seq. #3), is denied; and it is further

ORDERED that the Clerk of the Court shall amend the caption to read as follows:

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U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE FOR
RESIDENTIAL ASSET SECURITIES CORPORATION HOME
EQUITY MORTGAGE ASSET-BACKED PASS-THROUGH
CERTIFICATES SERIES 2005-AHL2,

Plaintiff,

-against-

JURIS BOLSHAKOV, ILONA GALTSOVA if living, and if she/he be dead, any and all persons unknown to plaintiff, claiming, or who may claim to have an interest in, or general, or specific lien upon the real property described in this action; such unknown persons being herein generally described and intended to be included in the following designation, namely: the wife, widow, husband, widower, heirs at law, next of kin, descendants, executors, administrators, devisees, legatees, creditors, trustees, committees, lienors, and assignees of such deceased, any and all persons deriving interest in or lien upon, or title to said real property by, through or under them, or either of them, and their respective wives, widows, husbands, widowers, heirs at law, next of kin, descendants, executors, administrators, devisees, legatees, creditors, trustees, committees, lienors and assigns, all of whom and whose names, except as stated, are unknown to plaintiff; CRIMINAL OF THE CITY OF NEW YORK, THE PEOPLE OF THE STATE OF NEW YORK, THE UNITED STATES OF AMERICA, MARINA DUBISCOV, AND MICHAEL DUBISCOV, THE BOARD OF MANAGERS OF THE 2121 SHORE CONDOMINIUM, JOHN DOE #1 AND JOHN DOE #2 (THE LAST TWO NAMES BEING FICTITIOUS AND UNKNOWN TO PLAINTIFF, THE PERSONS OR PARTIES INTENDED BEING THE TENANTS, OCCUPANTS, PERSONS OR CORPORATIONS, IF ANY, HAVING OR CLAIMING AN INTEREST IN OR LIEN UPON THE PREMISES, DESCRIBED IN THE COMPLAINT),

Defendant,

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This constitutes the decision and order of the Court.

ENTER:



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