

**Bethpage Fed. Credit Union v Pepe**

2025 NY Slip Op 34651(U)

December 17, 2025

Supreme Court, Nassau County

Docket Number: Index No. 617250/2023

Judge: Carolyn Mazzu Genovesi

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This opinion is uncorrected and not selected for official publication.

At IAS Part 35A of the Supreme Court of the State of New York, held in and for the County of Nassau, at the Courthouse, 100 Supreme Court Drive, Mineola, New York, on the /7 day of 2025.  
*December*

Present: Hon. Carolyn Mazzu Genovesi

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BETHPAGE FEDERAL CREDIT UNION,

DECISION AND ORDER

Plaintiff,

Index No.: 617250/2023

-against-

Mot. Seq. 4 & 5

ANTHONY PEPE; ANGELA GAMBINO N/K/A  
ANGELA PEPE,

"JOHN DOE #1" through "JOHN DOE #12," the last twelve 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,

Defendants,

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The following papers were read on this motion pursuant to CPLR 2219(a):

<b>Papers</b>	<b>NYSCEF Numbered</b>
Motion (MS # 4), Affirmation in Support, Exhibits	<u>104-126</u>
Cross-Motion (MS # 5), Affirmation in Support, Affidavit, Memorandum of Law, Exhibits	<u>128-140</u>
Affirmation in Opposition to Cross-Motion and in Support of Motion	<u>142</u>

In an action to foreclose a mortgage, plaintiff moves to confirm the referee’s report; for Judgment of Foreclosure and Sale; and to direct the distribution of the sale proceeds (MS # 4). Anthony Pepe (“defendant”) opposes the motion, and cross-moves to toll interest; and stay the proceeding pending the outcome of defendant’s appeal.

“The report of a referee should be confirmed whenever the findings are substantially supported by the record, and the referee has clearly defined the issues and resolved matters of credibility.” *HSBC Mortgage Corporation USA v. Lee*, 228 A.D.3d 742 (2d Dep’t 2024) quoting

*U.S. Bank N.A. v. Moschetta*, 216 A.D.3d 848, 849 (2d Dep’t 2023). Here, the Court finds that the referee’s report is not substantially supported by the record. The referee attests that the amount due to plaintiff is \$62,835.89. However, the referee annexes his computation to his Oath and Report. The computation strikes certain charges for “Total Accrued Interest at 7.940% from April 28, 2023 – June 20, 2024” and “Accrued Late Charges.” The referee does not indicate why those charges were stricken. However, the amount that the referee states is owed in total does not reflect the deletion of those charges. Accordingly, the Court rejects the referee’s report.

Defendant cross-moves to stay this action pending appeal. The Court notes that the Orders of Justice Danielle M. Peterson granting summary judgment and appointing the referee, both dated December 31, 2024, are currently being appealed at the Appellate Division, Second Department. Under CPLR 5519, “[t]he court from or to which an appeal is taken or the court of original instance may stay all proceedings to enforce the judgment or order appealed from pending an appeal or determination on a motion for permission to appeal...” Since this Court declines to issue a judgment, there is no reason to stay this proceeding at this juncture. Moreover, an Order to Show Cause to stay this action pending appeal was filed at the Second Department, and that Court struck the provision to stay this action. The branch of the cross-motion to stay this action is accordingly denied.

Defendant also request the Court toll interest. “A foreclosure action is equitable in nature and triggers the equitable powers of the court.” *Onewest Bank, FSB v. Kaur*, 172 A.D.3d 1392, 1393-1394 (2d Dep’t 2019) quoting *Rajic v. Faust*, 165 A.D.3d 716, 717 (2d Dep’t 2018). “In actions of an equitable nature, including foreclosure actions, ‘the recovery of interest is within the court’s discretion.’ ” *Wells Fargo Bank, N.A. v. Lee*, 208 A.D.3d 1384, 1386 (2d Dep’t 2022) quoting *Deutsche Bank Natl. Trust Co. v. Ould-Khattari*, 201 A.D.3d 701, 703 (2d Dep’t 2022).

The exercise of this discretion is governed by the particular facts of the case, including whether a party engaged in wrongful conduct, prejudiced the other party, or engaged in lengthy unexplained delay in prosecuting the action. *Bank of New York Mellon v. George*, 186 A.D.3d 661, 664 (2d Dep't 2020). In the present case, there is no indication that plaintiff engaged in wrongful or prejudicial conduct or lengthy delays in prosecuting this action. The branch of the cross-motion to toll interest is therefore denied. For the foregoing reasons, it is

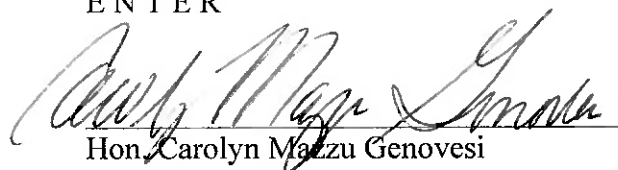
ORDERED that plaintiff's motion (MS #4) is DENIED; and it is further

ORDERED that defendant's cross-motion (MS #5) is DENIED; and it is further

ORDERED that this matter is referred back to the referee to issue a new report consistent with this Decision and Order.

This constitutes the Decision and Order of the Court.

ENTER



Hon. Carolyn Mazza Genovesi