

U.S. Bank N.A. v Davis

2025 NY Slip Op 34708(U)

December 2, 2025

Supreme Court, Kings County

Docket Number: Index No. 507054/18

Judge: Cenceria P. Edwards

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FRP-1 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 2nd day of December, 2025.

P R E S E N T:

HON. CENCERIA P. EDWARDS,
Justice.

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U.S. BANK NATIONAL ASSOCIATION AS LEGAL
TITLE TRUSTEE FOR TRUMAN 2016 SC6 TITLE
TRUST,

Plaintiff,

- against -

Index No. 507054/18

LEROY DAVIS, KARRIEN DAVIS, CRIMINAL COURT
OF THE CITY OF NEW YORK, NEW YORK STATE
DEPARTMENT OF TAXATION & FINANCE, NEW
YORK CITY PARKING VIOLATIONS BUREAU,
NEW YORK CITY ENVIRONMENTAL CONTROL
BOARD, NEW YORK CITY TRANSIT ADJUDICATION
BUREAU, M&T BANK CORPORATION, 898 JEROME
ST LTD., PEOPLE OF THE STATE OF NEW YORK,
NEW YORK CITY DEPARTMENT OF FINANCE,

JOHN DOE (Those unknown tenants, occupants,
Persons or corporations or their heirs,
distributees, executors, administrators, trustees,
guardians, assignees, creditors or successors
claiming an interest in the mortgaged premises),

Defendants.

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The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/Cross
Motion and Affidavits (Affirmations) _____
Opposing Affidavits (Affirmations) _____
Reply Affidavits (Affirmations) _____

86-88, 90-104
118
119

Upon the foregoing papers in this action to foreclose a mortgage encumbering the residential property at 898 Jerome Street in Brooklyn (Block 4400, Lot 16) (Property), plaintiff U.S. Bank National Association as Legal Title Trustee for Truman 2016 SC6 Title Trust (Plaintiff or US Bank Trust) moves (in motion sequence [mot. seq.] three) for an order: (1) awarding it summary judgment, pursuant to CPLR 3212; (2) dismissing defenses asserted in defendants' answer, pursuant to CPLR 3211 (b), and treating the answer as a limited notice of appearance; (3) appointing a referee to determine the amount due and to ascertain whether the Property may be sold in parcels, pursuant to RPAPL § 1321; (4) amending the caption to eliminate the John Doe defendants; and (5) granting it a default judgment against all non-appearing and non-answering defendants (NYSCEF Doc No. 86).

Background

On April 9, 2018, US Bank Trust commenced this foreclosure action by filing a summons, an unverified complaint and a notice of pendency against the Property. The complaint alleges that on or about July 18, 2007, defendants Leroy Davis and Karrien Davis (Davis Defendants) executed and delivered a \$423,750.00 note, which was subsequently modified on February 21, 2009, and on January 27, 2010 (Complaint at ¶ 2). The complaint alleges that the note was secured by a July 18, 2007, mortgage encumbering the Property, which was subsequently modified on February 21, 2009, and again on January 27, 2010 (*id.* at ¶ 3). The complaint alleges that on February 12th, 2018, the Davis Defendants transferred the Property to 898 Jerome St Ltd. (*id.* at ¶ 5). The complaint further alleges that the Davis Defendants “failed to comply with the conditions of the note and

mortgage by not making the payment that was due on September 1, 2012 and subsequent payments” (*id.* at ¶ 6).

Notably, annexed to the complaint as Exhibit A is a copy of the July 18, 2007, promissory note in favor of the original lender, Resmae Mortgage Corporation (Resmae), which Resmae endorsed on the bottom of the third page to the order of U.S. Bank, N.A., as Trustee on behalf of Servitis Fund 1 Trust 2010-1 Grantor Trust Certificates, Series 2010-1 (Servitis Fund) (*id.* at 8-10). In addition, affixed to the note are: (1) an Allonge executed by Gerald Hicks, an “authorized signer” of Green Tree Servicing, LLC (Green Tree), Servitis Fund’s attorney-in-fact, who endorsed the note to the order of Christiana Trust, a Division of Wilmington Savings Fund Society, FSB, not in its individual capacity but as Trustee of ARLP Trust 2 (Christiana Trust), and (2) an Allonge with a blank endorsement executed by Steven Janicek, Assistant Vice President of Christiana Trust (NYSCEF Doc No. 1 at 8-12).¹

On May 17, 2018, the Davis Defendants and defendant 898 Jerome St Ltd. collectively answered the complaint, denied the material allegations, yet admitted that the Davis Defendants executed the note and mortgage, and asserted affirmative defenses, including that “Plaintiff cannot establish that it has standing to maintain this action” and

¹ A plaintiff establishes its prima facie standing to foreclose “by demonstrating that it had physical possession of the note prior to the commencement of the action, as evidenced by its attachment of the note, endorsed in blank, to the summons and complaint” (*U.S. Bank Nat’l Ass’n v Romano*, 231 AD3d 1079, 1080 [2d Dept 2024]).

“Plaintiff cannot establish that it mailed a notice of default, as required by the terms of the mortgage” (NYSCEF Doc No. 25).

On September 14, 2018, US Bank Trust moved for summary judgment, an order of reference, a default judgment against the non-answering defendants and other relief (NYSCEF Doc No. 30). The Davis Defendants opposed the motion on the grounds that US Bank Trust failed to: (1) evidence its standing to foreclose; (2) prove that it mailed a notice of default; and (3) submit admissible evidence of the Davis Defendants’ payment default (NYSCEF Doc No. 52). By a May 14, 2019, decision and order, the court (Dear, J.) denied US Bank Trust’s motion “without prejudice” because “[t]he Centala [moving] Affidavit is insufficient to demonstrate proper, timely mailing of the default notice – merely stating that it was sent” (NYSCEF Doc No. 57).

On August 6, 2019, US Bank Trust moved, once again, for summary judgment and an order of reference (NYSCEF Doc No. 59). One month after the Davis Defendants opposed the second summary judgment motion (NYSCEF Doc No. 82), US Bank Trust inexplicably withdrew the motion on December 17, 2019 (NYSCEF Doc No. 83).

US Bank Trust’s Third Summary Judgment Motion

On March 6, 2020, US Bank Trust filed its *third* motion for summary judgment, an order of reference and a default judgment (NYSCEF Doc No. 86). US Bank Trust submitted an affidavit from Kim Kelly (Kelly), FC Specialist at Fay Servicing, LLC (Fay), the former mortgage loan servicer and attorney in fact for US Bank Trust,² pursuant to a

² The record reflects that the servicer of the subject mortgage has changed at least twice since the filing of US Bank Trust’s instant summary judgment motion (NYSCEF Doc Nos. 122 and 127).

July 12, 2017, Limited Power of Attorney (NYSCEF Doc No. 92 at ¶ 12 and 342-346). Kelly attests that her affidavit is based on her review of Fay's business records made and maintained by Fay relating to the subject mortgage loan (*id.* at ¶ 2). Notably, Kelly does *not* attest that Fay's business records that she reviewed include servicing records prepared and maintained by prior servicers of the subject mortgage loan.

While Fay was appointed attorney-in-fact for US Bank Trust as of July 12, 2017, Kelly attests, without having any personal knowledge, that “[t]he Defendant is in default under the terms and conditions of the Promissory Note and Mortgage, because the September 01, 2012 and subsequent payments were not made” (*id.* at ¶ 6). Kelly references “the relevant payment history of the loan . . .” attached to her moving affidavit as Exhibit 5, which consists of the following documents, none of which evidence the alleged September 1, 2012, payment default: (1) a one-page chart listing Property inspection fees and valuation in 2014 and 2015 and redacting all loan information (*id.* at 79); (2) a one-page chart listing Property inspection fees and foreclosure costs in 2013 and 2014 and redacting all loan information (*id.* at 80); (3) partially redacted computer printouts of “Corporate Advance History Screens” (*id.* at 81-114); (4) computer printouts of the “Hazard & Flood Insurance” for the Property (*id.* at 115-116); (5) a “Fee Activity Ledger” (*id.* at 117); (6) a computer printout entitled “Collection Information” which lists basic loan information and the “Due Date” as “09-01/12” (*id.* at 118); (7) a 36-page, redacted computer printout of the “Mortgage Loan History,” which merely states that the loan is “DUE 09-01-12” and sets forth the “PRIN-BAL” and “ADV-BAL” (*id.* at 119-154); (8) a

computerized chart of “Payoff Calculation Totals” (*id.* at 155); (9) a computerized chart of “Payoff Fees and Perdiem” (*id.* at 156); (10) a computerized printout of the “Payoff Calculation” (*id.* at 157); (11) a computerized printout of the loan’s “Payoff information” (*id.* at 158); (12) computerized printouts of “Property Inspection Results” (*id.* at 159-166); (13) a chart reflecting the loan history from 03/03/2015 through 12/12/2019, which merely references a “Due Date” of “09-01-2012” (*id.* at 167-169); (14) a short chart reflecting loan and tax escrow disbursements from 9/2/2013 through 12/11/2014, redacting loan numbers (*id.* at 170); (15) Fay’s “Loan Activity – Escrow Activity 3/1/2015-4/10/2018” which reflects that it was “printed by Jamie Lee” (*id.* at 171-176); (16) an “Account History” statement of the Property from “The Official New York City Web Site” reflecting the “Assessed Value” of the Property (*id.* at 177-179); (17) a one-page chart reflecting certain transactions for an unidentified loan (*id.* at 180); and (18) a computer printout of “History For Account” regarding the subject loan, dated 7/10/07, which reflects that it was prepared by Carrington Mortgage Services (*id.* at 181-183).

US Bank Trust also submits a memorandum of law asserting that “Plaintiff has established its prima facie entitlement to summary judgment by submitting the Note, the Mortgage, and evidence of the Leroy Davis and Karrien Davis’s default” and Plaintiff has “set forth evidence in the form of the relevant business records of Defendants’ default in payment under the terms of the Note and Mortgage” (NYSCEF Doc No. 89 at 4 and 15).

The Davis Defendants’ Opposition

The Davis Defendants, in opposition, submit an attorney affirmation asserting that US Bank Trust's successive summary judgment motion should be denied because "the evidence submitted herewith was available to plaintiff when it previously moved for summary judgment" and "[a]lthough the prior motion was denied without prejudice, the Court did not hold that the plaintiff did not have to demonstrate 'good cause' for not offering the evidence on the prior motion" (NYSCEF Doc No. 118 at ¶¶ 3-11). Defense counsel further argues that US Bank Trust failed to evidence its standing to foreclose because Kelly's moving affidavit did not annex the business records proving that US Bank Trust was in possession of the note prior to the April 9, 2018, commencement of this action (*id.* at ¶¶ 20-22). Defense counsel also asserts that US Bank Trust failed to strictly comply with RPAPL § 1306 because its filing with the Department of Financial Services did not include the borrowers' last known telephone number or the amount due on the mortgage (*id.* at ¶ 36).³

US Bank Trust's Reply

US Bank Trust, in reply, submits an attorney affirmation asserting that "Plaintiff was granted leave to file a second motion for summary judgment by Hon. Judge Dear in the Decision and Order dated May 22, 2019"; "Plaintiff established standing by annexing

³ US Bank Trust's filing with the Department of Financial Services, pursuant to RPAPL § 1306, reflects that the borrowers' telephone number is redacted and states the amount of the subject loan (*see* NYSCEF Doc No. 91 at 315).

a copy of a duly endorsed Note to the Complaint”; and Plaintiff established compliance with RPAPL § 1306 (2) by submitting the Kelly affidavit and a copy of the proof of filing (NYSCEF Doc No. 119 at ¶ 3). Counsel asserts that Plaintiff has established its prima facie entitlement to summary judgment by producing the loan documents and by “demonstrate[ing] the existence of Defendants’ continuous default under the loan documents commencing with the September 1, 2012 payment” (*id.* at ¶ 5).

Discussion

Summary judgment is a drastic remedy that deprives a litigant of his or her day in court and should, thus, only be employed when there is no doubt as to the absence of triable issues of material fact (*Kolivas v Kirchoff*, 14 AD3d 493 [2d Dept 2005]; *see also Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). “The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment, as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Manicone v City of New York*, 75 AD3d 535, 537 [2d Dept 2010], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *see also Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). If it is determined that the movant has made a prima facie showing of entitlement to summary judgment, “the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493 [2d Dept 1989]).

Generally, to establish prima facie entitlement to judgment as a matter of law in an action to foreclose a mortgage, a plaintiff must produce the mortgage, the unpaid note and admissible evidence of the borrower's default (*see Deutsche Bank Natl. Trust Co. v Karibandi*, 188 AD3d 650, 651 [2d Dept 2020]; *Christiana Trust v Moneta*, 186 AD3d 1604, 1605 [2d Dept 2020]; *Deutsche Bank Trust Co. Ams. v Garrison*, 147 AD3d 725, 726 [2d Dept 2017]). Where a plaintiff establishes prima facie entitlement to judgment, the burden then shifts to the defendant to raise a triable issue of fact as to a bona fide defense to the action (*CitiMortgage, Inc. v Guillermo*, 143 AD3d 852, 853 [2d Dept 2016]).

Here, US Bank submitted copies of the loan documents, but it failed to submit any admissible evidence of the Davis Defendants' alleged September 1, 2012, payment default. While Kelly attests that the Davis Defendants breached their obligations under the mortgage by failing to tender the installments that were due on September 1, 2012, and subsequently thereafter, Fay was appointed attorney-in-fact for US Bank Trust as of July 12, 2017, and was not the servicer of the subject mortgage loan on September 1, 2012. Kelly fails to attest that she reviewed records created and maintained by prior servicers of the mortgage loan that were incorporated into Fay's records and relied upon by Fay in the ordinary course of business (*Bank of Am., N.A. v Huertas*, 195 AD3d 891, 893 [2d Dept 2021] [holding that "Dunbar's purported knowledge of Huertas's default was based upon her review of unidentified business records [from a prior servicer], which she failed to attach to her affidavit"]). Exhibit 5 to Kelly's moving affidavit, which Kelly references as "the relevant payment history of the loan . . ." fails to evidence the Davis Defendants'

alleged September 1, 2012, payment default and consists of 18 different computerized documents seemingly derived from unidentified prior servicers. Accordingly, it is hereby

ORDERED that US Bank Trust’s motion (mot. seq. three) is only granted to the extent that the caption is amended to exclude the John Doe defendants; US Bank Trust’s motion is otherwise denied; and it is further

ORDERED that the caption shall hereinafter read as follows:

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U.S. BANK NATIONAL ASSOCIATION AS LEGAL
TITLE TRUSTEE FOR TRUMAN 2016 SC6 TITLE
TRUST,

Plaintiff,

- against -


LEROY DAVIS, KARRIEN DAVIS, CRIMINAL COURT
OF THE CITY OF NEW YORK, NEW YORK STATE
DEPARTMENT OF TAXATION & FINANCE, NEW
YORK CITY PARKING VIOLATIONS BUREAU,
NEW YORK CITY ENVIRONMENTAL CONTROL
BOARD, NEW YORK CITY TRANSIT ADJUDICATION
BUREAU, M&T BANK CORPORATION, 898 JEROME
ST LTD., PEOPLE OF THE STATE OF NEW YORK,
NEW YORK CITY DEPARTMENT OF FINANCE,

Defendants.

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This constitutes the decision and order of the court.

E N T E R,



Hon. Cenceria P. Edwards SCJ, CPA