

Citibank. N.A. v Williams

2025 NY Slip Op 34812(U)

December 8, 2025

Supreme Court, Kings County

Docket Number: Index No. 510307/2018

Judge: Menachem M. Mirocznik

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At IAS Part ~~FIVE~~ 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 8th day of December 2025

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

CITIBANK, N.A

Plaintiff,

-against-

SAMUEL WILLIAMS, INDIVIDUALLY, AND AS ADMINISTRATOR AND AS HEIR TO THE ESTATE OF BERNICE MILES, TRANSCEND DESIGN LLC, SELINA WILLIAMS, AS HEIR TO THE ESTATE OF BERNICE MILES, ROCHELL MASON, AS HEIR TO THE ESTATE OF BERNICE MILES, CRIMINAL COURT OF THE CITY OF NEW YORK, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, KINGS SUPREME COURT, UNITED STATES OF AMERICA O/B/O INTERNAL REVENUE SERVICE, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, NEW YORK CITY PARKING VIOLATIONS BUREAU, NEW YORK CITY TRANSIT ADJUDICATION BUREAU, CAPITAL ONE BANK and "JOHN DOE #1" through "JOHN DOE #10", the last ten names being fictitious and unknown to the plaintiff, the person or parties intended being the persons or parties, if any, having or claiming an interest in or lien upon the mortgaged premises described in the Complaint

Defendants.

Index No. 510307/2018

**Decision and Order
(Motion Seq. 1)**

Papers	Numbered
Notice of Motion	NYSCEF Doc. 48-52, 79-100

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

Procedural History

This action was commenced on May 18, 2018 by Citibank, N.A. (“plaintiff”), seeking to foreclose a mortgage (the “mortgage”) executed by defendant Samuel Williams (the “defendant”) encumbering the property known as 3811 Avenue H, Brooklyn, NY 11210 (the “property”).

Title to the property was originally held by Shelby Miles, Bernice Miles and Samuel Williams. Shelby Miles died on November 8, 1990.

The mortgage was executed solely by defendant Williams on July 15, 2002.

On June 2, 2010, Bernice Miles died intestate. Defendant Samuel Williams was appointed as administrator for the estate of Bernice Miles upon being issued Letter of Limited Administration on February 2, 2018.

On January 2, 2019, the Court granted plaintiff motion to extend the time to serve defendants by 120 days.

On April 11, 2019, defendant Rochelle Mason as heir of the estate of Bernice Miles was allegedly personally served with the summons and complaint pursuant to CPLR 308[1].

On April 16, 2019, defendant Samuel Williams, individually and as administrator, and heir of the estate of Bernice Miles was allegedly served with the summons and complaint by nail and mail pursuant to CPLR 308[4]. The affidavits of service was filed April 30, 2019.

On April 16, 2019, defendant Selina Williams as heir of the estate of Bernice Miles was allegedly served with the summons and complaint by nail and mail pursuant to CPLR 308[4]. The affidavit of service was filed April 30, 2019.

On May 27, 2019, defendant Rochelle Mason served an answer. On July 2, 2019, plaintiff rejected the answer as untimely.

On November 9, 2023, defendant Samuel Williams served an answer. On December 8, 2023, plaintiff rejected the answer as untimely.

Settlement conferences were held on January 22, 2019, March 27, 2019, May 23, 2019, September 12, 2019 and November 21, 2019.

On January 15, 2020, plaintiff filed the instant motion for a default judgment, order of reference, to amend the caption, to amend the affidavit of service nunc pro tunc as to the City of New York and Capital Bank, directing reformation of the mortgage to add Bernice Miles as a mortgagor and bind the estate of Bernice Miles, Samule Williams, Salina Williams and Rochelle Mason to the lien of the mortgage, to impose an equitable lien and/or mortgage or constructive trust, a declaration that plaintiff has first lien on the entire property and to amend the complaint to correct the principal amount alleged on mortgage.

Discussion

“A plaintiff establishes its entitlement to a default judgment by submitting evidence of service of the summons and complaint, evidence of the facts constituting the cause of action, and evidence of the defendants' default... To demonstrate the facts constituting the cause of action, the plaintiff need only submit sufficient proof to enable a court to determine if the cause of action is viable” *Wilmington Sav. Fund Socy., FSB v Stopanio*, 240 AD3d 939 [2d Dept 2025][internal citations and quotation marks omitted]

Here, in support of the motion, plaintiff annexes the affidavit of Michelle Jones a Vice President Document Control of CitiMortgage, Inc. (“CitiMortgage”) the purported servicer of plaintiff. However, no payment history or loan account records are attached to the affidavit. While a power of attorney is annexed to plaintiff’s counsel’s affirmation the same is not referenced in the affidavit. More importantly, the power of attorney is limited, is executed by CitiMortgage and appoints Cenlar FSB as attorney in fact. No further documentation is provided establishing that CitiMortgage is the servicer of plaintiff.

Plaintiff further did not offer any evidence or testimony in support of its claims to reform the mortgage, impose an equitable lien, mortgage or constructive trust or quiet title claims.

Therefore, plaintiff failed to establish the facts constituting the claims as required by CPLR 3215[f]. See e.g. *HSBC Bank USA, N.A. v. Betts*, 67 Ad3d 735 [2d Dept 2009]; See also *U.S. Bank N.A. v Simpson*, 216 AD3d 1043 [2d Dept 2023]; See also *Deutsche Bank Natl. Trust Co. v Hossain*, 196 AD3d 631 [2d Dept 2021]; *JPMorgan Chase Bank. N.A. v Horsfield* 227 AD3d 790 [2d Dept 2024]

Additionally, it appears that plaintiff waived objection to untimely answer submitted by defendant Rochelle Mason. Here, the answer was served on answer May 27, 2019 and plaintiff did not reject same for over 30 days. “By retaining the amended pleading without objection...the plaintiff waived any objection as to untimeliness.” *Citibank. N.A. v Saldarriaga*, 213 AD3d 732 [2d Dept 2023][internal citations and quotation marks omitted]; *Minogue v Monette*, 138 AD2d 851, 852 [3d Dept 1988][“Physical retention of a pleading for an extended period of time will almost invariably constitute a waiver of its late service.”]; *Ruppert v Ruppert*, 192 AD2d 925 [3d Dept 1993][“Retention of the answer and counterclaim for some three weeks...constituted a waiver of any objection to the late service of the answer”]; See also *Ligotti v Wilson*, 287 AD2d 550 [2d Dept 2001]

Plaintiff’s request to amend the filing date of the affidavits of service nunc pro tunc as to the City of New York and Capital Bank is denied. While plaintiff apparently seeks to cure the late filing of the affidavits of service under CPLR 308[4], which requires timely filing of the affidavit service within 20 days of service, the same is not relevant as neither the City of New York nor Capital bank were allegedly served pursuant to CPLR 308[4], nor could they be as CPLR 308 only applies to service on a natural person.

Lastly, “[a]pplications for leave to amend pleadings under CPLR 3025(b) should be freely granted unless the proposed amendment would unfairly prejudice or surprise the opposing party,

or is palpably insufficient or patently devoid of merit...A court must not examine the legal sufficiency or merits of a pleading unless such insufficiency or lack of merit is clear and free from doubt.” *TD Bank, N.A. v Keenan*, 221 AD3d 1040 [2d Dept 2023][citations omitted]; See also *Fahey v Ontario County*, 44 NY2d 934, 935 [1978][“Leave to amend the pleadings “shall be freely given” absent prejudice or surprise resulting directly from the delay... Since the respondents cannot claim here such prejudice or surprise, the court below abused its discretion as a matter of law in denying appellant’s motion to amend.”][citations omitted]

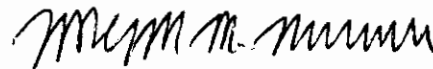
Accordingly, plaintiff’s request to amend the complaint to drop the John Doe defendants and correct the alleged principal amount of the loan is granted.

Accordingly, it is hereby

ORDERED, that plaintiff’s motion is GRANTED SOLELY TO THE EXTENT that plaintiff is granted leave to file an amended complaint within 30 days of entry of this order and the motion is otherwise DENIED in all respects.

This constitutes the decision and order of the Court.

ENTER:



Hon. Menachem M. Mirocznik, JSC

FILED

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KINGS COUNTY CLERK'S OFFICE