

**U.S. Bank N.A. v Ruiz**

2025 NY Slip Op 34847(U)

December 8, 2025

Supreme Court, Kings County

Docket Number: Index No. 504901/2017

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 8<sup>th</sup> day of December 2025

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

U.S. Bank National Association, as Trustee for Specialty Underwriting and Residential Finance Trust Mortgage Loan Asset-Backed Certificates, Series 2006-BC5,

Plaintiff.

-against-

Johnathan Ruiz, Wilson III Realty Corp., Kings Supreme Court, NYS Department of Taxation & Finance, City of New York Environmental Control Board, City of New York Parking Violations Bureau, City of New York Transit Adjudication Bureau, "JOHN DOE", said name being fictitious, it being the intention of Plaintiff to designate any and all occupants of being foreclosed herein, any and all parties, corporations or entities, if any, having or claiming an interest or lien upon the mortgage premises,

Defendants.

**Index No. 504901/2017**

**Decision and Order  
(Motion Seq. 2)**

<b>Papers</b>	<b>Numbered</b>
Notice of Motion	NYSCEF Doc. 87-90
Opposition Papers	NYSCEF Doc. 92
Amended Opposition Papers	NYSCEF Doc. 94
Reply Papers	NYSCEF Doc. 96

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

**Relevant Factual and Procedural History**

This action was commenced on March 10, 2017, seeking to foreclose a mortgage (the "mortgage") executed by defendant Johnathan Ruiz ("Ruiz") encumbering the property known as 608 Wilson Avenue, Brooklyn, NY 11207 (the "property"). Title to the property was originally held by defendant Wilson III Realty Corp. ("Wilson Corp.")

On February 27, 2008, a prior foreclosure action was allegedly commenced seeking to

foreclose the mortgage entitled *US Bank as Trustee, et al v. Jonathan Ruiz, et al.* under Index Number 6332/2008 (the "prior foreclosure action"). The prior foreclosure action was allegedly dismissed on November 12, 2013, and plaintiff allegedly sent a de-acceleration letter to defendant Ruiz attempting to revoke the prior acceleration of the mortgage.

On May 2, 2017, defendant Wilson Corp. joined issue in this case, with the filing of an answer asserting various affirmative defenses, including that enforcement of the mortgage is barred by the statute of limitations and as well as several counterclaim, including a claim to discharge the mortgage pursuant RPAPL 1501[4].

On May 22, 2017, plaintiff filed reply to the counterclaims.

Settlement conferences were held on May 16, 2017, and June 7, 2017, after which the matter was released from the settlement part.

On May 22, 2019, the Court granted plaintiff partial summary judgment and dismissed all of Wilson Corp.'s affirmative defenses and counterclaims other than its statute of limitations defense and counterclaim to discharge the mortgage due to issues of fact as to whether plaintiff actually sent the alleged de-acceleration letter. The Court further directed the parties to complete discovery and proceed to trial.

On July 8, 2019, the Court issued a preliminary conference order which provided for examinations before trial ("EBTs") to held by November 8, 2019, and other discovery to completed by September 9, 2019.

On November 22, 2019, the Court issued a compliance conference order which provided that discovery demands were to be served within 30 days and EBTs were to be held by March 9, 2020.

A further compliance conference was scheduled to be held on March 13, 2020, but was adjourned to April 29, 2020, and then to August 28, 2020.

On August 6, 2020, prior to adjourned compliance conference, plaintiff filed a note of issue and certificate of readiness.

Defendant Wilson Corp. now moves to vacate the note of issue contending discovery is not complete and EBTs have not yet been held.

Plaintiff opposes the motion arguing that defendant Wilson Corp. did not serve discovery demands following the preliminary conference order or the subsequent compliance conference order and therefore defendant Wilson Corp. waived the right to discovery. Plaintiff further contends that Wilson Corp. transferred the property to Zev Yankowitz, as Trustee (the "Trustee") of Yechaleik Shulol Complex Trust and therefore defendant Wilson Corp. was divested of standing to contest this action.

In reply, Wilson Corp. argues that the transfer was essentially a mere change of form as the principal of Wilson Corp. is the trustee who received title, that Wilson Corp.'s counsel also continues to represent the Trustee and a motion for substitution can be made if necessary.

### Discussion

“A motion to vacate a note of issue is addressed to the sound discretion of the Supreme Court... Where a party's motion to vacate a note of issue is timely, the party is required only to demonstrate why the case is not ready for trial.” *Echavarria v Rego Park Gardens Owners, Inc.*, 240 AD3d 744 [2d Dept 2025][Internal citations and quotation marks omitted]

“The purpose of a note of issue and certificate of readiness is to assure that cases which appear on the court's trial calendar are, in fact, ready for trial...22 NYCRR 202.21(a) is an applicable rule of court which requires all notes of issue to be accompanied by certificates of readiness....A certificate of readiness certifies that all discovery is completed, waived, or not required and that the action is ready for trial... The effect of a statement of readiness is to ordinarily foreclose further discover.” *Tirado v Miller*, 75 AD3d 153 [2d Dept 2010].

“The Uniform Rules set forth two separate and distinct methods for obtaining discovery after a note of issue is filed. If a party moves within 20 days of the filing to vacate the note of issue, that party must demonstrate only the less stringent standard for vacatur of the note of issue pursuant to 22 NYCRR 202.21(e).” *Audiovox Corp. v Benyamini*, 265 AD2d 135 [2d Dept 2000]

Where a “defendant timely moved to vacate the note of issue, he was required only to demonstrate why the case was not ready for trial, and was not required to establish that additional discovery was necessary because unusual or unanticipated circumstances had developed subsequent to the filing of the note of issue.” *Jacobs v Johnston*, 97 AD3d 538 [2d Dept 2012]; See also *Audiovox Corp. v Benyamini*, 265 AD2d 135 [2d Dept 2000][“If a party moves to vacate the note of issue within 20 days of its filing there is no requirement in 22 NYCRR 202.21(e) that the movant demonstrate “unusual or unanticipated circumstances”. The only requirement is that the movant submit an affidavit demonstrating why the case is not ready for trial.”]

Initially, plaintiff's contention that the transfer of title to the Trustee divested defendant Wilson Corp. from moving to vacate the note of issue or contest this action is without merit. CPLR 1018 provides that “[u]pon any transfer of interest, the action may be continued by or against the original parties unless the court directs the person to whom the interest is transferred to be substituted or joined in the action.”

Here, the transfer of title was a mere change of form, and the Trustee is principal of defendant Wilson Corp. Therefore, the action may proceed in the name of Wilson Corp. in the absence of formal substitution. See e.g. *Wells Fargo Bank, NA v McKenzie*, 183 AD3d 574 [2d Dept 2020]; *Wells Fargo Bank, N.A. v Eitani*, 148 AD3d 193 [2d Dept 2017]

Moreover, discovery is not complete in as much as party EBTs have not yet been conducted and defendant timely moved to vacate the note of issue to conduct same.<sup>1</sup> Therefore, defendant's motion to vacate the note of issue is granted. See *Mosley v Flavius*, 13 AD3d 346 [2d Dept 2004]; *Gallo v SCG Select Carrier Group, L.P.*, 91 AD3d 714 [2d Dept 2012]; See also *Tirado v Miller*, 75 AD3d 153 [2d Dept 2010]

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<sup>1</sup> This Court notes that it appears that this action may be impacted by the passage of the of the Foreclosure Abuse and Prevention Action (“FAPA”) which may render a trial unnecessary. See GOL 17-105[4].

Accordingly, it is hereby

**ORDERED**, that defendant Wilson Corp.'s motion to vacate the note of issue dated August 6, 2020 is GRANTED and the parties are directed complete discovery within thirty (30) days of entry of this order, unless the same is extended by further order of the Court upon a showing of good cause or upon stipulation of the parties; and it further

This constitutes the decision and order of the Court.

ENTER:



Hon. Menachem M. Mirocznik, JSC

**FILED**

DEC 11 2025

KINGS COUNTY CLERK'S OFFICE