

JPMorgan Chase Bank v Sicari

2025 NY Slip Op 34876(U)

December 8, 2025

Supreme Court, Kings County

Docket Number: Index No. 28390/11

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 8th day of December, 2025.

P R E S E N T:

Motion Calendar Date:

5/19/22

HON. CENCERIA P EDWARDS,

Motion Calendar No.: 30

Justice.

-----X

JPMORGAN CHASE BANK

Plaintiff,

-against-

Index No.: 28390/11
MS 7

GERALDINE J SICARI et al,

Defendant,

-----X

The following e-filed papers read herein:

NYSEF Nos.:

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and Affidavits (Affirmations)

Annexed _____

44-57

Opposing Affidavits (Affirmations) _____

9-25

Affidavits/ Affirmations in Reply _____

26-34

Upon the foregoing papers in this action to foreclose a mortgage encumbering the residential property located at 1939 Benson Avenue in Brooklyn (Block 6373, Lot 3), Defendant Geraldine Sicari moves for dismissal of this action. Plaintiff opposes.

Background Facts and Procedural History

Plaintiff commenced the instant foreclosure action on December 20, 2011. Defendant and her late husband Salvatore P Sicari jointly answered through counsel, asserting eight affirmative defenses and five counterclaims.

The matter was then referred to the Foreclosure Settlement Conference Part where a dozen settlement conferences were held over the next more than two years. Per the release directive, “[t]he Defendant’s application has been denied for both HAMP and FHMLC due to apparent equity.” Thereafter, there were additional appearances before the IAS Judge, also seemingly unsuccessfully seeking to bring about a resolution.

After Salvatore’s death, both Geraldine and Plaintiff changed counsel. Conferences in the IAS Part continued until late 2016.

On January 19, 2017, the Court propounded an order (erroneously) finding that issue had not been joined and that Plaintiff had not sought judgment within one year of the default. It concluded that “the instant complaint is dismissed as abandoned unless plaintiff proceeds to entry of judgment within 90 days hereof.” Consequently, Plaintiff filed a Note of Issue on April 12, 2017.

On June 9, 2017, Plaintiff moved for summary judgment and an order of reference. Defendant opposed through counsel, primarily arguing that Plaintiff engaged in predatory lending in extending large loans to an elderly couple who were ill-equipped to repay them. Such conduct, counsel argued, was in violation of various subsections of Banking Law 6-L. In reply, Plaintiff argued (among other things) that 6-L was inapplicable as a matter of law as the loan was not a “high-cost home loan” and that Defendant’s arguments regarding her age and lack of income were improperly being raised for the first time. By order dated October 18, 2017, the Court granted Plaintiff’s motion and vacated the Note of Issue as a trial was no longer necessary. One week later, an order of reference was signed.¹

Plaintiff then filed a motion to extend its time to move for judgment of foreclosure and sale. A few months later (on March 5, 2018), Plaintiff moved for JFS. Both motions were withdrawn.

On October 30, 2018, Plaintiff again moved for judgment of foreclosure and sale. While that motion was pending, the Court set a submission schedule for loss mitigation and noted in the order that “[i]f required, Plaintiff must make motion to vacate a prior Conditional Dismissal.”

¹ Though Defendant filed Notices of Appeal from the summary judgment order and order of reference, it does not appear that she perfected her appeal.

After several further appearances, the motion for JFS was taken on submission on October 30, 2019 and a judgment of foreclosure and sale dated December 11, 2019 subsequently issued. Notice of Entry of the order was served in early 2020.

A sale was scheduled for March 19, 2020 but did not go forward.

Defendant² filed a “Mortgagor’s Declaration of COVID-19-Related Hardship” form on August 9, 2021. The following month, she filed a motion seeking dismissal of the action. Therein, she argued that there were three self-executing dismissal orders with which Plaintiff failed to comply. As such, she asserted, the judgment of foreclosure and sale – which issued without the action being restored – was improper. Defendant further claimed that the Court had stated at the October 30, 2019 conference that a final order of dismissal would be issued. She also complained that the loan was transferred during loss mitigation negotiations, thereby preventing this matter from being able to resolve. After Plaintiff opposed, the motion was denied on October 21, 2021 based upon the pendency of the hardship stay.

On January 18, 2022, Defendant filed the instant motion, seeking dismissal of the action due to predatory lending and Plaintiff’s (alleged) failure to comply with three self-executing orders of dismissal. Therein, she largely reiterates the arguments contained in her prior motion. In support, she proffers a letter that she previously sent to the Court, detailing her version of events. She also provides a summary of relevant events authored by one of her former counsels. Therein, he asserts that he raised the conditional dismissal multiple times before the Court and that he was told that a further dismissal order would be issued in light of Plaintiff’s non-cooperation with the Court’s settlement efforts.

In opposition, Plaintiff argues that summary judgment in its favor and judgment of foreclosure and sale both issued and were not appealed. Defendant’s affirmative defenses – including predatory lending – were stricken and law of the case bars revisiting them. The only conditional order of dismissal was entered on January 24, 2017 and Plaintiff notes that it filed a Note of Issue within the ninety days provided by the order. The other orders referenced by the Defendant appear to be the grant of summary judgment and the order of reference – neither of which dismiss the action, even conditionally. While Plaintiff sent a letter seeking to withdraw its

² Seemingly, acting pro se.

motion for judgment of foreclosure and sale due to ongoing loss mitigation, it asserts that the Court declined to allow it to do so – instead, adjourning the motion several more times. After the case did not settle, the motion was taken on submission and granted. To the extent that Defendant argues wrongdoing on Plaintiff’s part (ex parte communication with the Court and various issues as to the referee), Plaintiff asserts that she is factually incorrect – all parties were at the conference before the Court and the referee’s actions unrelated to this action are irrelevant and cannot be imputed to it.

Defendant, having again retained counsel, responds that the Note of Issue was filed more than ninety days after the date of the conditional order and, thus, was untimely. She further asserts that the filing of a Note of Issue is not proceeding to “entry of judgment” as required by the order. Defendant also argues that the motion for judgment of foreclosure and sale was withdrawn and, thus, the resulting order is a nullity.

Analysis

It is undisputed that the order dated January 9, 2017 required Plaintiff to proceed to entry of judgment within 90 days hereof” and that the order was not scanned into the County Clerk Minutes until January 24, 2017.³ In filing a Note of Issue on April 12th, Plaintiff’s counsel wrote that he was doing so in the abundance of caution as the Court had directed him to do so within ninety days – but that his office had never received a written order to that effect. Further, the action was never marked dismissed, Defendant did not assert that the action was dismissed in opposing summary judgment shortly thereafter, and the same judge that put in the conditional order granted summary judgment and vacated the Note of Issue. Under the circumstances, to find that the action has been dismissed since 2017 would be inappropriate.

Plaintiff withdrew the motion for judgment of foreclosure and sale by letter. Though the matter was adjourned several times thereafter, there is nothing in the record supporting a finding that the Court rejected the withdrawal (nor, generally, can a Court do so). The transcript of Defendant’s prior motion and her submissions reflect that the matter was on for loss mitigation

³ The Note of Issue was filed within ninety days of entry of the conditional dismissal order but two days late if counting from the date on the face of the order.

negotiations – not for the motion. As such, this Court finds that the motion was withdrawn – no longer pending – and the judgment of foreclosure and sale must be vacated.

Conclusion

Accordingly, it is

ORDERED that Defendant’s motion to vacate and dismiss (mot. Seq. #7), is granted to the extent that the judgment of foreclosure and sale dated December 11, 2019 is vacated.

ENTER:



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