

Wells Fargo Bank v Martinez

2025 NY Slip Op 34991(U)

December 12, 2025

Supreme Court, Kings County

Docket Number: Index No. 44087/03

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 12th day of December, 2025.

P R E S E N T:

HON. CENCERIA P EDWARDS,
Justice.

Motion Calendar Date: 4/12/23
Motion Calendar No.(s): 31+32

-----X

WELLS FARGO BANK,

Plaintiff,

-against-

Index No.: 44087/03
MS 12&13

PAUL MARTINEZ 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 _____

2-9 12-16

Opposing Affidavits (Affirmations) _____

19-30

Affidavits/ Affirmations in Reply _____

31-33

Upon the foregoing papers, US Bank National Association, as Trustee for Structured Asset Investment Loan Trust Mortgage Pass-Through Certificates, Series 2005-7 moves for an order directing the distribution of the surplus funds realized from the foreclosure auction in this action. The Office of the State Comptroller (OSC) opposes and cross-moves to vacate the order confirming the Referee’s Computation of Surplus Funds and for a declaration that the mortgages between Roger Reece and US Bank’s predecessor-in-interest are unenforceable against the surplus funds. US Bank opposes.

Background Facts and Procedural History

Plaintiff Wells Fargo Bank Minnesota National Association commenced the instant foreclosure action on November 10, 2003. An order of reference and a judgment of foreclosure and sale both issued in 2004. Over the next few years, three scheduled auctions were cancelled

due to bankruptcy filings by Defendants. The next three sales did not lead to closings, seemingly due to title issues.

By decision dated January 24, 2007, the Court addressed motions by Defendant Paul Martinez seeking to compel non-parties Commonwealth Title Insurance Company, Title Run Abstract Company, Jonathan Mason-Kinsey, and or Scott, Mason-Kinsey LLP to deposit with the Clerk of the Court the sum of approximately \$157,901 to satisfy the subject mortgage. As set forth within the decision, Defendant contended that he went to a mortgage broker's office believing that he was refinancing his mortgage and that Plaintiff's lien was going to be paid off. He was given a check for \$106,000 but did not know what it represented. After learning that the property had been sold at auction by Plaintiff, he retained counsel who discovered that there were two new mortgages executed by "Roger Reece" and filed in Acris – but that no deed to Reece had been recorded. As such, Defendant argued that Title Run – which filed the mortgages and he contended, thus, would have received the funds – and/or Commonwealth – which issued a titled insurance policy for those loans – should be required to satisfy his mortgage to Plaintiff. Both Title Run and Commonwealth denied receipt of the funds and contended that the funds remained with the firm that conducted the closing, Scott, Mason-Kinsey. Both motions were denied, however, as Title Run, Commonwealth, Mason-Kinsey, and his law firm were all non-parties over whom the Court lacked jurisdiction.

Three months later, US Bank moved for an order directing Mason-Kinsey or his law partner Armani B Scott to issue an attorney trust or IOLA account check in the amount of \$157,901 plus interest thereon to Plaintiff representing the portion of the proceeds of the mortgage closing intended to satisfy Plaintiff's lien. It further sought to compel Commonwealth to pay the difference between the net closing proceeds and the now-greater amount necessary to satisfy Plaintiff's mortgage. US Bank also requested a stay of the transfer of the property. By order dated June 29, 2007, US Bank was directed to reimburse Plaintiff for the costs that it had incurred since the filing of the OSC, including expenses related to the most recent cancelled auction and per diem interest from April 4, 2007 until Plaintiff's receipt of the funds. Mason-Kinsey and Scott were directed to disgorge the funds within their escrow account which were

intended to payoff Plaintiff's lien. US Bank was ordered to then pay any additional funds necessary to satisfy the loan.¹

While it is unclear to what extent US Bank complied with the June 29, 2007 order, the loan remained unsatisfied. As such, an auction was held on January 10, 2008. US Bank was the successful bidder and acquired the property for \$255,000. A surplus of \$212,457.48 was deposited with the King's County Clerk's Office on June 4, 2008.²

On September 10, 2008, US Bank filed a notice of claim to the surplus. After its first motion to confirm the referee's report of sale and for a reference for a surplus money proceeding was marked off, its second was granted on default by order dated February 3, 2009. The report of sale was confirmed, and it was directed that a referee be appointed to determine the amount due to US Bank. As the order did not actually name a referee, a subsequent motion for that relief was filed and an appointment made. Thereafter, a substitute referee appointed, and following a protracted, unexplained delay in proceeding, a hearing again directed and another substitute referee designated.

On November 14, 2019, US Bank filed a motion seeking to confirm the appointed referee's findings that the entire surplus should be awarded to it. After no opposition was received, the requested relief was granted by order dated September 2, 2020.

¹ During the pendency of its motion, US Bank also filed a separate action (19773/07) against Commonwealth, Mason-Kinsey, and Scott seeking, among other things, to be compensated for its losses stemming from the failure to pay off Plaintiff's lien. Though all three defendants answered, Mason-Kinsey's and Scott's answers were stricken for failure to provide discovery.

By order dated November 17, 2009, US Bank's motion for summary judgment against Commonwealth was granted to the extent that Commonwealth was found to have improperly denied coverage under the title insurance policy and the matter was set down for a trial on damages. Default judgment was subsequently granted against Mason-Kinsey and Scott on the US Bank's claims and Commonwealth's cross-claims and the matter set down for inquest at the time of trial.

The case was then stayed by stipulation to allow the instant surplus proceeding to conclude as the result thereof would affect US Bank's potential damages. By order dated January 5, 2016, Commonwealth's motion to vacate the stay and to limit its potential liability was granted, the Court accepting its argument that US Bank's loss could not exceed \$42,542.52 (the \$255,000 purchase price less the \$212,457.48 in surplus to which it was the sole claimant). Commonwealth deposited those funds with the County Clerk and entered judgment against its co-defendants in that amount.

² Pursuant to the Referee's Report of Sale, a total of \$200,454.31 was due to Plaintiff. He then gave a "Principal and Interest Credit" of \$157,911.79 leaving \$42,542.52 due to Plaintiff and a surplus of \$209,703.97. If Plaintiff never received the proceeds of US Bank's mortgage, this calculation would be problematic (see, infra fn 5, for a discussion of additional evidence that Scott and Mason-Kinsey did reissue payment pursuant to the Court order.)

US Bank's Motion for Surplus [MS 12]

On May 12, 2022, US Bank filed the instant motion seeking an order directing the distribution of the surplus funds. Therein, it claims that it attempted to execute upon the order granting it the surplus but was told by the Office of the State Comptroller that a new motion would be required, that notice requirements would need to be met, and that the funds would not be released without the resultant order. Believing that it complied with all requirements, US Bank seeks an order directing OSC to release the funds to it.

OSC's Cross-Motion to Vacate [MS 13]

On February 10, 2023, OSC cross-moved for vacatur of the order confirming the referee's report recommending that the surplus be awarded to US Bank. It further seeks a declaration that the Reece Mortgages are unenforceable against the surplus funds. Noting that there is no recorded deed from the Martinezes to Reece, OSC argues that the mortgage upon which US Bank relies is void. To the extent that the prior order awarded the surplus to US Bank, OSC notes that it was not on notice of the referee's hearing and the motion to confirm and that no one else opposed.

OSC also alleges that US Bank might be able to collect on the note and has filed an action seeking to collect from Commonwealth and Mason-Kinsey. In fact, Commonwealth's liability was capped therein, and it paid that amount into Court. Further, as US Bank acquired the property at auction it could have recouped some of its losses through a sale of the property.³

US Bank's Opposition

³ Unfortunately, while a deed from US Bank was recorded on Acris, that led to further litigation as it asserted that the deed was fraudulent and sought to regain title. That action settled in 2019 on unspecified terms.

US Bank counters that it has at least an equitable lien on the property and should be able to collect from the surplus. Proffering the contract of sale and the HUD-1 from the closing, US Bank asserts that the property was sold to Reece, notwithstanding that no deed was recorded.⁴ Its predecessor advanced the funds necessary for the transaction and recorded the resulting mortgages. A check was cut to pay off Plaintiff's lien but never was negotiated.⁵ Reece made payments on the new loan for about a year before defaulting. As such, US Bank urges the Court to find that it had a lien that could be enforced against the surplus.

OSC's Reply

In reply, OSC argues that a prerequisite for a valid lien – whether legal or equitable – is that the person granting the lien own the property that is subject to the lien. To the extent that there is no deed to Reece, OSC takes the position that he was not authorized to encumber the property. It further reiterates that a mortgage without a deed is a nullity and again stresses that US Bank had other opportunities to reduce its losses but has not been diligent in doing so.

Analysis

Plaintiff has proffered a fully executed copy of the contract of sale between the Martinezes and Reece.⁶ It is undisputed that a closing occurred and that Reece borrowed the necessary funds from US Bank's predecessor-in-interest, encumbering the property with two mortgages. A HUD-1 for the transaction was fully filled out and signed by Reece, reflecting the new loans. It is undisputed – and has already been found in other proceedings – that a check was issued to satisfy Plaintiff's lien, albeit it was never negotiated. However, the copies of checks proffered by US Bank and the Referee's Report of Sale both appear to reflect that the funds were

⁴ It accurately notes that this was also a finding of the Court in US Bank's action against Commonwealth.

⁵ US Bank notes that this was a finding of the Appellate Division in the grievance procedure against Mason-Kinsey. It also proffers copies of a pair of checks which it claims was the check from the closing (see Exhibit H to the Handville Affidavit). However, neither check is numbered "321" as discussed in other decisions and both are dated July 6, 2007 – two years after the closing (and likely tendered in response to the Court's order directing Scott and Mason-Kinsey to reissue payment to Plaintiff.)

⁶ In his verified answer to US Bank's complaint in its quiet title action (501899/15), Reece claims that he was a bona fide purchaser who took out loans from US Bank's predecessor to acquire the property but never received a deed or a possessory interest in the property due to the fraud of the closing agents. Likewise, Paul Martinez ratified the result of the sale in moving under the instant index number to compel Commonwealth, Title Run, and/or the closing attorneys to pay off Plaintiff's lien.

eventually tendered (albeit, following a Court order two years later). Further, the Court – both in this action and in US Bank’s action against Commonwealth – appears to have viewed the transaction between the Martinezes and Reece as a genuine sale of the property. As such, this Court finds that US Bank had a valid lien on the property and could pursue the surplus.

Equity also requires this result. The loans to Reece funded and, but for the actions of others, it appears that a deed would have been recorded. To deny it the surplus based on the unavailability of the deed would likely hamper its ability to recover – the order capping Commonwealth’s liability to US Bank is predicated on the surplus going to US Bank and it appears unlikely that it will recover anything from Scott and Mason-Kinsey. On the other hand, it was the only claimant at the surplus hearing and there is no one else currently seeking the funds. To award the funds to US Bank would, thus, appear to prejudice no one.

Conclusion

Accordingly, it is

ORDERED that US Bank’s motion [MS 12] is granted; and it is further

ORDERED that pursuant to Section 1406(2) of the Abandoned Property Law, the surplus funds in the above-referenced foreclosure action held by the State of New York, Office of the State Comptroller in the amount of \$212,457.48 plus applicable interest shall in their entirety be distributed to US Bank National as Trustee; and it is further

ORDERED that OSC’s cross-motion [MS 13] to vacate the order confirming the referee’s recommendation and for a declaration that the Reece Mortgages are unenforceable against the surplus funds is denied in its entirety.

This constitutes the decision and order of the Court.

ENTER:



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