

**Bank of NY Mellon v Chavez**

2025 NY Slip Op 35126(U)

December 29, 2025

Supreme Court, Kings County

Docket Number: Index No. 512993/2018

Judge: Menachem M. Mirocznik

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This opinion is uncorrected and not selected for official publication.

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 29<sup>th</sup> of December 2025

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

THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK AS SUCCESSOR IN INTEREST TO JP MORGAN CHASE BANK, N.A. AS TRUSTEE FOR STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST 2006- AR6 MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-AR6,

Plaintiff,

-against-

PILAR CHAVEZ A/K/A PILAR LEO AS HEIR AND DISTRIBUTEE OF THE ESTATE OF SUSANA MARTINEZ A/K/A SUSANA URMACHEA; ET AL

Defendants.

**Index No. 512993/2018**

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

<b>Papers</b>	<b>Numbered</b>
Notice of Motion	NYSCEF Doc. 75-102

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

**Procedural History**

This action was commenced on June 25, 2018, seeking to foreclose a mortgage (the “mortgage”) executed by Susana Martinez (the “decedent”) encumbering the property known as 13 Brighton 5 Place, Brooklyn, NY 11235 (the “property”).

Decedent died prior to commencement of this action and plaintiff named the unknown heirs and distributees of the estate of decedent and Yolanda Martinez, as heir and distributee of the estate of decedent as party defendants.

On July 3, 2018, defendant Callahan Holdings LLC was served with the summons and complaint through service on the Secretary of State.

On July 6, 2018, defendants New York City Parking Violations Bureau and New York City Environmental Control Board were served with the summons and complaint through service on an authorized agent.

On July 12, 2018, defendant New York State Department of Taxation and Finance was served with the summons and complaint through service on an authorized agent.

On July 13, 2018, defendant United States of America – Internal Revenue Service was served with the summons and complaint through service on an authorized agent.

On August 16, 2018, defendant “John Doe” (Refused Name) as John Doe #1 was served with the summons and complaint personally in hand in accordance with CPLR 308[1].

On October 17, 2018, defendant Pilar Chavez A/K/A Pilar Leo as Heir and Distributee of the Estate of Susana Martinez A/K/A Susana Urmachea (“Pilar Chavez”) was served with the summons and complaint by substituted service in accordance with CPLR 308[2]. The affidavit of service was filed on October 19, 2018.

On October 23, 2018, defendant Pilar Chavez joined issue with the filing of an answer.

On December 4, 2018, plaintiff filed a request for judicial intervention and an ex parte motion seeking to appoint a guardian ad litem and military attorney for the unknown heirs of the decedent, for leave to serve a supplemental summons and amended complaint and to serve the unknown heirs by publication.

On March 4, 2019, the Court denied the motion with leave to renew on notice.

Despite the property being apparently not owner occupied, as decedent died prior to commencement of the action, settlement conferences were held on January 22, 2019, April 3, 2019, and July 3, 2019.

On December 3, 2019, defendant Antonio F Puccio as heir and distributee of the estate of decedent was served with the summons and complaint by substituted service in accordance with CPLR 308[2]. The affidavit of service was filed on December 12, 2019.

On October 6, 2021, defendant Tamara N. Torres as heir and distributee of the estate of decedent was served with the summons and complaint by substituted service in accordance with CPLR 308[2]. The affidavit of service was filed on October 12, 2021.

On March 15, 2022, the Court granted plaintiff’s motion seeking to appoint a guardian ad litem and military attorney for the unknown heirs of the decedent, for leave to serve a supplemental summons and amended complaint and to serve the unknown heirs by publication.

On April 29, 2022, defendants were mailed the supplemental pleadings.

On May 19, 2022, and May 25, 2022, plaintiff filed affidavits of publication of the supplemental pleadings.

On January 5, 2023, non-party New York City Department of Finance filed a notice of appearance and waiver.

On October 3, 2023, plaintiff filed an affirmation, answer and waiver of service of papers on behalf of the appointed guardian ad litem.

On June 27, 2025, plaintiff filed the present motion for summary judgment, to appoint a referee, to reform the mortgage, to deem the notice of pendency timely filed nunc pro tunc and for a default judgment against the non-answering parties.

### Discussion

“Where a property owner dies intestate, title to real property is automatically vested in his or her distributees...Under such circumstances, a foreclosure action may be commenced directly against the distributees” *Wells Fargo Bank, N.A. v Miglio*, 197 AD3d 776 [2d Dept 2021][internal citations and quotation marks omitted]; See also *U.S. Bank Tr., N.A. v Gedeon*, 181 AD3d 745 [2d Dept 2020]

The instant motion is brought more than a year after defendants Antonio F Puccio and Tamara N. Torres as heirs and distributees of the estate of decedent, Callahan Holdings LLC, New York City Parking Violations Bureau and New York City Environmental Control Board defaulted in appearing or answering. Plaintiff offers no excuse or explanation for its delay in taking proceedings for entry of a default judgment.

However, where “a settlement conference is a necessary prerequisite to obtaining a default judgment...a formal judicial request for *such a conference*...constitutes ‘proceedings for entry of judgment’ within the meaning of CPLR 3215(c).” *US Bank N.A. v Jerriho-Cadogan*, 224 AD3d 788 [2d Dept 2024][emphasis added]

Here, it is apparent from the face of the record that this matter was not subject to mandatory settlement conferences as the borrower is deceased and does not reside at the property, which appears occupied by tenants as evidenced by the affidavits of service. See *Wilmington Sav. Fund Socy., FSB v Nifenecker*, 236 AD3d 971 [2d Dept 2025]; *HSBC Bank USA, N.A. v Seidner*, 159 AD3d 1035 [2d Dept 2018]; *Mun. Credit Union v Thomas*, 243 AD3d 449 [1st Dept 2025][“the borrower, was not a resident of the property when the foreclosure action was commenced because he died two years earlier.”]

“Plaintiff was therefore not required to participate in a settlement conference as a prerequisite for obtaining a default judgment...Plaintiff’s filing of an RJI seeking a CPLR 3408 settlement conference thus failed to qualify as “tak[ing] proceedings for the entry of judgment within one year after the default” *E\*Trade Bank v Plotch*, 243 NYS3d 671 [1st Dept 2025]

Lastly, plaintiff’s filing of an RJI in connection with its motion for the appointment of a guardian also does not constitute “taking proceedings” for entry of a default judgment within the meaning of CPLR 3215(c) as such a filing is not “a necessary prerequisite to obtaining a default judgment” as is the case with the filing of an RJI seeking settlement conferences when required. Cf. *US Bank N.A. v Jerriho-Cadogan*, 224 AD3d 788 [2d Dept 2024]; See also *loanDepot.com LLC v Ortner*, 2025 NY Slip Op 25242 [Sup Ct Oct. 31, 2025]

Nor was the filing of a motion for the appointment of a guardian ad litem a reasonable excuse as plaintiff fails to explain how litigation pertaining to a co-defendant prevented it from seeking a default judgment against the defaulting defendant. See *United States Bank N.A. v Moster*, 196 AD3d 663, 665 [2d Dept 2021][“The plaintiff’s contention that the delay was due to its continuing litigation against another defendant in the action...does not constitute a reasonable

excuse”]; *Wilmington Sav. Fund Soc’y, FSB v Nifenecker*, 236 AD3d 971 [2d Dept 2025][“Limosa failed to show how opposing those motions "hindered [BANA] from timely taking any steps to initiate proceedings for the entry of a default judgment" against Reddy”]; *Shields v Cohen*, 222 AD3d 1019 [2d Dept 2023][“The plaintiff failed to explain how the ongoing litigation against the answering defendant "hindered [the plaintiff] from timely taking any steps to initiate proceedings for the entry of a default judgment" against the respondents.”]; *Weiner v Anzaroot*, 241 AD3d 1394 [2d Dept 2025][“The plaintiff’s contention that the delay was due to his continuing litigation against a nondefaulting defendant in the action, without more, does not constitute a reasonable excuse, as the plaintiff failed to show how motion and discovery practice related to the nondefaulting defendant hindered him from taking any steps to initiate proceedings for the entry of a default judgment against the defendants.”]; See also *Deutsche Bank Natl. Trust Co. v Charles*, 186 AD3d 454 [2d Dept 2020]

Accordingly, the complaint must be dismissed pursuant to CPLR 3215[c] for the reasons set forth in *FVX LLC in Tr. for Morgan Stanley Bank, N.A. v Robertson*, 2025 N.Y. Slip Op. 34250[U] [N.Y. Sup Ct, Kings County 2025]

Moreover, the Court is always required and has duty, on its own, to consider the implications of the absence of a necessary or indispensable party. See e.g. *Lezette v Bd. of Ed., Hudson City School Dist.*, 35 NY2d 272 [1974]; *City of New York v Long Is. Airports Limousine Serv. Corp.*, 48 NY2d 469 [1979]; *Jim Ludtka Sporting Goods, Inc. v City of Buffalo School Dist.*, 48 AD3d 1103 [4th Dept 2008]; *Wrobel v La Ware*, 229 AD2d 861 [3d Dept 1996]

Here, given the dismissal of the action as against an owner of the property who is an indispensable party, the complaint is dismissed in its entirety. See *LaSalle Bank N.A. v Benjamin*, 164 AD3d 1223 [2d Dept 2018][“Chittra, as a fee owner of the property which was subject to the mortgage, was a necessary and indispensable party to the action...Once the complaint was dismissed against Chittra, the plaintiff could not continue the action against the other defendants”]; *Newton v Evers*, 215 NY 198 (1915)[“Julia E. Ferguson was the owner of the equity of redemption under her deed...She was a necessary party to any action brought to foreclose that mortgage, and without her presence the action could not proceed.”]; see also *MTGLQ Inv’rs, L.P. v Shay*, 190 AD3d 527 [1<sup>st</sup> Dept 2021][“Dismissal of the action as against Eaton requires discontinuation of the action as against Meldal as well”]; *Green Tree Servicing, LLC v Jean*, 2025 NY Slip Op 06997 [2d Dept Dec. 17, 2025][“As a fee owner of the property and mortgagor, [defendant] was an indispensable party to this foreclosure action...The absence of an indispensable party mandates dismissal of the action, and the plaintiff cannot maintain the action as against the other defendants...Therefore, contrary to the plaintiff’s contention, once the complaint was dismissed insofar as asserted against [defendant], the plaintiff could not continue the action against the remaining defendants.”][internal citations omitted]

Lastly, given the dismissal of the complaint, the notices of pendency filed herein must also be cancelled. See CPLR 6514; See also generally, *Nationstar Mgt., LLC v Davis*, 240 AD3d 790 [2d Dept 2025]; *Bayview Loan Servicing, LLC v Starr-Klein*, 193 AD3d 807 [2d Dept 2021]

The parties’ remaining contentions need not be reached in light of the Court’s determinations.

Accordingly, it is hereby

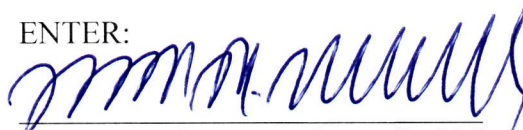
**ORDERED**, that plaintiff's motion is DENIED; and it is further

**ORDERED AND ADJUDGED**, the complaint is DISMISSED; and it is further

**ORDERED**, that the Clerk is directed to cancel the Notices of Pendency filed on June 25, 2018, and August 16, 2023.

This constitutes the decision, order and judgment of the Court.

ENTER:



Hon. Menachem M. Mirocznik, JSC

**FILED**

JAN 06 2026

KINGS COUNTY CLERK'S OFFICE