

**AJ Partners, LLC v Thiam**

2025 NY Slip Op 35127(U)

December 29, 2025

Supreme Court, Kings County

Docket Number: Index No. 513580/2016

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

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

<p>AJ PARTNERS, LLC,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">-against-</p> <p>FATOUMATA THIAM AS ADMINISTRATRIX OF THE ESTATE OF THIAM SADAU A/K/A SADOU THIAM, SURROGATES #2017-499, MADO THIAM AS INFANT HEIR AT LAW OF THE ESTATE OF THIAM SADAU A/K/A SADOU THIAM; AISSATA THIAM AS INFANT HEIR AT LAW OF THE ESTATE OF THIAM SADAU A/K/A SADOU THIAM; MOHAMMAD THIAM AS INFANT HEIR AT LAW OF THE ESTATE OF THIAM SADAU A/K/A SADOU THIAM; AISSATOU THIAM AS INFANT HEIR AT LAW OF THE ESTATE OF THIAM SADAU A/K/A SADOU THIAM; NANCY T SUNSHINE-COMMISSIONER OF JURORS; NEW YORK CITY TRANSIT ADJUDICATION BUREAU; NEW YORK CITY ENVIRONMENTAL CONTROL BOARD; NEW YORK CITY PARKING VIOLATIONS BUREAU; SEYDOU TRAORA, JOHN SMITH S/H/A JOHN DOE 2, JOHN SMITH S/H/A JOHN DOE 3, JOHN SMITH S/H.A JOHN DOE 4, SALIMATA COLIBALY, JANE SMITH S/H/A JANE DOE 2, JANE SMITH S/H/A JANE DOE 3</p> <p style="text-align: center;">Defendants.</p>
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**Index No. 513580/2016**

**Decision and Order  
(Motion Seq. 12)**

<b>Papers</b>	<b>Numbered</b>
Order to Show Cause	NYSCEF Doc. 63-65
Opposition Papers	NYSCEF Doc. 66-67

Upon the foregoing papers, the motion(s) is/are determined in accordance with this decision and order as follows:

### **Relevant Factual and Procedural History**

This action was commenced on August 4, 2016, seeking to foreclose a mortgage (the “mortgage”) executed by decedent Thiam Sadau A/K/A Sadou Thiam (the “decedent”) encumbering the property known as 12 Columbus Place, Brooklyn, NY 11233 (the “property”). Decedent did not timely answer or appear.

A previous action was commenced on October 5, 2010 under Index No. 24567/2010 seeking to foreclose the same mortgage (the “2010 Action”).

On June 7, 2012, plaintiff filed a request for judicial intervention in the 2010 Action. Thereafter, the parties appeared at numerous settlement conferences after which the referee recommended the action be dismissed with prejudice or a bad faith hearing be scheduled. After being assigned to the IAS Judge, the Court scheduled several further settlement conferences which despite decedent’s efforts, yielded no settlement and the Court ultimately issued a conditional order of dismissal on November 7, 2014.

On February 3, 2015, plaintiff filed a motion for order of reference in the 2010 Action, which was later withdrawn.

On February 16, 2016, plaintiff moved to discontinue the 2010 Action which was granted on June 20, 2016.

On November 15, 2016, decedent died and Fatoumata Thiam was appointed administratrix of the estate of decedent on February 16, 2017 (the “defendant”).

On December 19, 2017, plaintiff filed its first motion for default judgment and order of reference. Said motion was denied by order dated March 23, 2018 for failure to serve defendant as administratrix.

On May 11, 2018, plaintiff moved by order to show cause to substitute defendant for decedent as party defendant. On December 5, 2018, the Court granted plaintiff’s motion to substitute.

On January 29, 2019, plaintiff filed its second motion for a default judgment and order of reference. On April 11, 2019, the Court granted plaintiff’s motion for a default judgment and order of reference.

On July 30, 2019, plaintiff filed its first motion to confirm the referees report and for judgment of foreclosure and sale. On September 18, 2019, the Court denied the motion due to the lapsed notice of pendency.

On October 23, 2019, plaintiff filed its second motion to confirm the referees report and for judgment of foreclosure and sale. On January 30, 2020, the Court denied plaintiff’s second motion to confirm the referee’s report and for judgment of foreclosure and sale due plaintiff’s failure to timely serve the order of reference prior to issuance of the referee’s report.

On February 21, 2020, plaintiff filed a third motion to confirm the referees report and for

judgment of foreclosure and sale. On April 13, 2022, the Court granted plaintiff's motion to confirm the referee's report and for a judgment of foreclosure and sale.

A foreclosure sale was scheduled for December 8, 2022.

On December 7, 2022, defendant filed bankruptcy and the foreclosure sale was cancelled

On February 9, 2023, the bankruptcy stay was lifted by the Bankruptcy Court.

On March 1, 2023, plaintiff moved by order to show cause to appoint a substitute referee who was unavailable to conduct a foreclosure sale on the date selected by plaintiff.

A foreclosure sale was scheduled for June 8, 2023. Said sale was cancelled by the referee due to unavailability of the referee.

On June 12, 2023, plaintiff filed an order to show cause seeking to substitute the referee. On November 24, 2023, the Court granted the motion.

A foreclosure sale was scheduled for March 7, 2024.

On March 6, 2024, defendant filed an order to show cause to stay the foreclosure sale and to toll interest for plaintiff's alleged bad faith conduct and delays in prosecuting this action and a prior action.

On March 7, 2024, defendant filed bankruptcy.

On March 8, 2024, the Court signed the order to show cause and stayed the sale.

On April 10, 2024, the bankruptcy stay was lifted by the Bankruptcy Court.

A foreclosure sale was then scheduled for September 5, 2024.

On September 4, 2024, defendant moved again by order to show cause to amend the March 8, 2024 order to show cause and to stay the foreclosure sale. The order to show cause was signed on September 5, 2024 and stayed the sale.

On July 21, 2025, the Court denied defendant's first order to show cause because it was signed after defendant filed bankruptcy which rendered the order void.

On August 14, 2025, the Court denied defendant's second order to show cause as moot.

A foreclosure sale was scheduled for September 18, 2025.

On September 16, 2025, defendant filed the instant order to show cause seeking to stay the foreclosure sale and to toll interest for alleged bad faith conduct and delays in prosecuting this action and a prior action. The order to show cause was signed on September 17, 2025, and stayed the foreclosure sale. Defendant argues that because foreclosure is an equitable action, the Court has broad discretion to toll or cancel interest where the lender's conduct is inequitable, and relief is warranted by nearly fifteen years of delays, bad-faith conduct, and repeated procedural defects.

Defendants contend the plaintiff failed to negotiate in good faith during CPLR 3408 conferences in the 2010 Action—conduct expressly identified by a referee who recommended tolling interest—then withdrew motions, discontinued that case, recommenced foreclosure in 2016, and thereafter filed multiple defective motions, all while allowing interest to accrue. Given the neglect, bad faith, and prejudice, defendant asserts that tolling or cancellation of interest is warranted.

In opposition, plaintiff argues that entry of the judgment of foreclosure constitutes law of the case, and defendant does not moved to vacate the judgment. Plaintiff further contends that tolling is unwarranted, the Court did not issued a tolling order in the 2010 Action, plaintiff satisfied its CPLR 3408 good-faith obligations, and the delays in this case stemmed from unavoidable circumstances including the borrower’s death, substitution issues, COVID-19 court shutdowns, referee unavailability, and multiple bankruptcy filings by the defendant, not plaintiff misconduct.

### Discussion

Initially, plaintiff’s contention that the relief sought is barred by the law of the case doctrine is without merit.

“The doctrine of the law of the case is a rule of practice, an articulation of sound policy that, when an issue is once judicially determined, that should be the end of the matter as far as Judges and courts of co-ordinate jurisdiction are concerned...Such a rule is essential to an orderly and seemly administration of justice in a court composed of several judges...” *U.S. Bank N.A. v Tenenbaum*, 228 AD3d 696 [2d Dept 2024]; *Bank of New York Mellon v Singh*, 205 AD3d 866, 867 [2d Dept 2022][“The doctrine of the law of the case seeks to prevent relitigation of issues of law that have already been determined at an earlier stage of the proceeding.”]

However, “[t]he law of the case doctrine applies only to legal determinations that were necessarily resolved on the merits in a prior decision...and to the same questions presented in the same case” *U.S. Bank N.A. v Moss*, 186 AD3d 1753, 1753 [2d Dept 2020][internal citations and quotation marks omitted]; See also *Deutsche Bank Natl. Tr. Co. v Bruno*, 239 AD3d 827, 829 [2d Dept 2025][“The law of the case doctrine applies only to legal determinations that were necessarily resolved on the merits in a prior decision and to the same questions presented in the same case”]; *US Bank, N.A. v Kandra*, 2025 NY Slip Op 06889 [2d Dept Dec. 10, 2025][“However, the doctrine of law of the case applies only to legal determinations that were necessarily resolved on the merits in [a] prior decision.”]

Here, the issue of whether interest should be tolled was never resolved on the merits or otherwise. Therefore, the law of the case doctrine does not preclude the relief sought.

“A foreclosure action is equitable in nature and triggers the equitable powers of the court...In an action of an equitable nature, the recovery of interest is within the court's discretion. The exercise of that discretion will be governed by the particular facts in each case, including any wrongful conduct by either party,’ such as where the plaintiff’s conduct has prejudiced the defendant...Further, a tolling and cancellation of interest may also be warranted where there is an unexplained delay in prosecution of a mortgage foreclosure action” *GMAC Mtge., LLC v Yun*, 206 AD3d 798, 798-99 [2d Dept 2022][internal citations omitted]; See also *People's United Bank v Patio Gardens III, LLC*, 189 AD3d 1622, 1623 [2d Dept 2020][“tolling and cancellation of interest

may also be warranted where there is an unexplained delay in prosecution of a mortgage foreclosure action”]

Here, while some of the delay in this action was attributable to defendant’s conduct, plaintiff does not even attempt to offer an explanation for its conduct in the 2010 Action. Nor does plaintiff meaningfully dispute the findings of the referee in recommending a bad faith hearing. The fact that the Court in the 2010 Action did not conduct a bad faith hearing does not preclude this Court from tolling interest. Indeed, the issue could not be reached in light of plaintiff seeking discontinuance of the action after almost six years. See e.g. *GMAC Mtge., LLC v Yun*, 206 AD3d 798, 798-99 [2d Dept 2022][tolling interest after entry of judgment of foreclosure and sale]

“In light of the plaintiff’s failure to offer any explanation for the delays that occurred between the commencement of the first action and the current action, it should not benefit financially in the form of accrued interest during that time period.” *Deutsche Bank Natl. Tr. Co. v Armstrong*, 218 AD3d 738 [2d Dept 2023]

Accordingly, the Court, in its equitable discretion, finds that interest should be tolled from the commencement of the 2010 Action until commencement of this action. A period of approximately 70 Months. However, given the explanations provided for at least some of the delays in this action, further tolling is not warranted.

Accordingly, it is hereby

**ORDERED**, that defendant’s motion is GRANTED solely to the extent that interest is tolled for a period of 70 months; and it further

**ORDERED**, that plaintiff and defendant shall each submit a single page letter explaining its proposed calculations and an amended Judgment of Foreclosure and Sale within forty-five (45) days of entry of this order.

This constitutes the decision and order of the Court.

ENTER:

  
Hon. Menachem M. Mirocznik, JSC

**FILED**

JAN 06 2026

KINGS COUNTY CLERK'S OFFICE