

**U.S. Bank Trust N.A. v Crichlow**

2025 NY Slip Op 35153(U)

December 29, 2025

Supreme Court, Kings County

Docket Number: Index No. 507569/2019

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

U.S. BANK TRUST NATIONAL ASSOCIATION,  
NOT IN ITS INDIVIDUAL CAPACITY BUT  
SOLELY AS OWNER TRUSTEE FOR RCAF  
ACQUISITION TRUST,

Plaintiff,

-against-

KAREN CRICHLOW; BANK OF AMERICA, N.A.;  
AMERICAN EXPRESS BANK FSB,

Defendants.

**Index No. 507569/2019**

**Decision and Order  
(Motion Seq. 5 and 6)**

<b>Papers</b>	<b>Numbered</b>
Notice of Motion (Seq. 5)	NYSCEF Doc. 112-118
Opposition Papers (Seq. 5)	NYSCEF Doc. 119-120
Order to Show Cause (Seq. 6)	NYSCEF Doc. 121-128
Opposition Papers (Seq. 6)	NYSCEF Doc. 129-130
Reply Papers (Seq. 6)	NYSCEF Doc. 131-133

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

#### **Relevant Procedural History**

This action was commenced on April 5, 2019, seeking to foreclose a mortgage (the “mortgage”) executed by defendant Karen Crichlow (the “defendant”) encumbering the property known as 757 Hendrix Street, Brooklyn, NY 11207 (the “property”).

On April 11, 2019, defendant was served with the summons and complaint in hand in accordance with CPLR 308[1]. Defendant failed to timely appear or answer.

Settlement conferences were held on June 25, 2019, September 4, 2019, October 23, 2019, November 20, 2019, January 15, 2020, and February 26, 2020, after which the matter was released from the settlement part.

On July 26, 2023, plaintiff moved for a default judgment and order of reference.

On September 5, 2023, defendant filed a formal notice of appearance.

On October 4, 2023, defendant cross-moved to dismiss, to vacate her default and compel the acceptance of her late answer asserting various alleged defenses including a vague challenge to service of process, the action is barred by the statute of frauds and that plaintiff lacked standing. On the same day, defendant also filed a late answer, which was rejected by plaintiff as untimely.

On January 9, 2024, the Court granted plaintiff's motion for a default judgment and order of reference and denied defendant's cross-motion in its entirety. The Court specifically found, inter alia, that defendant failed to demonstrate a reasonable excuse for the default and rejected defendant's jurisdictional challenge.

On October 21, 2024, the Court granted plaintiff's unopposed motion to confirm the referees report and issued a judgment of foreclosure and sale.

On February 13, 2025, defendant was served with a copy of the judgment foreclosure and sale with notice of its entry.

On February 20, 2025, a foreclosure sale was held, and the property was sold to a third-party purchaser for \$685,000.00.

On June 6, 2025, the report of sale was filed, which indicates that a surplus in the amount \$222,293.75 remained after paying all amounts due under the judgment of foreclosure and sale. The funds were deposited with the Court on June 26, 2025

On July 27, 2025, defendant filed an emergency order to show cause seeking to vacate the judgment of foreclosure and sale, set aside the foreclosure sale and to stay the recording of the deed and eviction proceedings. The Court declined to sign the order to show cause.

On June 30, 2025, defendant filed the instant motion on notice, seeking to vacate the judgment of foreclosure and sale, for leave to serve a late answer with counterclaims and to stay proceedings. Defendant claims plaintiff lacks standing, failed to comply with RPAPL 1304, the action is barred by the statute of limitations and plaintiff's servicer engaged in misconduct.

Plaintiff opposes the motion arguing that relief is precluded by res judicata with the entry of the judgment of foreclosure and sale which has not been appealed and is final as to all issues of defense defendant may have. Plaintiff further argues that relief is precluded by the law of the case doctrine given the Court denial of defendant's previous motion seeking the same relief and that in any case defendant failed to demonstrate a reasonable excuse and meritorious defense. Lastly, plaintiff argues that jurisdiction was properly obtained over defendant, she waived jurisdictional objections by participating in the action and seeking affirmative relief and is not entitled to non-jurisdictional relief absent vacatur of her default.

On September 26, 2025, defendant also moved by emergency order to show cause seeking to stay disbursement of the surplus funds, to vacate the referee's report of sale due to defective service and other issues, to direct a traverse hearing to determine the validity of service of process, to direct a surplus money hearing and to "recognize" the bankruptcy filing of "Deed Rescue LLC".

In opposition to the motion, plaintiff argues that relief is barred by res judicata and law of

the case, that defendant was properly served, waived jurisdictional objections and that the bankruptcy was filed by a stranger who is not a borrower, defendant or owner of the property.

In reply, defendant contends that the appearance at settlement conferences does not waive jurisdictional objections, her untimely answer was rejected and is not an appearance, denies she was served and the description in the affidavit of service does match defendant's appearance. Defendant further alleges that plaintiff's conduct amounts to extrinsic fraud and that jurisdictional challenges are not barred by res judicata or law of the case and the sha acted promptly and that Deed Rescue's alleged recorded interest is protected by the Bankruptcy stay.

### Discussion

"A judgment of foreclosure and sale entered against a defendant is final as to all questions at issue between the parties, and all matters of defense which were or which might have been litigated in the foreclosure action are concluded" *83-17 Broadway Corp. v Debcon Fin. Services, Inc.*, 39 AD3d 583 [2d Dept. 2007].

Here, defendant appeared prior to the entry of the judgment of foreclosure and sale and the time to appeal from same has expired.

Accordingly, "the entry of the judgment of foreclosure and sale in this action bars consideration of the issues raised by the defendant, since those issues either were raised or could have been raised during the pendency of the action" *Deutsche Bank Natl. Tr. Co. v Matheson*, 229 AD3d 505, 506 [2d Dept 2024]

Moreover, "[a]n appearance by a defendant in an action is deemed to be the equivalent of personal service of a summons upon him [or her], and therefore confers personal jurisdiction over him [or her], unless he [or she] asserts an objection to jurisdiction either by way of motion or in his [or her] answer." *Countrywide Home Loans Servicing, LP v Albert*, 78 AD3d 983 [2d Dept 2010]

Here, defendant formally appeared when she filed a notice of appearance on September 5, 2023. Therefore, defendant waived any jurisdictional objections. See *Deutsche Bank Natl. Tr. Co. v Abraham*, 183 AD3d 698 [2d Dept 2020][“the defendant waived the issue of lack of personal jurisdiction by appearing in the action...”]

In any case, defendant's jurisdictional objections and attempt to vacate her default were raised in her prior cross-motion on October 4, 2023, the denial of which on January 9, 2024, is law of the case.

“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.”]

Here, the issues raised on the current motion were raised by defendant in her previous motion which was denied by the Court on January 9, 2024, from which no appeal was taken. Therefore, the relief sought is barred by law of the case. See *Munoz v Am. Pac. Min., Inc.*, 264 AD2d 622, 623 [1st Dept 1999][“there is no merit to defendants' contention that the denial of their prior motion to dismiss for lack of jurisdiction is not law of the case.”]

Even if this Court were to consider defendants request to vacate her default the result would be the same. A defendant seeking vacate a default in answering or appearing pursuant to CPLR 5015 must demonstrate a reasonable excuse for the default and meritorious defense to the action. See *US Bank N.A. v Dedomenico*, 162 AD3d 962, 964 [2d Dept 2018].

Here, defendant offers no reasonable excuse, and this lack of justification is already law of the case. In the absence of a reasonable excuse this Court need not consider whether defendant has a meritorious defense to the action. See *LaSalle Bank, NA v Bernard*, 184 AD3d 816, 818 [2d Dept 2020][“Since the defendant failed to demonstrate a reasonable excuse for her default, it is not necessary to determine whether she demonstrated a potentially meritorious defense”]; See also *US Bank N.A. v Dedomenico*, 162 AD3d 962, 964 [2d Dept 2018][“Moreover, since the appellants failed to demonstrate a reasonable excuse for their default, it is unnecessary to consider whether they sufficiently demonstrated the existence of a potentially meritorious defense”]

Defendant’s contention that the bankruptcy petition filed by non-party stranger Deed Rescue LLC has any impact on these proceedings is unexplained, unsubstantiated and therefore warrants no relief.

However, defendant’s request for a surplus hearing is granted in part. The Report of Sale is confirmed pursuant to RPAPL 1355 and CPLR 4403 and the matter shall be referred to a referee for the purpose of determining the distribution of the surplus.

Pursuant to CPLR 4403, the Court has the express authority to act “on its own initiative” regardless of whether parties so move. See *Breland v Motor Veh. Acc. Indem. Corp.*, 24 AD2d 881 [2d Dept 1965][“Rule 4403 of the CPLR was specifically enacted, in part, to overrule the holding in *Rosenfield v. Rosenfield*, 272 App.Div. 547, 74 N.Y.S.2d 82, that the court must await a formal motion before confirming or rejecting a referee's report, and to reaffirm the court's power to act on its own initiative”]

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

Accordingly, it is hereby

**ORDERED**, that defendant’s motion (seq. 5) is DENIED; and it further

**ORDERED**, defendant’s motion (seq. 6) GRANTED solely to the extent set forth herein and is otherwise DENIED; and it is further

**ORDERED**, that all stays in this matter are hereby lifted; and it is further

**ORDERED**, that said report and the sale therein mentioned be absolute and binding

forever and it stand as in all things ratified and confirmed, and it is referred to Jack Segal, Esq. as Referee to compute in this SURPLUS MONEY proceeding, who is to notify, in writing, all claimants, all appearing parties, the Corporation Counsel of the City of New York, the New York State Attorney General and the United States Attorney for the Eastern District of New York and any other appropriate district and any other person who has a lien on the surplus monies to appear and attend a hearing on the distribution of said surplus money and to conduct said hearing AND REQUIRE ALL PERSONS APPEARING AT THE HEARING AND MAKING A CLAIM TO SURPLUS FUNDS TO PRESENT SATISFACTORY IDENTIFICATION and to then ascertain and report the amount due to said petitioner or TO ANY OTHER PERSON OR ENTITY who has a lien on the subject property and to ascertain the priorities of the several liens, if any, and to issue a report with all convenient speed; and it is further

**ORDERED**, that no payment is to be made to the referee to compute in this surplus money proceeding from the surplus monies pursuant to the consent of the parties; but rather it is hereby

**ORDERED**, that all fees charges and assessments against surplus monies be made in compliance with statutory requisites to be confirmed by order of this Court; and it is further

**ORDERED**, that the Referee appointed herein in this surplus money proceeding is subject to the requirements of Rule 36.2(c) of the Rules of the Chief Judge and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that rule, the Referee shall notify the appointing judge forthwith.

This constitutes the decision and order of the Court.

ENTER:



Hon. Menachem M. Mirocznik, JSC

**FILED**  
JAN 06 2026  
KINGS COUNTY CLERK'S OFFICE