

Bank of Am. v Ali

2025 NY Slip Op 35206(U)

December 15, 2025

Supreme Court, Kings County

Docket Number: Index No. 11869/2009

Judge: Derefim B. Neckles

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FSMP 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, 11201 on the 15th day of December, 2025.

P R E S E N T:

HON. DEREKIM B. NECKLES,

Acting Justice.

✓ -----X
BANK OF AMERICA,

Plaintiff,

- against -

Index No. 11869/2009 ✓

✓
MOHAMMED ALI; ET AL,

Defendants.

MS #5 & MS #6

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Affidavits (Affirmations) Annexed
Notice of Cross-Motion/Affidavits (Affirmations) Annexed
Opposition Affirmation to Cross-Motion
Reply Affirmation to Opposition

30-42
44-52
54-63
64

Upon the foregoing papers in this proceeding, plaintiff moves (under mot. seq. 5) for an order amending the complaint and adding party defendants. Defendant cross-moves (under mot. seq. 6) for an order dismissing the action pursuant to RPAPL §1301 as amended by FAPA.

Background

The instant action was commenced on May 14, 2009. All defendants defaulted in appearing. A motion for order of reference was filed in November 2009 and marked off the following month. Another motion for the same relief was filed shortly thereafter and withdrawn in January 2010. Following three years of inactivity, the matter was dismissed

on July 30, 2013 pursuant to CPLR 3216, following a status conference. A new action seeking to foreclose upon the same lien was commenced on June 29, 2015. Defendant then moved to dismiss the action as untimely, and it was granted by order dated December 5, 2017.

Plaintiff then moved to restore the instant 2009 action but was denied by order dated April 4, 2019. Plaintiff appealed and pursuant to order dated February 9, 2022, the Appellate Division reversed and vacated the dismissal, finding that the dismissal was erroneous and that the filing of the 2015 action did not prevent Plaintiff from seeking to resurrect this one. The Appellate Division also held that “RPAPL 1301(3) is inapplicable” as there never were two actions pending at the same time and there is “no reason to import the concept of effective abandonment ... [to] where the plaintiff seeks to restore the first action to the calendar after the second action has been dismissed.” Further, the Appellate Court “reject[ed] the defendant’s contention that the instant action was barred by the doctrine of res judicata because the 2015 action was dismissed as time barred.”

While the instant action was dismissed, title to the property was transferred several times and one of the purchasers further mortgaged the property. Plaintiff now seeks leave to amend the complaint *nunc pro tunc* to add the more recent purchasers (682M LLC and Leah Waldman), the new encumbrancer (MERS as nominee for The Federal Savings Bank), and a judgment creditor (Nasrin Begum). Defendant opposes and cross-moves for dismissal pursuant to RPAPL 1301 as amended by FAPA. Plaintiff, noting the Appellate Division’s decision opposes the cross-motion.

Discussion

I. Motion to Dismiss

The law of the case doctrine “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” (*Martin v. City of Cohoes*, 37 N.Y.2d 162, 165 [1975]). Here, defendant is attempting to renew his prior argument regarding the application of RPAPL 1301, which was determined by the Appellate Division. The Appellate Division’s determination that RPAPL 1301 is inapplicable here constitutes law of the case and is thus binding on this court (*Shroid Constr. v. Dattoma*, 250 A.D.2d 590, 593 [2d Dept 1998]).

II. Amending the Complaint

In opposition to plaintiff’s motion, defendant contends that the statute of limitations to file a new action has expired and the relation-back doctrine does not apply, thus barring the proposed amendment.

The relation-back doctrine requires that the plaintiff establish all three prongs of a three-part test for the addition of untimely claims or parties (*Bisono v. Mist Enters., Inc.*, 231 A.D.3d 134, 141 [2d Dept 2024]). The test examines whether (1) both claims arose out of the same conduct, transaction or occurrence; (2) the new party is united in interest with the original defendant, and by reason of that relationship can be charged with such notice of the institution of the action that the new party will not be prejudiced in maintaining its defense on the merits by the delayed, otherwise stale, commencement; and (3) the new party knew or should have known that, but for an excusable mistake by the plaintiff in

originally failing to identify all the proper parties, the action would have been brought against the additional party united in interest as well (*Mondello v. New York Blood Ctr.-Greater New York Blood Program*, 80 N.Y.2d 219, 226 [1992]).

Here, plaintiff has established all three prongs for the relation back doctrine to apply. First, the cause of action for foreclosure against the original defendant and proposed defendant both stem from the original defendant's default in paying the subject loan. Second, the original defendant and proposed defendant are united interest, given that they both have an interest in the subject property and would be affected by any judgment in this action. Finally, the proposed defendant cannot assert that they were unaware of plaintiff's interest in the property because there were notices of pendency concerning the 2015 action, which listed the subject property at issue.


Accordingly, it is

ORDERED that plaintiff's motion (mot. seq. 5) is granted in all respects. Long form order to follow; and it is further

ORDERED that defendant's cross-motion (mot. seq. 6) is denied in all respects.

This constitutes the decision and order of the court.

E N T E R,


HON. DEREFIM B. NECKLES
A. J. S. C.