

<b>Roach v U.S. Bank N.A.</b>
2025 NY Slip Op 35211(U)
November 5, 2025
Supreme Court, Kings County
Docket Number: Index No. 526927/2024
Judge: Derefim B. Neckles
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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 5th day of November, 2025.

P R E S E N T:

HON. DEREKIM B. NECKLES,  
Acting Justice.

-----X  
OLIVER ROACH; CYNTHIA ROACH; ROGER  
ROWE,

Plaintiff,

- against -

Index No. 526927/2024

U.S. BANK NATIONAL ASSOCIATION;  
NATIONSTAR MORTGAGE LLC,

MS #1 & MS #2

Defendants.  
-----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 to Cross-Motion

8-9  
12-14; 19-37  
17; 39

Upon the foregoing papers in this proceeding, plaintiffs move (under mot. seq. 1) for an order vacating the judgment of foreclosure and sale issued in a related foreclosure action, among other related relief. Defendants cross-move (under mot. seq. 2) for an order dismissing the instant action pursuant to CPLR § § 3211(a)(5), (7) and (8) for res judicata, collateral estoppel, failure to state a claim upon which relief may be granted, and lack of personal jurisdiction.

### *Background*

In a related foreclosure action (under Index No. 6177/2012), defendant here, U.S. Bank National Association, sought to foreclose on a mortgage entered into by plaintiffs here, Oliver Roach and Cynthia Roach. By order dated March 6, 2017, the court granted U.S. Bank's motion for a default judgment and an order of reference and denied Oliver Roach and Cythia Roach's cross-motion to dismiss that was based on U.S. Bank's lack of standing. A judgment of foreclosure and sale was later granted, without opposition, by order dated March 19, 2018. Oliver Roach's motion to vacate the judgment was denied by order dated September 5, 2018, as he "set forth no legal reason to set aside [the] judgment." Oliver Roach then moved to dismiss the action upon the contention that U.S. Bank had failed to establish that it is a "holder in due course." By order dated July 23, 2019, the court denied Oliver Roach's motion to dismiss, holding that U.S. Bank already obtained a judgment of foreclosure and sale against Roach, and the court previously denied his motion to vacate that judgment. Furthermore, the judgment is law of the case.

Oliver Roach and Cynthia Roach then moved for an order vacating the judgment of foreclosure and sale, and allowing them to file an answer to the complaint, pursuant to RPAPL 1302-a. By order dated December 28, 2022, the court denied the parties' motion, holding that RPAPL 1302-a does not apply to a defaulting defendant, and RPAPL 1304 cannot be raised post-judgment.

The property was sold at auction, back to U.S. Bank, on June 13, 2024. Plaintiffs now file the instant action, raising defenses regarding the related foreclosure action,

including U.S. Bank's standing, vacatur of the judgment of foreclosure and sale, and redeeming the property.

### *Discussion*

“Collateral estoppel, or issue preclusion, precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party or those in privity, whether or not the tribunals or causes of action are the same. The party seeking to invoke collateral estoppel has the burden to show the identity of the issues, while the party trying to avoid application of the doctrine must establish the lack of a full and fair opportunity to litigate” (*Bank of New York Mellon v. Treitel*, --- AD3d ---, 2023 NY Slip Op 03446 [2d Dept 2023]).

Under the doctrine of res judicata, “once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy” (*Jones v. Flushing Bank*, 212 AD3d 791, 793 [2d Dept 2023]). “The doctrine of res judicata bars a party from relitigating any claim which could have been or should have been litigated in a prior proceeding” (*id.*) A judgment of foreclosure and sale entered against a defendant is final as to all questions at issue between the parties and concludes all matters of defense which were or might have been raised in the foreclosure action (*id.*)

Here, plaintiffs have previously raised the issue of U.S. Bank's standing in the related foreclosure action, which was denied by orders dated March 6, 2017 and July 23, 2019. Plaintiffs had the opportunity to raise these defenses in the related foreclosure action,

and the judgment of foreclosure and sale issued on March 19, 2018 has concluded all matters of defense which were or might have been raised in that action.

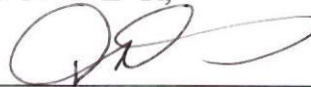
Accordingly, it is

**ORDERED** that plaintiffs' motion (mot. seq. 1) is denied in all respects; and it is further

**ORDERED** that defendant's cross-motion (mot. seq. 2) is granted in all respects.

This constitutes the decision and order of the court.

E N T E R,



HON. DEREKIM B. NECKLES

A. J. S. C.