

Newrez LLC v Castillo
2025 NY Slip Op 35224(U)
October 27, 2025
Supreme Court, Kings County
Docket Number: Index No. 525890/2024
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 27th of October 2025

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

NEWREZ LLC D/B/A SHELLPOINT MORTGAGE
SERVICING,

Index No. 525890/2024

Plaintiff,

-against-

ELIDA CASTILLO; YOSELIN ANGOMAS; BELEN ANGOMAS; ROSA V. ALVAREZ AKA ROSA VIRGINIA ALVAREZ; JOSE ANGOMAS; UNITED STATES OF AMERICA INTERNAL REVENUE SERVICE; NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE; CRIMINAL COURT OF THE CITY OF NEW YORK; WORKERS COMPENSATION BOARD OF NY STATE; COMMISSIONER OF LABOR STATE OF NEW YORK; CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD; CITY OF NEW YORK TRANSIT ADJUDICATION BUREAU; CITY OF NEW YORK DEPARTMENT OF TRANSPORTATION PARKING VIOLATIONS BUREAU, and JOHN DOE AND JANE DOE #1 through #7, the last seven (7) names being fictitious and unknown to the Plaintiff, the persons or parties intended being the tenants, occupants, persons or parties, if any, having or claiming an interest in or lien upon the mortgage premises described in the complaint

**Decision and Order
(Motion Seq. 3)**

Defendants.

Papers	Numbered
Notice of Motion	NYSCEF Doc. 65-88
Opposition Papers (Jose Angomas and Rosa Alvarez)	NYSCEF Doc. 90-92
Opposition Papers (Elida Castillo, Belen Angomas and Yoselin Angomas)	NYSCEF Doc. 93-94
Reply Papers	NYSCEF Doc. 95

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

Procedural and Factual History

On or about November 19, 2007, non-party Maria Perez ("decedent"), executed a note and mortgage (the "mortgage") in favor of plaintiff's predecessor in interest. The mortgage was recorded and encumbers the property known as 248 61st Street, Brooklyn, NY 11220 (the "property"). By deed dated December 21, 2020, decedent conveyed the property to defendants Belen Angomas, Rosa V. Alvarez, Jose Angomas, Elida Castillo and Yoselin Angomas ("defendants") as tenants in common and decedent reserved to herself a life estate.

This action was commenced on September 24, 2024 seeking to foreclose the mortgage. On November 25, 2024, defendants Elida Castillo, Yoselin Angomas and Belen Angomas filed an answer asserting various affirmative defenses and several cross-claims against co-defendants Rosa V. Alvarez and Jose Angomas. On December 10, 2024, defendants Rosa V. Alvarez, Jose Angomas filed an answer with affirmative defenses and an answer to co-defendants' cross-claims and asserted various affirmative defenses.

On January 23, 2025, after the matter was released from the settlement part, defendants Elida Castillo, Yoselin Angomas and Belen Angomas moved for summary judgment dismissing the action because said defendants were allegedly not served with the summons and complaint and plaintiff cross-moved for an extension of time to serve the moving defendants. By stipulation dated April 16, 2025, the movants and cross-movant stipulated to withdraw the motion and cross-motion with the movants accepting service and consenting to the jurisdiction of the Court.

Plaintiff now moves for summary judgment, default judgment and order of reference and to sever the defendants' cross-claims. Defendants Rosa V. Alvarez and Jose Angomas oppose the motion contending that the action is a nullity because decedent died prior to commencement of the action and plaintiff failed substitute the estate of decedent. Defendants Elida Castillo, Yoselin Angomas and Belen Angomas join and adopt the opposition filed by defendants Rosa V. Alvarez and Jose Angomas and also contend that plaintiff is not entitled to a deficiency judgment against defendants because they did not execute the note and do not have personal liability for the debt.

Plaintiff submits reply contending that decedent is not named as a defendant in this action and is not a necessary party because the decedent conveyed her fee interest in the subject property to defendants Belen Angomas, Rosa V. Alvarez, Jose Angomas, Elida Castillo and Yoselin Angomas and merely reserved herself a life estate which was extinguished upon her death.

Defendants Rosa V. Alvarez and Jose Angomas attempted to file a sur-reply which was rejected by plaintiff as unauthorized.

Discussion

Initially, the Court did not provide defendants with leave to submit a sur-reply. Therefore, the same was not considered.

"Generally, in moving for summary judgment in an action to foreclose a mortgage, a plaintiff establishes its prima facie case through the production of the mortgage, the unpaid note, and evidence of default" *Deutsche Bank Nat. Tr. Co. v Brewton*, 142 AD3d 683 [2d Dept 2016].

This showing shifts the burden to the non-movant to present evidence in admissible form sufficient to raise a material issue of fact. See *Gesuale v. Campanelli & Assocs., PC*, 126 AD3d 936 [2d Dept. 2015]. See also *Dee v. Rakower*, 112 A.D.3d 204 [2d Dept. 2013]. See also *First Int'l Bank of Israel, Ltd. v. L. Blankstein & Son, Inc.*, 59 NY3d 436 [1983].

Here, plaintiff established prima facie entitlement to judgment as a matter of law with production of the note, mortgage and evidence of decedent's default in payment including the production of decedent's payment history. Furthermore, none of the answering defendants contend plaintiff did not establish prima facie entitlement to judgment as a matter of law.

The sole contention raised by defendants that decedent's estate is a necessary party is without merit. "Pursuant to RPAPL 1311(1), "necessary defendants" in a mortgage foreclosure action include, among others, "[e]very person having an estate or interest in possession, or otherwise, in the property as tenant in fee, for life, by the curtesy, or for years, and every person entitled to the reversion, remainder, or inheritance of the real property, or of any interest therein or undivided share thereof, after the determination of a particular estate therein." *Nationstar Mtge., LLC v Foltishen Inst.*, 199 AD3d 1011 [2d Dept 2021].

However, "[w]here, as here, a mortgagor has made an absolute conveyance of all her interest in the mortgaged premises, including her equity of redemption, she is not a necessary party to foreclosure, unless a deficiency judgment is sought against her" *PNC Bank, N.A. v Lefkowitz*, 185 AD3d 1069, 1070 [2d Dept 2020]; See also *Nationstar Mtge., LLC v Foltishen Inst.*, 199 AD3d 1011 [2d Dept 2021].

Here, neither the decedent nor her estate are named parties to this action and it is undisputed that decedent conveyed her fee interest in the property to defendants and reserved to decedent a life estate. It is further undisputed that decedent died prior to commencement of the instant action. Upon decedent's death, her life estate terminated and she ceased to have any interest in the subject property. See *In re Estate of Carey*, 249 AD2d 542 [2d Dept 1998] ["The real substance of a life estate consists in the life tenant's right to exclude all others from the possession of the subject property for the duration of his or her own life. . . In general terms, such an estate, by its very nature, terminates upon the death of the life tenant"].

Therefore, neither the decedent nor her estate had any interest in the subject property and are not necessary parties to this foreclosure action. However, defendants are correct that a deficiency judgment may not be sought against the answering defendants as they did not execute the note or mortgage and therefore do not have personal liability for the debt.

Accordingly, it is hereby,

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

ORDERED, that the Plaintiff is awarded summary judgment as Against Elida Castillo; Yoselin Angomas; Belen Angomas; Rosa V. Alvarez AKA Rosa Virginia Alvarez and Jose Angomase and their cross-claims are hereby severed; and it is further

ORDERED, that the non-answering and non-appearing defendants are determined to be in default and Plaintiff is granted judgment upon the default of said defendant(s) pursuant to CPLR 3215; and it is further

ORDERED, that Summerfield M. Baldwin, Esq. with an address of 75 Maiden Lane, Room 357, New York, New York 10038-5198 Telephone No. (212) 402-6827 is hereby appointed Referee, in accordance with RPAPL 1321, to compute the amount due to Plaintiff, and to examine whether the mortgaged property may be sold in parcels; and it is further

ORDERED, that the Referee make his/her computation and report with all convenient speed; and it is further

ORDERED that, if necessary, the Referee may take testimony pursuant to RPAPL 1321; and it is further

ORDERED, that by accepting this appointment the Referee certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to section 36.2(c) ("Disqualifications from appointment"), and section 36.2(d) ("Limitations on appointments based upon compensation"), and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall immediately notify the Appointing Judge; it is further

ORDERED, that, pursuant to CPLR 8003(a), the statutory fee of \$350.00 shall be paid to the Referee for the computation of the amount due and upon the filing of his/her report and the Referee shall not request or accept additional compensation for the computation unless it has been fixed by the court in accordance with CPLR 8003(a); and it is further;

ORDERED that the Referee is prohibited from accepting or retaining any funds for him/herself or paying funds to him/herself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED that Plaintiff shall serve a copy of this Order with notice of entry on all parties and persons entitled to notice, including the Referee appointed herein; and it is further

ORDERED that the caption be amended to add "JOHN DOE" (REFUSED NAME) as Defendants by and in place of "JOHN DOE"; and it is further

ORDERED that the caption be amended to read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

NEWREZ LLC D/B/A SHELLPOINT MORTGAGE
SERVICING,

Index No. 525890/2024

Plaintiff,

-against-

ELIDA CASTILLO; YOSSELIN ANGOMAS; BELEN
ANGOMAS; ROSA V. ALVAREZ AKA ROSA
VIRGINIA ALVAREZ; JOSE ANGOMAS; UNITED
STATES OF AMERICA INTERNAL REVENUE
SERVICE; NEW YORK STATE DEPARTMENT OF
TAXATION AND FINANCE; CRIMINAL COURT OF
THE CITY OF NEW YORK; WORKERS
COMPENSATION BOARD OF NY STATE;
COMMISSIONER OF LABOR STATE OF NEW
YORK; CITY OF NEW YORK ENVIRONMENTAL
CONTROL BOARD; CITY OF NEW YORK TRANSIT
ADJUDICATION BUREAU; CITY OF NEW
YORK DEPARTMENT OF
TRANSPORTATION PARKING VIOLATIONS
BUREAU; "JOHN DOE" (REFUSED NAME),

Defendants.

This constitutes the decision and order of the Court.

ENTER:



Hon. Menachem M. Mirocznik, J.S.C.

KINGS COUNTY CLERK
FILED
2025 NOV -6 A 10:28