

<b>Wilmington Sav. Fund Socy., FSB v Bissada</b>
2025 NY Slip Op 35229(U)
November 26, 2025
Supreme Court, Kings County
Docket Number: Index No. 526442/23
Judge: Christopher Robles
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At an IAS Term, Part FRP 6 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 26<sup>th</sup> day of November, 2025.

P R E S E N T:

HON. CHRISTOPHER ROBLES,  
Justice.

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WILMINGTON SAVINGS FUND SOCIETY, FSB, NOT IN  
ITS INDIVIDUAL CAPACITY BUT SOLELY AS OWNER  
TRUSTEE OF CSMC 2021-RPL11 TRUST,

Plaintiff,

- against -

Index No. 526442/23

AZIZ BISSADA A/K/A AZIZ A. BISSADA; GEORGETTE  
BISSADA; JPMORGAN CHASE BANK, N.A.; CITY OF  
NEW YORK ENVIRONMENTAL CONTROL BOARD;  
CITY OF NEW YORK PARKING VIOLATIONS BUREAU;  
CITY OF NEW YORK TRANSIT ADJUDICATION  
BUREAU;

“JOHN DOE,” said Name Being Fictitious, it Being  
the Intention of Plaintiff to Designate any and all  
Occupants of Premises Being Foreclosed Herein,  
and any Parties, Corporations or Entities, if any,  
Having or Claiming an Interest or Lien upon the  
Mortgaged Premises,

Defendants.

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The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/Cross  
Motion and Affidavits (Affirmations) \_\_\_\_\_  
Opposing Affidavits (Affirmations) \_\_\_\_\_

56, 58-78  
81-82, 84

Upon the foregoing papers in this action to foreclose a mortgage encumbering the residential property at 121 Marine Avenue in Brooklyn (Block 6116, Lot 3) (Property), plaintiff Wilmington Savings Fund Society, FSB, not in its individual capacity but solely

as owner Trustee of CSMC 2021-RPL11 Trust (Plaintiff or Wilmington) moves (in motion sequence [mot. seq.] three) for an order: (1) appointing a referee to ascertain and compute the damages due and owing to Plaintiff and to issue a report, pursuant to RPAPL § 1321; (2) awarding it a default judgment against the non-answering defendants, Georgette Bissada, JPMorgan Chase Bank, N.A. (Chase), City of New York Environmental Control Board (ECB), City of New York Parking Violations Bureau (PVB) and City of New York Transit Adjudication Bureau (TAB), pursuant to CPLR 3215; and (3) discontinuing the action as against defendants Aziz Bissada a/k/a Aziz A. Bissada and the John Doe defendants and amending the caption to reflect the discontinuance “as they are no longer necessary parties” (NYSCEF Doc No. 56).

### **Background**

On September 12, 2023, Wilmington commenced this foreclosure action by filing a summons, an unverified complaint and a notice of pendency against the Property. The complaint alleges that defendants Aziz Bissada and Georgette Bissada, husband and wife, “duly made a certain bond, note, consolidation, extension, modification, recasting, or assumption agreement, as the case may be[,]” and “[a]s security for the payment of said indebtedness, a [July 21, 2020] consolidation, extension and/or modification agreement [CEMA] was executed, acknowledged and delivered to Nationstar Mortgage LLC d/b/a Mr. Cooper, its successors and assigns . . .” which “modified the mortgage(s) referred to in Schedule ‘D’ hereof to form a single first mortgage lien in the sum of \$282,800.29” (Complaint at ¶¶ 4-5). According to Schedule D, the CEMA consolidated and/or modified (1) a March 31, 2004 mortgage for \$300,000.00, and (2) a May 21, 2014, loan modification

agreement to secure the sum of \$259,385.83 (*id.* at 11). Schedule D to the complaint also states that “the underlying Note was indorsed by the original lender or its agent, successor, or assign, and was delivered to Plaintiff prior to the commencement of this action” (*id.*). Importantly, annexed to the complaint is a copy of the March 31, 2004, note with a blank endorsement from North Fork Bank, the original lender, on the last page of the document (*id.* at 14-16).<sup>1</sup>

Allegedly, Aziz and Georgette Bissada failed to pay “monthly payments of principal, interest, taxes, assessments, water rates, insurance premiums, escrow and/or other charges . . .” as of October 1, 2022 (*id.* at ¶ 8 and Exhibit C). Notably, in addition to foreclosure of the Property, the complaint seeks a deficiency judgment against Aziz and Georgette Bissada (*id.* at 6).

Wilmington’s September 22, 2023, affidavit of service in the record reflects that Aziz Bissada was purportedly served with process on September 20, 2023, at 4:22 p.m., at the Property by delivering the documents to Georgette Bissada, “Co-Tenant” and a person of suitable age and discretion, and mailing them on September 21, 2023, to the Property (NYSCEF Doc No. 11). However, in October 2024, when Wilmington moved for an order of reference and a default judgment against the borrowers, Plaintiff’s counsel advised the

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<sup>1</sup> A plaintiff establishes its prima facie standing to foreclose “by demonstrating that it had physical possession of the note prior to the commencement of the action, as evidenced by its attachment of the note, endorsed in blank, to the summons and complaint” (*U.S. Bank Nat’l Ass’n v Romano*, 231 AD3d 1079, 1080 [2d Dept 2024]).

court that Aziz Bissada had died on July 17, 2021, prior to the commencement of this action (NYSCEF Doc No. 41 at ¶ 8 and NYSCEF Doc No. 42 [Death Certificate]).

None of the defendants answered or otherwise responded to the complaint.

***Wilmington's Instant Motion***

On April 28, 2025, Wilmington moved for an order of reference, a default judgment against the non-answering defendants and an order discontinuing this action as against the John Doe defendants and Aziz Bissada and amending the caption accordingly (NYSCEF Doc No. 56).

Plaintiff's counsel submits a moving affirmation asserting that “[b]orrowers held title as tenants by the entirety”<sup>2</sup> and “Aziz A. Bissada passed away on July 17, 2021 and his death certificate reflects that his spouse, Georgette Bissada, survived him” (NYSCEF Doc No. 58 at ¶ 17; *see also* NYSCEF Doc No. 42). Wilmington submits a memorandum of law asserting that “upon the death of Aziz A. Bissada, his interest automatically vested in Georgette Bissada, and she became the sole owner of the Property[,]” and thus, Aziz Bissada is not a necessary party to this action (NYSCEF Doc No. 57 at 9). Wilmington asserts that it should be permitted to discontinue this foreclosure action as against the decedent borrower, Aziz Bissada, since Wilmington is waiving any deficiency against him (*id.* at 9-10).

Wilmington also submits an affidavit from Cynthia May (May), an officer of Select Portfolio Servicing, Inc. (SPS), the servicing agent and attorney-in-fact for Wilmington,

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<sup>2</sup> Wilmington submits a copy of the December 27, 1991 deed to the Property, which reflects that Aziz Bissada, the decedent, and Georgette Bissada owned the Property as husband and wife (NYSCEF Doc No. 42).

pursuant to a March 16, 2022, Limited Power of Attorney (NYSCEF Doc No. 63), who attests that her affidavit is based on her review of SPS's records relating to Borrowers' loan, including records that have been integrated into SPS's system from prior servicers (NYSCEF Doc No. 62 at ¶¶ 2-3). May reiterates the allegations in the complaint regarding the Bissada defendants' execution of the March 31, 2004 note and mortgage, the May 2014 loan modification and the July 21, 2020, loan modification, which was effective as of August 1, 2020 (*id.* at ¶¶ 7-10). Copies of the endorsed note, the mortgage and the loan modifications are submitted with Wilmington's motion (NYSCEF Doc Nos. 64-67). Regarding the alleged payment default, May attests that:

“[t]he Loan is due for October 1, 2022, under the Loan Documents, and the entire loan balance is now due and owing to Plaintiff. A redacted but otherwise true and correct copy of SPS's Financial Breakdown Statement business record that I reviewed and relied upon and that is maintained as described above, evidencing and confirming the due date and amount owed is attached hereto as **Exhibit K**” (*id.* at ¶ 17).

Exhibit K consists of: (1) SPS's Financial Breakdown Summary (including “Borrower/ Loan Information” and “Financial Information”); (2) “Financial Breakdown Details” from 09/20/2022 through 04/03/2025; and (3) the “Payment History” from 02/07/2022 through 12/19/2022, which reflects that the last payment was made on September 1, 2022 (NYSCEF Doc No. 73 at 6).

### ***Defendant Bissada's Opposition***

Georgette Bissada, in opposition, submits an attorney affirmation asserting that “Defendant continues to maintain previously stated procedural and substantive objections to the within motion due to the death of one of the borrowers, Defendant Aziz Bissada,

prior to the filing of the instant action” (NYSCEF Doc No. 81 at ¶ 6). Defense counsel argues that “the within action was not brought properly pursuant to CPLR §1015, and that as such, this Court does not have jurisdiction in this matter . . .” (*id.*). Defense counsel asserts that “the death of Mr. Bissada, a named Defendant, prior to the commencement of this action renders the action, insofar as asserted against the deceased defendant, a legal nullity from its inception” and “because no estate representative has been appointed to date, this, leaves the Court without jurisdiction to grant any of the relief requested by Plaintiff . . .” (*id.* at ¶¶ 7 and 18). Notably, defense counsel specifically concedes that “Georgette Bissada has, by operation of law, become the owner of the subject premises after Mr. Bissada’s passing . . .” (*id.* at ¶ 8).

Alternatively, defense counsel asserts that Wilmington’s motion for an order of reference is not supported by documentary evidence and should be denied as “defective” (*id.* at ¶ 6). Defense counsel argues that the May moving affidavit fails to identify the “particular records” that she reviewed or that she was familiar with the record-keeping practices of prior servicers (*id.* at ¶¶ 10 and 19-20). Defense counsel further argues that Wilmington has failed to provide evidence demonstrating that it is the owner of the note (*id.* at ¶¶ 11-13). Finally, defense counsel asserts that Wilmington’s motion for an order of reference is “premature, to the extent that this matter can be settled and a foreclosure judgment and sale may not be necessary” (*id.* at ¶ 14).

### ***Wilmington’s Reply***

Wilmington, in reply, submits a memorandum of law arguing that there are no “jurisdictional defects” and “[t]he action as a whole is not a legal nullity since the

Defendant, at the time of commencement, held the sole ownership interest in the Property” (NYSCEF Doc No. 85 at 7). Wilmington explains that “[t]enancy by the entirety confers on the surviving spouse a right to absolute ownership of the property upon the other spouse’s death” and “[s]ince title in the instant matter was held as tenants by the entirety and upon the passing of the Decedent, Defendant acquired sole ownership of the Property, a discontinuance solely as against the Decedent is proper” (*id.* at 8). Wilmington asserts that the decedent’s estate is not a necessary party since it is not seeking a deficiency (*id.*).

### Discussion

“When seeking an order of reference to determine the amount that is due on an encumbered property, a plaintiff must show its entitlement to a judgment . . . [which] may be shown . . . by the plaintiff showing entitlement to summary judgment . . .” (*U.S. Bank N.A. v Miller*, 49 Misc 3d 1205 (A), \* 7 [Sup Ct, Kings County 2015] [citing RPAPL § 1321; 1-2 Bruce J. Bergman, Bergman on New York Mortgage Foreclosures § 2.01 (4) (k) (note: online edition)]).

Summary judgment is a drastic remedy that deprives a litigant of his or her day in court and should, thus, only be employed when there is no doubt as to the absence of triable issues of material fact (*Kolivas v Kirchoff*, 14 AD3d 493 [2d Dept 2005]; *see also Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). “The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment, as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Manicone v City of New York*, 75 AD3d 535, 537 [2d Dept 2010], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *see also Zuckerman v City of New York*, 49 NY2d 557, 562

[1980]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). If it is determined that the movant has made a prima facie showing of entitlement to summary judgment, “the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493 [2d Dept 1989]).

Generally, to establish prima facie entitlement to judgment as a matter of law in an action to foreclose a mortgage, a plaintiff must produce the mortgage, the unpaid note and admissible evidence of the borrower’s default (*see Deutsche Bank Natl. Trust Co. v Karibandi*, 188 AD3d 650, 651 [2d Dept 2020]; *Christiana Trust v Moneta*, 186 AD3d 1604, 1605 [2d Dept 2020]; *Deutsche Bank Trust Co. Ams. v Garrison*, 147 AD3d 725, 726 [2d Dept 2017]). Where a plaintiff establishes prima facie entitlement to judgment, the burden then shifts to the defendant to raise a triable issue of fact as to a bona fide defense to the action (*CitiMortgage, Inc. v Guillermo*, 143 AD3d 852, 853 [2d Dept 2016]).

Here, Wilmington, in support of its motion for an order of reference and a default judgment against the non-answering defendants has adequately demonstrated its prima facie entitlement to foreclose the Consolidated and/or Modified Mortgage dated July 21, 2020, by producing the May affidavit testimony, copies of the loan documents and SPS’s business records evidencing Georgette Bissada’s October 1, 2022, payment default.

Defendant’s contention that this action is jurisdictionally defective and a nullity from its inception because Aziz Bissada died prior to commencement of this action is rejected. Wilmington has demonstrated, and defense counsel concedes, that Georgette

Bissada became the sole owner of the Property after her husband's death on July 17, 2021, prior to the commencement of this action, since Aziz and Georgette Bissada owed the Property as tenants by the entirety (*Kozyra v Goldstein*, 146 Misc 2d 25, 27 [Sup Ct Suffolk County 1989] [“(o)n the death of either spouse the fee vests in the other, not because there was a transfer of any part of the estate, but because the survivor is the representative of the single ownership”]). New York courts have held that the personal representative of the estate of a deceased mortgagor, who died intestate and against whom no deficiency judgment is sought, is not a necessary party to a mortgage foreclosure action (*Wells Fargo Bank, N.A. v Seibold*, 49 Misc 3d 1217 (A), \*5 [Sup Ct Richmond County 2015]; *Wells Fargo Bank, N.A. v Cerotano*, 45 Misc 3d 1226 (A), \*3 [Sup Ct Suffolk County 2014]). Because Wilmington has waived its right to a deficiency judgment against the decedent's estate, it is not a necessary party to this foreclosure action, and thus, that branch of Wilmington's motion seeking to discontinue the action as against the decedent, Aziz Bissada, is granted. Accordingly, it is hereby

**ORDERED** that Wilmington's motion (in mot. seq. three) is granted and Wilmington is entitled to: (1) an order of reference, pursuant to RPAPL § 1321, which shall be settled on notice within 30 days after service of this decision and order with notice of entry thereof; (2) a default judgment against the non-answering defendants, Georgette Bissada, Chase, ECB, PVB and TAB, pursuant to CPLR 3215; and (3) an order discontinuing the action as against the decedent mortgagor, Aziz Bissada, and the John Doe defendants and amending the caption to reflect the discontinuance; and it is further

**ORDERED** that the caption shall hereinafter read as follows:

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WILMINGTON SAVINGS FUND SOCIETY, FSB, NOT IN  
ITS INDIVIDUAL CAPACITY BUT SOLELY AS OWNER  
TRUSTEE OF CSMC 2021-RPL11 TRUST,

Plaintiff,

- against -


GEORGETTE BISSADA; JPMORGAN CHASE BANK,  
N.A.; CITY OF NEW YORK ENVIRONMENTAL  
CONTROL BOARD; CITY OF NEW YORK PARKING  
VIOLATIONS BUREAU; CITY OF NEW YORK TRANSIT  
ADJUDICATION BUREAU,

Defendants.

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This constitutes the decision and order of the court.

E N T E R,

  
J. S. C.