

<b>Homestate Asset Mgt., LLC v U.S. Bank N.A.</b>
2025 NY Slip Op 35274(U)
May 7, 2025
Supreme Court, Onondaga County
Docket Number: Index No. 007388/2024
Judge: Joseph E. Lamendola
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STATE OF NEW YORK  
SUPREME COURT ONONDAGA COUNTY

**HOMESTATE ASSET MANAGEMENT, LLC**

Plaintiff,

v.

**U.S. BANK NATIONAL ASSOC., as Trustee  
for the Registered Holders of Bank of  
America Merrill Lynch Commercial  
Mortgages, Inc., Multifamily Mortgage Pass-  
Through Certificates Series 2016-KX02, and  
ARBOR AGENCY, LLC,**

Defendants.

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Before: Hon. Joseph E. Lamendola, JSC

Plaintiff commenced this action against Defendants seeking damages for alleged breach of contract, unjust enrichment, and/or breach of the implied covenant of good faith and fair dealing. By way of background, Plaintiff and Defendant Lender (US Bank Nat'l) entered into a Settlement Agreement with respect to a March 221, 2021, foreclosure action wherein Plaintiff agreed to pay Defendant Lender the sum of \$186,737.26, special servicing fees, legal fees, and inspection fee, and KYC fees set forth therein. In March of 2024, Defendants herein consented to the assumption of the underlying loan by a Buyer, subject to the terms and conditions set forth in Defendant Arbor's "Assumption Approval Letter, which assessed against Plaintiff a one percent Workout fee and \$10,630.63 in additional attorney fees, totaling \$213,115.68. Plaintiff alleges that they paid the fees under duress to preserve the viability of the Plaintiff's sale at the March 20, 2024 closing.

Defendant Lender (US Bank Nat'l) joined the issue with the filing of a verified answer on October 23, 2024. Defendant Arbor Agency has not answered the complaint.

Instead, Defendant Arbor Agency (hereinafter “Defendant”) filed the present pre-answer motion to dismiss pursuant to CPLR 3211 (a) (1) and (7). Defendant argues that as it was not a party to the Settlement Agreement the breach of contract action must be dismissed against it, and that said Agreement cannot be used to create an independent obligation upon them on a breach of implied covenant of good faith and fair dealing claim. Defendant further argues that the unjust enrichment claim is barred by the existence of the Settlement Agreement.

It is well settled that, “[i]n assessing a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction . . . We accept the facts as alleged in the complaint as true, accord plaintiff[ ] the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss” (*Pottorff v Centra Fin. Group., Inc.*, 192 AD3d 1552, 1553 [4th Dept 2021] [internal citations and quotation marks omitted]). The Fourth Department, along with all other Departments and the Court of Appeals have been clear in their directive that Supreme Court must afford the allegations in the complaint every possible favorable inference (*see id.*).

Applying these well-settled principles, the Court must deny defendants’ motions on CPLR 3211 (a) (7) grounds. The Court is certainly willing to entertain a future motion, through the lens of a CPLR 3212 summary judgment motion, after the completion of discovery. Similarly, dismissal is not warranted under CPLR 3211 (a) (1) inasmuch as “[t]he documentary evidence submitted by defendant[s] in support of the . . . motion failed to resolve all factual issues and conclusively dispose of [plaintiff’s cause(s) of

action] as a matter of law” (*Wentworth v Erie Ins. Co.*, 195 AD3d 1426, 1426 [4th Dept 2021] [internal quotation marks omitted]).

Accordingly, it is hereby

**ORDERED**, that defendants’ motion is **DENIED**.

DATED: May <sup>7</sup> \_\_\_, 2025  
Syracuse, New York



HON. JOSEPH E. LAMENDOLA, JSC

**PAPERS CONSIDERED:**

- 1) Notice of Motion, filed on October 21, 2024 (NYSCEF #13)
- 2) Attorney Affirmation in Support, with annexed exhibit, October 21, 2024 (NYSCEF #14-15)
- 3) Memorandum of Law in Support, October 21, 2024 (NYSCEF #16)
- 4) Affirmation in Opposition with exhibits, filed December 5, 2024 (NYSCEF #24-7)
- 5) Memorandum of Law in Opposition, filed on December 5, 2024 (NYSCEF #28)
- 6) Memorandum of Law in Reply, filed on December 11, 2024 (NYSCEF #29)
- 7) Miller Affirmation in Reply, filed on January 31, 2025 (NYSCEF #30)
- 8) Rutecki Reply Affirmation with exhibits, filed on January 31, 2024 (NYSCEF #31-34)
- 9) Plaintiff’s “Reply” Affirmation with exhibit, filed February 25, 2025 (NYSCEF #35-36)
- 10) Defendants’ ‘Sur-Reply,’ filed March 25, 2025 (NYSCEF #38)