

US Bank Trust N.A. v Morgan

2026 NY Slip Op 30071(U)

January 9, 2026

Supreme Court, Kings County

Docket Number: Index No. 1352/2009

Judge: Carolyn Walker-Diallo

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FRP4, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 320 Jay Street, Brooklyn, New York, on the 9th day of January 2026.

PRESENT:

HON. CAROLYN WALKER-DIALLO, J.S.C.

Index No.: 1352/2009

_____ x

US BANK TRUST N.A.,

Plaintiff,

DECISION AND ORDER

-against-

BURCHEL MORGAN, et al.,

Defendant(s).

_____ x

Recitation, as required by CPLR 2219 (a), of the papers considered in the review of this

Motion:

Papers

Motion, Affirmation in Support, and Exhibit
Affirmation in Opposition
Affirmation in Reply

Numbered

NYSCEF Doc. Nos. 103-106¹
NYSCEF Doc. Nos. 109-125
[Paper]

Motion Sequence #7

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

Non-Party Proposed Intervenor, Stacia E. Hewitt, Administrator D.B.N. of the Estate of Jean Elizabeth Weisbord, (“Proposed Intervenor”), purported principal of Waycross Vista, Inc (“Waycross”), moves for an Order: (1) vacating the dismissal of the action entered on or about

¹ The motion was hard copy filed, and uploaded to NYSCEF by the Court.

November 23, 2016; (2) vacating the Judgment of Foreclosure and Sale (“Judgment”); (3) restoring the case to the Court’s active calendar; (4) substituting Proposed Intervenor in place of Waycross; (5) directing that the case proceed under FAPA in accordance with Administrative Order 431/11; (6) confirming Plaintiff’s compliance with RPAPL 1304 and 1306, and requiring submission of a FAPA affirmation; (7) dismissing the action for lack of personal jurisdiction for failure to properly serve the owner of record; (8) dismissing the action as time-barred under CPLR 213 (4) and FAPA; and (9) pursuant to CPLR 1001 (a), joining Proposed Intervenor as a necessary party. Plaintiff submits opposition, and Movant submit reply papers. For the foregoing reasons, Proposed Intervenor’s motion is DENIED.

This action was commenced on January 20, 2009, seeking to foreclose upon a mortgage executed by Decedent Sonia Morgan (“Borrower”) on the premises known as 1515 East 94th Street, Brooklyn, New York 11236. The Court granted Plaintiff’s motion for a default judgment and order of reference on September 16, 2010. *See* Kings County Clerk’s Minutes Prior to Conversion, NYSCEF Doc. No. 1. On May 10, 2012, after the Notice of Pendency lapsed, the property was purportedly transferred to Waycross by deed recorded on July 30, 2012, in the Office of the City Register. By Order entered February 15, 2013, Plaintiff’s motion for a Judgment was denied. *See* Kings County Clerk’s Minutes Prior to Conversion, NYSCEF Doc. No. 1. On November 23, 2016, the matter was dismissed for Plaintiff’s failure to appear at a status conference, which was vacated by Order entered October 23, 2018. Additionally, the Court also granted a Judgment on that date. *See* Kings County Clerk’s Minutes Prior to Conversion, NYSCEF Doc. No. 1.

On November 15, 2022, Plaintiff moved to vacate the Judgment and to add Waycross as a party defendant and extend the time for service. Waycross cross-moved for dismissal and to cancel

the notice to pendency, while also consenting to be added as a party defendant. On May 9, 2023, an Order was issued vacating the Judgment but not vacating the dismissal order and denying the cross-motion as moot given that Waycross is not a party. *See* Order of Hon. Larry D. Martin dated May 9, 2023, NYSCEF Doc. No. 38. The Court noted that Waycross acquired the property after the notice of pendency expired. On January 11, 2024, Plaintiff's motion to amend the complaint to dismiss Borrower from the action and to add Waycross was denied, as the amendment was potentially time-barred in absence of application of the relation back doctrine. The Court noted that it was possible for Waycross to be substituted for Borrower. *See* Order of Hon. Larry D. Martin dated January 11, 2024, NYSCEF Doc. No. 52. On April 9, 2025, the Court granted Plaintiff's motion to lift the stay imposed by Borrower's death on January 23, 2014, to discontinue the action against Borrower and substitute the heirs and distributees of Borrower's estate and various parties, and to amend the complaint and serve a supplemental summons by publication. *See* Order of Hon. Larry D. Martin dated April 9, 2025, NYSCEF Doc. No. 81.

DISCUSSION

CPLR 1012 (a) provides "Intervention as of right. Upon timely motion, any person shall be permitted to intervene in any action: 1. when a statute of the state confers an absolute right to intervene; or 2. when the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment; or 3. when the action involves the disposition or distribution of, or the title or a claim for damages for injury to, property and the person may be affected adversely by the judgment."

Initially, Plaintiff's contention that Waycross has no property interest and that this is the law of the case is without merit. "The doctrine of the law of the case 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. Such a rule is essential to an orderly and seemly administration of justice in a court composed of several judges.” *U.S. Bank N.A. v. Tenenbaum*, 228 A.D.3d 696, 699-700 (2d Dep’t 2024) (Internal quotations and citations omitted). The April 9, 2025 order amending the complaint and granting Plaintiff leave to serve a supplemental summons did not make this finding. *See* Order of Hon. Larry D. Martin dated April 9, 2025, NYSCEF Doc. No. 81. Rather, the Court has previously found that Waycross does have a valid interest in the property in the orders entered on May 9, 2023 and January 11, 2024. *See* Orders of Hon. Larry D. Martin dated May 9, 2023 and January 11, 2024, NYSCEF Doc. Nos. 38, 52.

Further, Plaintiff’s contentions are barred by judicial estoppel, as Plaintiff has taken the position for many years that Waycross had an interest in the property. By Order dated January 11, 2024, the Court adopted Plaintiff’s contention that it could move against Waycross as successor-in-interest to Borrower. *See* Order of Hon. Larry D. Martin dated January 11, 2024, NYSCEF Doc. No. 52. “Under the doctrine of judicial estoppel, or estoppel against inconsistent positions, a party is precluded from inequitably adopting a position directly contrary to or inconsistent with an earlier assumed position in the same proceeding. The doctrine further precludes a party who assumed a position in one legal proceeding and prevailed in maintaining that position from assuming a contrary position in another proceeding simply because the party’s interests have changed. The twin purposes of the doctrine are to protect the integrity of the judicial process and to protect judicial integrity by avoiding the risk of inconsistent results.” *State Farm Fire & Cas. Co. v. Dan Heller Plumbing & Heating, Inc.*, 2025 NY Slip Op 06635, ¶ 2 (2d Dep’t 2025) (Internal quotations and citations omitted). Therefore, Plaintiff is judicially estopped from challenging that Waycross has an interest in the property.

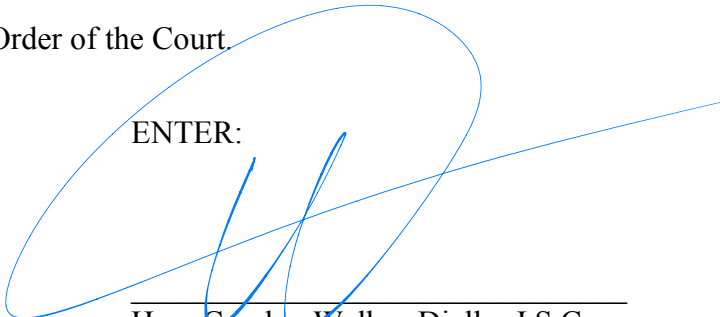
However, Plaintiff correctly notes that Proposed Intervenor lacks standing to assert any rights, as the estate does not have a direct interest in the property. To the extent that Jean Elizabeth Weisbrod was the sole shareholder of Waycross, its shares would fall to the estate, not the property. A party “generally has standing only to assert claims on behalf of himself or herself. Although there are situations in which representative standing is permitted (*see* CPLR 1004), one does not, as a general rule, have standing to assert claims on behalf of another.” *Cardo v. Bd. of Mgrs., Jefferson Vill. Condo 3*, 67 A.D.3d 945, 946 (2d Dep’t 2009) (Internal quotations and citations omitted). Proposed Intervenor is attempting to assert Waycross’s rights, and lacks standing to assert same. Though Waycross maintains interests in the property, Proposed Intervenor’s motion is brought only on behalf of the estate, not also on behalf of Waycross. *See* Notice of Motion dated May 16, 2025, NYSCEF Doc. No. 103.

CONCLUSION

Accordingly, Proposed Intervenor’s motion is DENIED. To the extent that any relief requested was not addressed by the Court, it is hereby DENIED. Plaintiff shall serve notice of entry within fifteen (15) days of the upload of the order to NYSCEF upon Proposed Intervenor, Defendants, and all parties who have appeared in this action.

This constitutes the Decision and Order of the Court.

ENTER:



Hon. Carolyn Walker-Diallo, J.S.C.