

U.S. Bank Trust N.A. v DeMarco

2026 NY Slip Op 30167(U)

January 6, 2026

Supreme Court, New York County

Docket Number: Index No. 850114/2024

Judge: Francis A. Kahn III

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. FRANCIS A. KAHN, III PART 32

Justice

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INDEX NO. 850114/2024

U.S. BANK TRUST NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY, BUT SOLELY AS TRUSTEE ON BEHALF OF FINANCE OF AMERICA SELECT MASTER TRUST,

MOTION DATE

MOTION SEQ. NO. 002

Plaintiff,

- v -

GINA DEMARCO, LENA DIGIROLOMO, MARGARITE SCHIAVONE, JOANNE GUIDICE, ROSELIE DEMARCO, THERESA DEMUCCIO, CHRISTINA DEMARCO, MARIA TANCREDI, ANTHONY DEMARCO, ALEXA DEMARCO, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, NEW YORK CITY PARKING VIOLATIONS BUREAU, NEW YORK CITY TRANSIT ADJUDICATION BUREAU, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, UNITED STATES OF AMERICA, JOHN DOE

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 137

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, the motion and cross-motion are determined as follows:

On the branches of the motion for summary judgment, a default judgment and appointment of a referee, Plaintiff established the mortgage, note, and evidence of Mortgagor's default in repayment by affidavit which was sufficiently supported by admissible business records annexed thereto (see eg Bank of NY v Knowles, 151 AD3d 596 [1st Dept 2017]; SRMOF II 2012-I Trust v Tella, 139 AD3d 599, 600 [1st Dept 2016]; Fortress Credit Corp. v Hudson Yards, LLC, 78 AD3d 577 [1st Dept 2010]). Defendant Margaret DeMarco Schiavone's limited opposition is unavailing as Plaintiff pled in the complaint and admits in its opposition to the cross-motion that it is not seeking a deficiency judgment against the estate of the deceased mortgagor or the intestate heirs of decedent.

As to the cross-motion, Defendant has not pled in her counterclaim, much less established in the motion, a basis for an award of attorney's fees under a contract provision, statute, or code provision (see generally Gotham Partners, L.P. v High Riv. Ltd. Partnership, 76 AD3d 203, 204 [1st Dept 2010]; Rules of the Chief Administrator Part 130, et seq [22 NYCRR]).

Accordingly, it is

ORDERED that the motion for summary judgment against the appearing parties, to strike the appearing Defendant's answer, a default judgment against the non-appearing parties, the appointment of a referee to compute is granted without opposition, to discontinue against certain Defendants and to amend the caption; and it is further

ORDERED that **Jeffrey R. Miller, Esq, 32 Broadway, 13th Floor, New York, New York 10004, 212-227-4200** is hereby appointed Referee in accordance with RPAPL § 1321 to compute the amount due to Plaintiff and examine whether the tax parcel can be sold in parcels; and it is further

ORDERED that if a Defendant appears and contests the amount due, in the discretion of the Referee, a hearing may be held, and testimony taken, otherwise the Referee shall hold no hearing and take no testimony or evidence other than by written submission; and it is further

ORDERED that by accepting this appointment the Referee certifies that he is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2 (c) ("Disqualifications from appointment"), and §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; and it is further

ORDERED that, pursuant to CPLR 8003(a), and in the discretion of the court, a fee of \$350 shall be paid to the Referee for the computation of the amount due and upon the filing of his 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(b); and it is further

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

ORDERED that if the Referee holds a hearing or is required to perform other significant services in issuing the report, the Referee may seek additional compensation at the Referee's usual and customary hourly rate; and it is further

ORDERED that plaintiff shall forward all necessary documents to the Referee and to defendants who have appeared in this case within 30 days of the date of this order and shall *promptly* respond to every inquiry made by the referee (promptly means within two business days); and it is further

ORDERED that if defendant(s) have objections, they must submit them to the referee within 14 days of the mailing of plaintiff's submissions; and include these objections to the Court if opposing the motion for a judgment of foreclosure and sale; and it is further

ORDERED the failure by defendants to submit objections to the referee shall be deemed a waiver of objections before the Court on an application for a judgment of foreclosure and sale; and it is further

ORDERED that plaintiff must bring a motion for a judgment of foreclosure and sale

within 30 days of receipt of the referee’s report; and it is further

ORDERED that if plaintiff fails to meet these deadlines, then the Court may *sua sponte* vacate this order and direct plaintiff to move again for an order of reference and the Court may *sua sponte* toll interest depending on whether the delays are due to plaintiff’s failure to move this litigation forward; and it further

ORDERED that this action is discontinued against defendant MARGARITE DEMARCO SCHIAVONE, AS HEIR AND DISTRIBUTE OF THE ESTATE OF MARY DEMARCO, JOANNE GUIDICE, AS HEIR AND DISTRIBUTE OF THE ESTATE OF MARY DEMARCO; ROSELIE DEMARCO, AS HEIR AND DISTRIBUTE OF THE ESTATE OF MARY DEMARCO; THERESA DEMUCCIO, AS HEIR AND DISTRIBUTE OF THE ESTATE OF MARY DEMARCO; CHRISTINA DEMARCO, AS HEIR AND DISTRIBUTE OF THE ESTATE OF MARY DEMARCO; MARIA TANCREDI, AS HEIR AND DISTRIBUTE OF THE ESTATE OF MARY DEMARCO; ANTHONY DEMARCO, AS HEIR AND DISTRIBUTE OF THE ESTATE OF MARY DEMARCO; ALEXA DEMARCO A/K/A FILED: NEW YORK COUNTY CLERK 06/19/2025 09:13 AM INDEX NO. 850114/2024 NYSCEF DOC. NO. 104 RECEIVED NYSCEF: 06/19/2025 2 of 6 ALEXIA DEMARCO, AS HEIR AND DISTRIBUTE OF THE ESTATE OF MARY DEMARCO; and it is further

ORDERED the caption is amended to reflect the joinder of Gina DeMarco in her sole capacity as executrix of the estate of Mary DeMarco; and it is further

ORDERED that all the "Doe" Defendants are stricken as the New York County Clerk will not accept a judgment for filing with a “Doe” defendant in the caption; and it is further

ORDERED that the caption of this action as amended, shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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U.S. BANK TRUST NATIONAL ASSOCIATION,
NOT IN ITS INDIVIDUAL CAPACITY, BUT
SOLELY AS TRUSTEE ON BEHALF OF
FINANCE OF AMERICA SELECT MASTER
TRUST,

Plaintiff,

-against-

GINA DEMARCO IN HER SOLE CAPACITY AS EXECUTRIX
OF THE ESTATE OF MARY DEMARCO;
SECRETARY OF HOUSING AND
URBAN DEVELOPMENT; NEW YORK CITY
PARKING VIOLATIONS BUREAU; NEW YORK
CITY TRANSIT ADJUDICATION BUREAU; NEW
YORK CITY ENVIRONMENTAL CONTROL
BOARD; NEW YORK STATE DEPARTMENT OF
TAXATION AND FINANCE; UNITED STATES OF
AMERICA,

Defendants.

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and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being removed pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address (www.nycourts.gov/supctmanh)); 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.

All parties are to appear for a virtual conference via Microsoft Teams on **May 6, 2026, at 10:00 a.m.** If a motion for judgment of foreclosure and sale has been filed Plaintiff may contact the Part Clerk (SFC-Part32-Clerk@nycourts.gov) in writing to request that the conference be cancelled. If a motion has not been made, then a conference is required to explore the reasons for the delay.

1/6/2026
DATE

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

FRANCIS KAHN, III, A.J.S.C.

HON. FRANCIS A. KAHN III
J.S.C.