

U.S. Bank Trust N.A. v Halfon
2026 NY Slip Op 30188(U)
January 2, 2026
Supreme Court, Kings County
Docket Number: Index No. 528104/2022
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 2nd of January 2026

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

U.S. BANK TRUST NATIONAL ASSOCIATION,
NOT IN ITS INDIVIDUAL CAPACITY BUT
SOLELY AS OWNER TRUSTEE FOR RCF 2
ACQUISITION TRUST,

Plaintiff,

-against-

YVETTE HALFON, BECKY HALFON, NEW YORK CITY PARKING VIOLATIONS BUREAU, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, NEW YORK CITY TRIP TRANSIT ADJUDICATION BUREAU, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, UNITED STATES OF AMERICA, "JOHN DOE #1" through "JOHN DOE #12," the last 12 names being fictitious and unknown to plaintiff, the person or parties intended being the tenants, occupants, persons or corporations, if any, having or claiming an interest in or lien upon the premises, described in the complaint,

Defendants.

Index No. 528104/2022

**Decision and Order
(Motion Seq. 2 and 3)**

Papers	Numbered
Notice of Motion	NYSCEF Doc. 59-85
Notice of Cross-Motion	NYSCEF Doc. 86-96
Opposition To Cross-Motion/Reply Papers	NYSCEF Doc. 98

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

Relevant Factual and Procedural History

This action was commenced on September 27, 2022, seeking to foreclose a mortgage (the "mortgage") executed by defendant Aliav Mizrahi A/K/A Elias Mizrahi A/K/A Aliau Mizrahi ("Elias Mizrahi") and Yvette Mizrahi ("Yvette Mizrahi") encumbering the real property known as 2187 East 7th Street, New York 11223 (the "property"). All of the defendants defaulted in appearing or answering except the City of New York who filed a notice of appearance.

Prior to commencement of this action, On August 7, 2014, Jennifer Halfon and Becky Halfon, utilizing powers of attorney for Elias Mizrachi and Yvette Mizrahi purportedly transferred the property to defendants Yvette Halfon and Becky Halfon (the "2014 Deed").

On November 29, 2017, Yvette Mizrachi was determined by the Court to be incapacitated pursuant to Mental Hygiene Law and guardians were appointed for Yvette Mizrachi. The Order and Judgment (the "Mental Hygiene Judgment") voided the 2014 Deed, and restored title to Yvette Mizrachi and Elias Mizrachi, as tenants by the entirety. The Mental Hygiene Judgment was recorded in the Office of the City Register on April 9, 2018 under CRFN 2018000116809.

On December 6, 2017, Elias Mizrachi died. By operation of law, upon the death of Elias Mizrachi, his interest devolved to Yvette Mizrachi who became the sole owner of the property.

On November 23, 2019, Yvette Mizrahi died.

On September 29, 2021, Molly Cohen and Jennifer Halfon were issued letters of administration and were appointed as administrators of the estate of Yvette Mizrahi

Despite being a fee owner and indispensable party to the action, neither the heirs of Yvette Mizrahi nor the administrators of the estate of Yvette Mizrahi were named parties to this action.

Settlement conferences were held on November 14, 2023, and December 6, 2023, after which the matter was released from the settlement part.

On June 28, 2024, the Court granted plaintiff's motion for a default judgment and issued an order of reference.

Plaintiff now moves to confirm the referee's report and for a judgment of foreclosure and sale. Plaintiff claims entitlement to relief in as much as the report is allegedly substantially supported by the record.

Non-parties Molly Cohen and Jennifer Halfon as co-administrators of the Estate of Yvette Mizrachi (the "Intervenors"), cross-move to deny plaintiff's motion, to intervene in this action, to amend the caption, to compel acceptance of their answer and for summary judgment dismissing the action. Defendant argues dismissal is appropriate because the actual owner of the property was never named and none of the predicate notices were properly served.

Plaintiff opposes the cross-motion arguing that the estate is not a party to this action is not entitled to seek relief and simply not bound by the Mental Hygiene Judgment, that the Mental Hygiene Judgment voiding the 2014 Deed was not "settled with a recorded deed transferring the property back" and that plaintiff allegedly did not have notice, constructive or otherwise, of the order and guardianship proceeding and the order was not served on plaintiff. Plaintiff further argues that joinder, rather than dismissal is the appropriate remedy, as there may be other parties with an interest in the property who were not known prior to commencement. Lastly, plaintiff contends the Court should grant the motion to confirm the referee's report and for judgment of foreclosure and sale as intervenors do not contest the amounts owed.

Discussion

“Pursuant to RPAPL 1311 (1), the plaintiff in a mortgage foreclosure action is required to join, as a party defendant, any person having a fee interest in the property whose interest is claimed to be subject and subordinate to the plaintiff's lien...Here, as the record owner of the property...was a necessary party to the instant foreclosure action...The absence of a necessary party in a foreclosure action leaves that party's rights unaffected by the judgment and sale, and the foreclosure sale may be considered void as to the omitted party.” *Deutsche Bank Natl. Trust Co. v Ennis*, 236 AD3d 987 [2d Dept 2025]

Here there is no material dispute that the Mental Hygiene Judgment restored the property back to decedent Elias and Yvette Mizrahi and that the property devolved to Yvette Mizrahi upon Elias Mizrahi's death. Plaintiff's contention that is did not have notice of the Mental Hygiene Judgment is specious as the same was duly recorded in the Office of the City Register and therefore had constructive notice that title was held by Elias and Yvette Mizrahi. Furthermore, the Mental Hygiene Judgment did not require a further transfer to be effective. Therefore, plaintiff failed to name the fee owners of the property and the same are not bound by these proceedings.

Given the Court's finding that the fee owners are not bound to this case, the action cannot proceed in the absence of same who are indispensable parties. See *LaSalle Bank N.A. v Benjamin*, 164 AD3d 1223 [2d Dept 2018][“Chittra, as a fee owner of the property which was subject to the mortgage, was a necessary and indispensable party to the action”]; *Newton v Evers*, 215 NY 198 [1915][“Newton”][“Julia E. Ferguson was the owner of the equity of redemption under her deed...She was a necessary party to any action brought to foreclose that mortgage, and without her presence the action could not proceed.”]; see also *MTGLQ Inv'rs, L.P. v Shay*, 190 AD3d 527 [1st Dept 2021][“Dismissal of the action as against Eaton requires discontinuation of the action as against Meldal as well”] *Green Tree Servicing, LLC v Jean*, 2025 NY Slip Op 06997 [2d Dept Dec. 17, 2025][“As a fee owner of the property and mortgagor, [defendant] was an indispensable party to this foreclosure action...The absence of an indispensable party mandates dismissal of the action, and the plaintiff cannot maintain the action as against the other defendants...Therefore, contrary to the plaintiff's contention, once the complaint was dismissed insofar as asserted against [defendant], the plaintiff could not continue the action against the remaining defendants.”][internal citations omitted]

It should be noted that unlike in *Newton* and its progeny, where the indispensable party was dismissed from the case, thereby requiring dismissal of the entire case, here the indispensable parties were never joined in the first instance.

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.”

While the parties dispute defendant's entitlement to intervention, both appear to misunderstand the procedural and due process requirements. As a simple matter of procedural due

process, it is a duty of a plaintiff to join the proper parties. See e.g. *Martin v Wilks*, 490 US 755 [1989][“a party seeking judgment binding on another cannot obligate that person to intervene; he must be joined”]; *Staten Is. R.T. Operating Auth. v Interstate Commerce Commerce*, 718 F2d 533 [2d Cir 1983][“Nor do we find convincing appellants’ assertion that [the nonparties’] opportunity to intervene in the state action binds them...to the judgment issued in the state court. As a general rule, a nonparty is not obligated to intervene in a pending action simply because the litigation presents matters affecting the nonparty.”]

“CPLR 1001(b) requires the court to order such persons summoned, where they are subject to the court’s jurisdiction...The nonjoinder of necessary parties may be raised at any stage of the proceedings, by any party or by the court on its own motion, including for the first time on appeal.” *Miller v Wendy Joan St. Wecker Trust U/A Aug. 28, 1997*, 173 AD3d 1007 [2d Dept 2019]

The Court is always required and has a duty, on its own, to consider the implications of the absence of a necessary or indispensable party. Indeed, the Court of Appeals has been clear on this issue. “When a necessary party is subject to the jurisdiction of the court...the statute directs that the court “order him summoned... It does not provide for consideration of the discretionary factors. In most cases, therefore, the court would be required to join the necessary parties.” *Windy Ridge Farm v Assessor of Town of Shandaken*, 11 NY3d 725, 727 [2008]; See also *Lezette v Bd. of Ed., Hudson City School Dist.*, 35 NY2d 272 [1974]; *City of New York v Long Is. Airports Limousine Serv. Corp.*, 48 NY2d 469 [1979]; *Jim Ludtka Sporting Goods, Inc. v City of Buffalo School Dist.*, 48 AD3d 1103 [4th Dept 2008]; *Wrobel v La Ware*, 229 AD2d 861 [3d Dept 1996]

Therefore, the Court orders the fee owners of the property (whoever they may be) be joined and intervenors’ motion is granted to the extent that intervention is granted and their answer is deemed accepted. However, to the extent the intervenors seek summary judgment the same is denied as premature prior to joinder of issue and intervenors failed to attach an affidavit of merit as required by CPLR 3212[b]. Plaintiff’s motion to confirm the referee’s report and for judgment of foreclosure and sale is denied as moot.

Lastly, since the Court orders joinder and grants intervention the order of reference must be vacated. See _____

Accordingly, it is hereby,

ORDERED, that Intervenor’s cross-motion is GRANTED TO THE EXTENT that intervention is granted, their answer is accepted and the caption shall be amended but is otherwise DENIED; and it is further

ORDERED, that the order dated June 28, 2024, is VACATED; and it is further

ORDERED, that plaintiff’s motion to confirm the referee’s report and for judgment of foreclosure and sale is DENIED; and it is further

ORDERED, that the plaintiff is directed to join the fee owners of the property and file a supplemental summons and amended complaint naming the fee owners as a party defendants; and it is further

ORDERED, that plaintiff shall file and personally serve the supplemental summons and amended complaint within sixty (60) days of entry of this Order; and it is further

ORDERED, that the caption is amended for now as follows:

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

U.S. BANK TRUST NATIONAL ASSOCIATION, NOT
IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS
OWNER TRUSTEE FOR RCF 2 ACQUISITION TRUST,

Plaintiff,

-against-

MOLLY COHEN AND JENNIFER HALFON AS CO-
ADMINISTRATORS OF THE ESTATE OF YVETTE
MIZRACHI; YVETTE HALFON, BECKY HALFON,
NEW YORK CITY PARKING VIOLATIONS BUREAU,
NEW YORK CITY ENVIRONMENTAL CONTROL
BOARD, NEW YORK CITY TRIP TRANSIT
ADJUDICATION BUREAU, NEW YORK STATE
DEPARTMENT OF TAXATION AND FINANCE,
UNITED STATES OF AMERICA, "JOHN DOE #1"
through "JOHN DOE #12," the last 12 names being
fictitious and unknown to plaintiff, the person or parties
intended being the tenants, occupants, persons or
corporations, if any, having or claiming an interest in or lien
upon the premises, described in the complaint,

Defendants.

This constitutes the decision and order of the Court.

ENTER:


Hon. Menachem M. Mirocznik, JSC

KINGS COUNTY CLERK'S OFFICE

JAN 15 2026

FILED