

Christiana Trust v Carroll
2026 NY Slip Op 30215(U)
January 13, 2026
Supreme Court, Kings County
Docket Number: Index No. 504855/2015
Judge: Derefim B. Neckles
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At an IAS Term, Part FRP-2 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, 11201 on the 13th day of January 2026.

P R E S E N T:

HON. DEREKIM B. NECKLES,
Justice.

-----X
CHRISTIANA TRUST, A DIVISION OF WILMINGTON SAVINGS FUND SOCIETY, FSB, NOT IN ITS INDIVIDUAL CAPACITY, BUT SOLELY AS SHAP NR TRUSTEE,
Plaintiff,

- against -

Index No. 504855/2015

THE HEIRS AT LARGE OF ALMA CARROLL, DECEASED and all persons who are husbands, widows, grantees, mortgagees, lienors, heirs, devisees, distributees, successors in interest of such of them as may be dead, and their husbands and wives, heirs, devisees, distributes and successors of interest of all of whom and whose names and places are unknown to Plaintiff; ELLIOTT SKIP ROSEBORO AND LOYCE DUKE, AS POSSIBLE HEIRS TO THE ESTATE OF ALMA CARROLL, DECEASED;

Defendants.

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The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Affidavits (Affirmations) Annexed
Opposition to the motion

225
226, 259, 260, 264

Upon the foregoing papers in this action to foreclose on a mortgage encumbering the subject property at 23 Pulaski Street in Brooklyn, defendant Elliot Roseboro (“defendant”), moves by order to show cause (under mot. seq. 7) for an order, (a) vacating the judgment of foreclosure and sale dated April 9, 2019, (b) setting aside the foreclosure sale that occurred on

July 27, 2024, and the Referee's Deed to 23 Pulaski LLC; (c) staying both an eviction commenced against defendant, and all other proceedings related to this matter until defendant's motion is resolved.

Background

On December 26, 2007, Alma Carroll executed a New York The Prime Advantage Fixed Rate Reverse Mortgage Loan Agreement and a reverse mortgage, in favor of Everbank Reverse Mortgage LLC. The mortgage was assigned to Christiana Trust ("plaintiff") and recorded on February 2, 2015. Alma Carroll passed away on August 29, 2013, and the subject loan went into default. Consequently, plaintiff commenced the instant action by filing a summons and complaint on April 22, 2015. On October 22, 2015, the court granted plaintiff's motion for service by publication and to amend plaintiff's complaint to specifically identify defendant and co-defendant Loyce Duke in their capacities as possible heirs to the estate of decedent. Thereafter, default judgment and an order of reference were granted in favor of plaintiff on July 20, 2016. Plaintiff moved for an order confirming the referee's report and for a judgment of foreclosure and sale, which was granted on April 9, 2019. Defendant thereafter filed a cross motion seeking to vacate the judgment and to dismiss the action for lack of personal jurisdiction. By order dated November 29, 2021, a triable issue of fact was found to exist as to whether the defendant was properly served with process, and the matter was set down for a traverse hearing. At conclusion of the traverse hearing, Special Referee Miriam Sunshine held that service on defendant was proper.

By order dated December 20, 2022, the plaintiff's motion for an extension of time to conduct a foreclosure sale was granted. A foreclosure sale was held on July 27, 2023, and the property was sold to 23 Pulaski. A closing on the property was held and title was transferred to 23 Pulaski by referee deed dated September 7, 2023. Defendant now moves to vacate the judgment

of foreclosure and sale and set aside the referee's deed.

In support of his motion, defendant argues that plaintiff was required to join a personal representative of the estate of Alma Carroll prior to commencing this action. Additionally, defendant asserts that plaintiff lacked standing to commence this action and failed to comply with RPAPL 1303 and RPAPL 1304. Furthermore, defendant argues that the foreclosure auction was not commercially reasonable due to a discrepancy between the sales price of \$1,210,000 and the deed recorded disclosing a sale price of \$1,246,602.

In opposition, plaintiff argues that this court has previously decided after a traverse hearing that defendant was properly served. Additionally, plaintiff asserts that because it is not seeking a deficiency judgment against the decedent's estate, a personal representative of the estate was not a necessary party that needed to be joined as a defendant prior to commencing the action. Further, plaintiff argues that defendant's motion is untimely pursuant to CPLR 2003 and RPAPL 231(6). Finally, plaintiff maintains that because defendant is in default, defendant is precluded from raising non-jurisdictional defenses until his default is vacated.

The successful bidder at the foreclosure sale and current title owner, 23 Pulaski, opposes the motion. In opposition 23 Pulaski argues that defendant is barred by the principles of res judicata as defendant sought nearly the exact same relief in a prior order to show cause dated December 20, 2022, which was ultimately marked off due to non-appearance by defendant. Additionally, 23 Pulaski asserts that pursuant to the Decision and Order entered after trial in the Housing Court Proceeding, defendant was supposed to vacate the subject premises on or about March 15, 2025.

Discussion

I. Personal Jurisdiction

By order dated August 2, 2022, Special Referee Miriam Sunshine determined after a traverse

hearing based on the credible evidence adduced at the hearing, that service upon defendant was proper and jurisdiction was obtained. 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” (*Martin v. City of Cohoes*, 37 N.Y.2d 162, 165, 371 N.Y.S.2d 687, 332 N.E.2d 867). As such, defendant is barred from relitigating the claim that personal jurisdiction was not obtained.

To the extent that defendant argues that a personal administrator or executor was never joined as a defendant in this action, this court finds the argument unavailing. Defendant is correct that “[a] party may not commence a legal action or proceeding against a dead person but must instead name the personal representative of the decedent’s estate” (*Jordan v. City of New York*, 23 A.D.3d 436, 437, 807 N.Y.S.2d 595). However, an administrator is not a necessary party when a deceased mortgagor/owner dies intestate (*U.S. Bank Tr., N.A. v. Gedeon*, 181 A.D.3d 745, 747, 121 N.Y.S.3d 276, 278 (2020)). Thus, where a mortgagor/property owner dies intestate and the mortgagee does not seek a deficiency judgment, generally a foreclosure action may be commenced directly against the distributees (*Countrywide Home Loans, Inc. v. Keys*, 27 A.D.3d 247, 811 N.Y.S.2d 362). Here, the summons and complaint name the heirs at large of Alma Carroll as defendants and plaintiff does not seek a deficiency judgment as against the decedent’s estate. As such, an administrator of decedent’s estate was not a necessary party to this action.

II. Timeliness

N.Y. Real Prop. Acts. Law § 231 provides, in relevant part, that a court, within one year after a foreclosure sale, may set the sale aside for failure to comply with the provisions of this section as to the notice, time or manner of such sale if a substantial right of a party was prejudiced by the defect. Here, as the foreclosure sale was held on July 27, 2023, and with defendant’s application

to vacate the foreclosure sale having been made in May 2025, the requested relief to vacate the judgment is deemed untimely.

III. Defendant’s Non-Jurisdictional Defenses

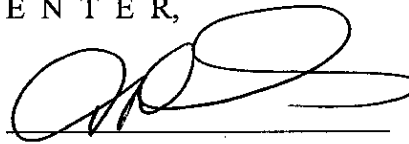
“[A] defendant in default is not entitled to affirmative relief of a non-jurisdictional nature absent vacatur[] of his or her default” (*Bank of N.Y. Mellon v. Lawson*, 176 A.D.3d 1155, 1157, 111 N.Y.S.3d 337). A defendant who defaults in an action to foreclose a mortgage must demonstrate a reasonable excuse for the default and the existence of a potentially meritorious cause of action in order to vacate the default (*Deutsche Bank Natl. Trust Co. v. Rudman*, 80 A.D.3d 651, 652, 914 N.Y.S.2d 672). Here, the defendant has neither asserted a reasonable excuse for the default nor even sought to vacate it. As the defendant has failed to meet the threshold requirements for vacatur, he is procedurally barred from challenging the plaintiff’s standing or alleging noncompliance with RPAPL 1303 or RPAPL 1304.

Accordingly, it is

ORDERED that defendant’s order to show cause (mot. seq. 7) is denied in its entirety.

This constitutes the decision and order of the court.

E N T E R,



HON. DEREFIM B. NECKLES
J. S. C.

Hon. Derefim B. Neckles
Supreme Court Justice

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KINGS COUNTY CLERK
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