U.S. Bank N.A. v Rodney
2026 NY Slip Op 30223(U)
January 2, 2026
Supreme Court, Kings County
Docket Number: Index No. 522466/2019
Judge: Menachem M. Mirocznik
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 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 NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR LEHMAN XS TRUST MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-11

Plaintiff,

-against-

LOXLEY RODNEY A/K/A LOXLEY O. RODNEY A/K/A RODNEY LOXLEY, 13 BREVOORT PLACE LLC, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS") ACTING SOLELY AS A NOMINEE FOR LANCASTER MORTGAGE BANKERS, ITS SUCCESSORS AND ASSIGNS, ERIN SERVICES CO. LLC, FLORIAN SENFTER, NYC BUREAU OF HIGHWAY OPERATIONS, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, "JOHN DOE #1" through "JOHN DOE #12," the last twelve names being fictitious and unknown to plaintiff, the persons or parties intended being the tenants, occupants, persons or corporations, if any, having or claiming an interest in or lien upon the Subject Property described in the Complaint,

Defendants.

Index No. 522466/2019

Decision and Order
(Motion Seq. 3 and 4)

Papers	Numbered
Notice of Motion (Motion Seq. 3)	NYSCEF Doc. 84-93
Notice of Motion (Motion Seq. 4)	NYSCEF Doc. 94-112
Opposition Papers (Motion Seq. 4)	NYSCEF Doc. 116
Reply Papers (Motion Seq. 4)	NYSCEF Doc. 117

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 October 14, 2019, seeking to foreclose a mortgage (the "mortgage") executed by defendant Loxley Rodney A/K/A Loxley O. Rodney A/K/A Rodney Loxley ("borrower") encumbering the real property known as 13 Brevoort Place, Brooklyn, New York 11216 (the "property").

Prior to commencement of this action, borrower transferred the property to 13 Brevoort Place LLC, by deed dated December 22, 2007, and recorded in the office of the City Register on April 7, 2008. 13 Brevoort Place LLC, ("Brevoort Place") then transferred the property to Brevoort Place Corp. ("Brevoort Corp.) by deed dated July 26, 2019, and recorded in the Office of the City Register on August 19, 2019.

Despite being a fee owner and indispensable party to the action, Brevoort Corp. was not named in the action.

On October 22, 2019, borrower was allegedly served with the summons and complaint by substituted service in accordance with CPLR 308[2]. The affidavit of service was filed on October 25, 2019.

On October 21, 2019, defendant 13 Brevoort Place LLC was served through service on the Secretary of State.

On October 21, 2019, defendants NYC Bureau of Highway Operations and New York City Environmental Control Board was served through an alleged authorized agent.

On October 23, 2019, defendants Erin Services Co. LLC and Mortgage Electronic Registration Systems, Inc. ("Mers") Acting Solely as a Nominee for Lancaster Mortgage Bankers, its Successors and Assigns, were served through service on the Secretary of State.

On October 31, 2019, defendant Florian Senfter was allegedly served with the summons and complaint by substituted service in accordance with CPLR 308[2]. The affidavit of service was filed on November 8, 2019.

Defendants "John Doe #1" Through "John Doe #12," were not served because the property was allegedly vacant.

On February 14, 2020, despite the property not being owner occupied and being allegedly vacant, plaintiff filed a specialized request for judicial intervention for the scheduling of settlement conferences in accordance with CPLR 3408.

Settlement conferences were originally scheduled for March 17, 2020 and May 5, 2020 but not held for reasons that are not clear from the record.

Non-party Brevoort Corp then transferred the property to non-party BVT13 LLC ("BVT13") by deed dated January 29, 2021 and recorded in the Office of the City Register on February 19, 2021.

On March 3, 2021, non-parties Brevoort Corp and BVT13 moved to intervene and dismiss the action. Plaintiff opposed intervention.

Settlement conferences were held on October 4, 2022 and November 2, 2022 where the matter was released form the settlement conference part due to non-appearance.

On September 13, 2023, plaintiff moved for a default judgment and order of reference. Brevoort Corp and BVT13 opposed the motion contending that dismissal was warranted pursuant to CPLR 3215(c) and asserting defenses on the merits.

On February 20, 2024, the Court granted plaintiff's motion for a default judgment but denied the request for an order of reference. The Court specifically, found that the motion sought not relief against Brevoort Corp or BVT13 and they therefore lack standing to contest the motion. The Court further found that it was undisputed that Brevoort Corp owned the property prior to commencement of the action and was not named as a defendant herein and thus its interests are unaffected by this action.

On December 6, 2024, the Court denied the non-parties' motion to intervene without prejudice with leave to renew due the non-parties' failure to attach a proposed pleading.

On October 11, 2024, plaintiff moved for an order of reference.

On October 11, 2014, BVT13 moved again to intervene this time attaching a proposed pleading and that it has a valid defense due to the fact that plaintiff lacks standing and the modification agreement sought to be enforced was executed by borrower after he transferred the property to Brevoort Place and was no longer the owner.

Plaintiff opposes the motion contending that the BVT13 is a necessary party because BVT13 took title subsequent to commencement of the action after an allegedly valid notice of pendency was filed and that BVT13 allegedly has no defense because the modification is valid even if the borrower did not own the property and plaintiff has standing.

In reply, BVT13 contends it is a necessary party because the Brevoort Corp. its predecessor in interest was not a named defendant despite its deed being of public record prior to commencement of this action, that the loan modification is invalid and reiterates its belief that plaintiff lacks standing.

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 dispute that BVT13 is record owner of the property and that its predecessor in interest, Brevoort Corp held title to the property prior to commencement of the action and was never named. Therefore, neither Brevoort Corp nor BVT13 are bound to these proceedings.

Plaintiff's contention that BVT13, although the fee owner of the property, is not a

necessary party because it took title to the property after the filing of the notice of pendency is baseless. Neither BVT13 nor its predecessor in interest were joined to this action. Therefore, the Court does not have jurisdiction over the property or the parties.

RPAPL 6501[a] expressly provides in relevant part that a "notice of pendency may be filed in any action...in which the judgment demanded would affect the title to...real property...The pendency of such an action is constructive notice, from the time of filing of the notice ***only, to a purchaser from, or incumbrancer against, any defendant named in a notice of pendency*** indexed in a block index against a block in which property affected is situated ***or any defendant against whose name a notice of pendency is indexed***. A person whose conveyance or incumbrance is recorded after the filing of the notice is bound by all proceedings taken in the action after such filing to the same extent as a party." [emphasis added]

"Determining the substantive scope of the notice of pendency, as embodied in CPLR 6501, cannot be divorced from consideration of the relative procedural ease with which it can be imposed throughout the duration of a lawsuit...To counterbalance the ease with which a party may hinder another's right to transfer property, this court has required strict compliance with the statutory procedural requirements. *5303 Realty Corp. v O & Y Equity Corp.*, 64 NY2d 313, 319-20 [1984]

"If the terms imposed are not met, the privilege is at an end" *In re Sakow*, 97 NY2d 436, 441 [2002] citing *Israelson v Bradley*, 308 NY 511, 515 [1955] *Pizzurro v Pasquino*, 201 AD2d 635, 636 [2d Dept 1994]["Furthermore, given the powerful impact that a notice of pendency has on the alienability of property, such a provisional remedy is to be narrowly applied..."]; *Diaz v Paterson*, 547 F3d 88, 98 [2d Cir 2008][Noting that the CPLR 6501 applies "a standard that is strictly construed"]

Here, BVT13 is not "*a purchaser from...any defendant named in a notice of pendency...or any defendant against whose name a notice of pendency is indexed*" and the judgment in this action would not "*affect the title to...real property*" given that 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" *71-21 Loubet, LLC v Bank of Am., N.A.*, 208 AD3d 736, 739 [2d Dept 2022]; See also *Polish Nat. All. of Brooklyn, U.S.A. v White Eagle Hall Co., Inc.*, 98 AD2d 400 [2d Dept 1983]["The absence of a necessary party in a mortgage foreclosure action simply leaves that party's rights unaffected by the judgment of foreclosure and sale...While the foreclosure sale may be considered void as to an omitted party...it is nonetheless effective to vest the purchaser with the interests of the mortgagee, the named defendants and persons acquiring interests from the defendants after the notice of pendency"]; *Robinson v Ryan*, 25 NY 320 [1862]["The purchaser at a mortgage sale under an attempted statutory foreclosure, void as against the mortgagor for want of notice, stands as an assignee of the mortgage."]; *Miner v Beekman*, 50 NY 337 [1872]["But the purchaser, at a mortgage sale ineffectual to pass the title, acquires thereby title to the mortgage"]; *Gokhvat Holdings LLC v U.S. Bank N.A., Tr. to Bank of Am., N.A.*, 23-300, 2024 WL 677078, at *2 [2d Cir Feb. 20, 2024]["While a purchaser at a foreclosure sale, defective and void as against the owner of the equity of redemption, because he was not made a party to the foreclosure action, becomes assignee of the mortgage...the mortgagee does not retain an interest in the mortgage or the property."][internal citation and quotation marks omitted]

Therefore, by the express terms of the statute, the notice of pendency did not bind BVT13.

Furthermore, "[p]ursuant to CPLR 6512, a notice of pendency is effective "*only if*, within thirty days after filing, a summons is served upon the defendant or first publication of the summons against the defendant is made pursuant to an order and publication is subsequently completed" (emphasis added)." *BR Madison, LLC v Novas*, 234 AD3d 907, 912 [2d Dept 2025]

"[I]n multiple defendant actions, timely service of the summons must be made on any one defendant *that has an ownership interest in the real property* that is the subject of the litigation and against which the notice of pendency was filed." *Weiner v Mkvii-Westchester*, 292 AD2d 597, 600 [2d Dept 2002][emphasis added]

"A lis pendens, invalid for failure to comply with the mandate of the statute, is a nullity; it cannot be validated by reason of any act done or any knowledge acquired by third parties." *Skoler v Rimberg*, 20 AD2d 580, 581 [2d Dept 1963]; *Chiulli v Reiter*, 173 AD2d 672, 672-673 [2d Dept 1991]["[A] lis pendens, invalid for failure to comply with the mandate of the statute, is a nullity; it cannot be validated by reason of any act done or any knowledge acquired by third parties…Thus, properly characterizing the plaintiffs' notice of pendency…as a nullity, it is clear that it never had any legal significance and did not provide [defendant] with constructive notice of any intended legal protection to the plaintiffs.]; *Brown v Mando*, 125 AD 380, 381 [1st Dept 1908]["A lis pendens, invalid for failure to comply with the mandate of the statute, is a nullity; it cannot be validated by reason of any act done or any knowledge acquired by third parties. The language is peremptory, and a failure to comply with it nullifies the lis pendens."]

Here, plaintiff failed to name and serve the fee owner of the property at all, let alone with within thirty days as required by the statute. Therefore, the notice of pendency is a nullity and binds no one. See *Rabinowitz v Larkfield Bldg. Corp.*, 231 AD2d 703, 703 [2d Dept 1996]["It is undisputed that Beechwood acquired the subject parcel by deed dated September 9, 1994, and recorded September 15, 1994. The plaintiff thereafter commenced this action and filed a notice of pendency on the property on October 11, 1994, but failed to serve Beechwood, the record owner, within 30 days thereafter as required by CPLR 6512. Under these circumstances, the plaintiff failed to strictly comply with the procedures of CPLR article 65…Moreover, contrary to the Supreme Court's determination, since the defendants who were timely served in the action in accordance with CPLR 6512 had no ownership interest in the premises, the service upon them does not preclude cancellation of the notice of pendency"]; See also *NYCTL 1999-1 Trust v Chalom*, 47 AD3d 779, 780 [2d Dept 2008]["The only notice of pendency filed in this matter was invalid. It was filed, along with the summons and complaint, on March 27, 2003. However, the summons and complaint were not served upon the defendant Charles Chalom, the purported owner of the subject property, within 30 days thereof as required by CPLR 6512.]

Moreover, CPLR 1018 compels the same conclusion. CPLR 1018 provides that "[u]pon any transfer of interest, the action may be continued by or against the original parties unless the court directs the person to whom the interest is transferred to be substituted or joined in the action."

First, while a plaintiff may continue an action "against the original parties" affecting the rights of a successor in interest to a defendant, obviously a plaintiff may *not* continue a case against a successor in interest, where the "original party" was *never* named in the first instance. Here, BVT13's predecessor was never named. Therefore, CPLR 1018 supports the contention that a plaintiff cannot continue prosecuting an action against a successor in the absence of a captioned predecessor, such as here.

Second, the law is well settled that BVT13 would have "a statutory right, pursuant to CPLR 1018, to continue [defending] the prior action in [it's predecessor]'s place, even in the absence of a formal substitution." *Wells Fargo Bank, N.A. v Eitani*, 148 AD3d 193, 199 [2d Dept 2017]

Here, even if a defendant's predecessor was originally joined, under CPLR 1018, a party, such as BVT13, would have the statutory right to continue the action in its predecessor's name unless the Court directed its substitution or joinder. Where the party's predecessor was named and the Court has jurisdiction over the party, either because the party appeared voluntarily, is bound by a notice of pendency or has actual notice of the litigation, substitution is permitted. However, where, as here, a predecessor was never named or the successor is not subject to the Court's jurisdiction, joinder is constitutionally required.

BVT13 cannot have less rights simply because plaintiff failed to join its predecessor. Such an interpretation would render the rights afforded under CPLR 1018 subject to the whims of a plaintiff and deprive parties, such as BVT13, of the right to protect it's interests. An interpretation clearly not supported by the legislative framework and would have significant due process implications. Rather, CPLR 1018 provides, without limitation, that a successor, such as BVT13, stands in the shoes of the predecessor and succeeds to its rights who is not bound to this case.

Therefore, BVT13 was and is still not bound the outcome in the case.

Given the Court's finding that BVT13 is not bound to this case, the action cannot proceed in the absence BVT13 who is an indispensable party. 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, here the indispensable party was never joined in the first instance.

While the parties dispute defendant's entitlement to intervention, both appear to misunderstand the procedural and due process requirements. BVT13 was not required to intervene to protect its interests, it's interest cannot be affected by the outcome of this case absent it's joinder. As a simple matter of procedural due process, it is the duty of a plaintiff to join the proper parties, and not on the non-party to seek discretionary intervention. 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 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 BVT13 be summoned.

Accordingly, it is hereby,

ORDERED, that the plaintiff is directed to join BVT13 LLC and file a supplemental summons and amended complaint naming BVT13 LLC as a party defendant; and it is further

ORDERED, that plaintiff shall file and serve the supplemental summons and amended complaint within thirty (30) days of entry of this Order; and it is further

ORDERED, that plaintiff's motion (Seq. 3) for an order of reference is DENIED; and it is further

ORDERED, that non-party BVT13 LLC's motion for renewal and intervention is DENIED as moot.

This constitutes the decision and order of the Court.

ENTER:

Hon. Menachem M. Mirocznik, JSC

FILED
JAN 15 2026
KINGS COUNTY CLERK'S OFFICE