

42 Carman Ave. LLC v US Bank N.A.

2026 NY Slip Op 30270(U)

February 4, 2026

Supreme Court, Nassau County

Docket Number: Index No. 604035/2023

Judge: Conrad D. Singer

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.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

P R E S E N T : HON. CONRAD D. SINGER,

Justice

TRIAL PART: 15

-----X
42 CARMAN AVENUE LLC and SOLOMON SHAMI,

Plaintiffs,

Index No.: 604035/2023
Motion Seq. Nos.: 004, 005, 006
Motions Submitted: 12/01/2025

-against-

DECISION AND ORDER ON
MOTIONS

US BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR
LSF9 MASTER PARTICIPATION TRUST, and US BANK
NATIONAL ASSOCIATION, AS TRUSTEE FOR RMAC
TRUST SERIES 2016-CTT,

XXX

Defendants.

-----X

The following papers were read on these motions:

Defendant US BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR RMAC TRUST SERIES 2016-CTT’s Motion to Dismiss [Seq. 004]

Notice of Motion and Supporting Papers [Seq. 004].....X

Plaintiff’s Cross-Motion for Substitution and For Leave to Voluntarily Discontinue this Action Without Prejudice [Seq. 005]

Notice of Cross-Motion and Supporting Papers [Seq. 005].....X

Affirmation in Opposition [Seq. 005].....X

Plaintiff’s Notice of Motion to Extend Time to Oppose Motion to Dismiss and to Consolidate Actions [Seq. 006]

Notice of Motion and Supporting Papers [Seq. 006].....X

Affirmation in Opposition to Motion [Seq. 006].....X

On March 8, 2023, Plaintiffs, 42 CARMAN AVENUE LLC and SOLOMON SHAMI [collectively, “Plaintiffs”], commenced the instant RPAPL §1501(4) quiet title action to secure the cancellation and discharge of a mortgage held by the Defendant, U.S. Bank National Association, as Trustee for RMAC Trust Series 2016- CTT [“Defendant”]. Defendant now moves for an Order pursuant to CPLR 3211(a)(7) dismissing the Plaintiffs’ Complaint for failure to state a cause of action [Seq. 004]. Plaintiffs cross-move for an Order granting substitution of counsel pursuant to CPLR 321(b), and for an Order pursuant to CPLR 3217(b) granting Plaintiffs leave to voluntarily discontinue the present action without prejudice [Seq. 005]; counsel of record

for the Plaintiffs separately moves for an Order extending the time to oppose Defendant's motion to dismiss and consolidating the present action with the action brought under Index No. 616228/2019, entitled "*U.S. Bank Trust, N.A. v. Solomon E. Shami*" [the "Foreclosure Action"].

On March 22, 2007, Solomon Shami ("Borrower") executed and delivered to Bank of America, N.A. a promissory note in the principal sum of \$570,500.00. On the same date, the Borrower executed and delivered a mortgage, which secured real property commonly known as 42 Carman Avenue, Cedarhurst, NY 11516 ["Mortgaged Premises"] as collateral for repayment of the promissory note and was recorded in the Nassau County Clerk's Office on March 29, 2007 at liber M 31711, page 783. It is alleged that the Borrower defaulted in repayment of the promissory note and mortgage. An assignment of the mortgage to U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust ("U.S. Bank Trust") was executed on July 6, 2015 and recorded in the Nassau County Clerk's Office on July 30, 2015 at liber M 40601, page 389. On December 23, 2015, the Borrower executed and delivered a deed to the Mortgaged Premises to 42 Carman Ave LLC [the "LLC"], which was recorded in the Nassau County Clerk's Office. An assignment of the mortgage to Defendant was executed on January 8, 2021 and recorded in the Nassau County Clerk's Office on March 11, 2021 at liber M 45113, page 683.

On November 21, 2019, U.S. Bank Trust, N.A., commenced the Foreclosure Action under index number 616228/2019. The Borrower and LLC filed an Answer, in which they alleged affirmative defenses. The Foreclosure Action remains pending. The Defendant now moves for an Order dismissing the present action for failure to state a cause of action.

In response to the Defendant's motion to dismiss, two different law firms filed two different motions on behalf of the Plaintiffs, both filed their motions on November 17, 2025. Motion Seq. 005 was brought by purported incoming counsel for the Plaintiffs, seeking, *inter alia*, an Order of substitution pursuant to CPLR 321(b).

CPLR 321(b)(2) provides, in pertinent part, that “[a]n attorney of record may withdraw or be changed by order of the court in which the action is pending, upon motion on such notice to the client of the withdrawing attorney, to the attorneys of all other parties in the action or, if a party appears without an attorney, to the party, and to any other person, as the court may direct.” “Although a client may, as a matter of public policy, discharge an attorney at any time, with or without cause...an attorney of record in an action may only withdraw or be changed or discharged in the manner prescribed by statute.” (*Garafalo v Mayoka*, 151 AD3d 1018, 1019 [2d Dept 2017])[internal citations omitted, citations omitted]). The present motion brought for substitution of counsel does not comport with the manner for changing counsel that is prescribed by CPLR 321(b)(2). First, the motion for substitution is not made by counsel of record, as required absent a properly executed change of counsel, second, the motion was brought by notice of motion and not by order to show cause as required by the terms of CPLR 321(b)(2).

Moreover, as the motion to substitute [Seq. 005] lacks a properly executed consent to change attorney, and lacks evidence clearly demonstrating consent by the client and outgoing counsel to change counsel in this action (not just in the Foreclosure Action), motion Seq. 005 fails to demonstrate grounds to grant the substitution motion. Therefore, the portion of Motion Seq. 005 seeking an Order granting substitution of counsel is **DENIED**.

As the motion granting substitution was denied, the remaining portion of Motion Seq. 005 seeking to discontinue the present action constitutes an unauthorized filing and is denied on those grounds alone. (*See Garafalo*, 151 AD3d at 1019). Moreover, even if the Court had granted the motion to substitute counsel, the portion of Motion Seq 005 seeking leave to voluntarily discontinue the present action pursuant to CPLR 3217(b) would still be denied. As will be discussed below, Defendant moves to dismiss the present action based on the fact that there is presently a pending mortgage foreclosure action filed under Index Number 616228/2019. In the second part of Motion Seq. 005, counsel concedes that “Defendants [*sic*] argument [for dismissal] pertaining to this action is valid and roundly accepted in the Second Department Appellate

Division”. Counsel further states that discontinuance is being sought to “resolve the 2019 Foreclosure Action and avoid any potentially adverse decisions in this action”. However, it has been expressly held that motions for leave to voluntarily discontinue an action pursuant to CPLR 3217(b) should generally be granted “unless the discontinuance would prejudice a substantial right of another party, circumvent an order of the court, *avoid the consequences of a potentially adverse determination*, or produce other improper results”. (*JPMorgan Chase Bank, N.A. v Starr-Klein*, 221 AD3d 677, 678 [2d Dept 2023][emphasis supplied][internal quotation marks omitted, citations omitted]). Under the circumstances, where counsel concedes that the Defendant’s argument for dismissal is valid and accepted, and that discontinuance is being sought to avoid adverse consequences, the Court finds it would be improper to grant the motion to voluntarily discontinue this action without prejudice. Therefore, Motion Seq. 005 is **DENIED**, in its entirety.

Turning to the merits of the Defendant’s motion to dismiss, Defendant contends that the present action should be dismissed pursuant to CPLR 3211(a)(7), due to the pending Foreclosure Action. “Pursuant to RPAPL 1501(4), ‘any person having an estate or interest in the real property subject’ to a mortgage may maintain an action to cancel and discharge such mortgage of record where ‘the period allowed by the applicable statute of limitation for the commencement of an action to foreclose a mortgage . . . has expired.’” (*4 Stella Mgt., LLC v Citimortgage, Inc.*, 204 AD3d 868, 869 [2d Dept 2022][citations omitted]). “However, ‘[b]ecause the expiration of the statute of limitations is an essential element of an action pursuant to RPAPL 1501 (4), the existence of a pending foreclosure action precludes a RPAPL 1501 (a) action’”. (*Davis v Wilmington Sav. Fund Socy., FSB*, 219 AD3d 798, 799 [2d Dept 2023][citation omitted]). “Further, an action is not considered terminated until appeals as of right have been exhausted”. (*Id.*; citations omitted).

It is undisputed that there is presently a pending Foreclosure Action concerning the Mortgaged Premises. Counsel of Record has moved on behalf of the Plaintiffs [Seq. 006] for an Order granting an extension of Plaintiffs’ time to oppose the Defendant’s motion to dismiss and consolidating the present action with the Foreclosure Action. The Court finds that the Plaintiffs have failed to demonstrate grounds to grant an

extension of their time to oppose the Defendant's motion pursuant to CPLR 2004, as their allegation of law office failure is vague, conclusory, and unsubstantiated. (*See Wilmington Sav. Fund Socy., FSB v Helal*, 211 AD3d 991, 993 [2d Dept 2022]). Additionally, the Plaintiffs' motion fails to actually include any substantive opposition to the Defendants' motion to dismiss pursuant to CPLR 3211(a)(7). Therefore, the portion of the Plaintiffs' motion [Seq. 006], which seeks an extension of time to oppose the Defendants' motion to dismiss is **DENIED**.

The Defendants' motion, which is effectively unopposed, demonstrates that the instant action should be dismissed pursuant to CPLR 3211(a)(7) due to the existence of a pending foreclosure action. (*Mizrahi v. U.S. Bank, N.A.*, 156 AD3d 617, 618 [2d Dept. 2017]). Therefore, the Defendant's motion to dismiss the Plaintiffs' Complaint [Seq. 004] shall be **GRANTED**, and this action shall be **DISMISSED**. In light of the dismissal of this action, the portion of the Plaintiffs' motion [Seq. 006], seeking to consolidate the present action with the Foreclosure Action, is **DENIED**, as moot.

Accordingly, it is hereby,

ORDERED, that the Defendant's motion for an Order pursuant to CPLR 3211(a)(7) dismissing the present action [Seq. 004] is **GRANTED**, and this action is **DISMISSED**; and it is further,

ORDERED, that Motion Seq. 005 and Motion Seq. 006 are **DENIED**, in their entirety; and it is further,

ORDERED, that requests for relief not specifically addressed herein shall be deemed **DENIED**.

This shall constitute the Decision and Order of the Court

Dated: February 4, 2026
Mineola, New York



HON. CONRAD D. SINGER, J.S.C.