

U.S. Bank Trust N.A. v Estate of Avidon
2026 NY Slip Op 30373(U)
February 6, 2026
Supreme Court, Nassau County
Docket Number: Index No. 621005/2025
Judge: Jeffrey A. Goodstein
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

PRESENT: HON. JEFFREY A. GOODSTEIN

AJSC.

TRIAL/IAS PART 48

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U.S. BAN TRUST NATIONAL
ASSOCIATION, AS TRUSTEE OF
LB-FLAT SERIES VI TRUST,

Mo. Seq.: 001 & 002
Index No.: 621005/2025

Plaintiff,

-against-

UNKNOWN HEIRS AND DISTRIBUTEES OF
THE ESTATE OF JEAN AVIDON; ILENE J.
CLAUDE A/K/A ILENE J. AVIDON, as
Heir and Distributee of the
Estate of Jean Avidon; LISA
SCHLICH A/K/A LISA AVIDON A/K/A
LISA H. O'HARA, as Heir and
Distributee of the Estate of
Harvey Avidon; DANIELLE C.
LEMIEUX A/K/A DANIELLE CMAYLO
A/K/A DANIELLE C. PAPPAS, as Heir
and Distributee of the Estate of
Peter A. Pappas; JOSHUA A. CMAYLO,
as Heir and Distributee of the
Estate of Peter A. Pappas; UNITED
STATES OF AMERICA (EASTERN DISTRICT)
O/B/O INTERNAL REVENUE SERVICE; NEW
YORK STATE DEPARTMENT OF TAXATION
AND FINANCE; BOARD OF MANAGERS OF
LIDO BEACH TOWERS CONDOMINIUM; "JOHN
DOE" and "JANE DOE" said names being
fictitious, it being the intention of
Plaintiff to designate any and all
occupants of the premises being
foreclosed herein,

Defendants.

_____X

The plaintiff, U.S. Bank Trust National Association, moves for an Order pursuant to CPLR 315: (1) granting the plaintiff leave to serve the decedent's unknown heirs by publication in accordance with CPLR 316; and (2) appointing a Guardian ad Litem and Military Attorney for the unknown heirs (Mot. Seq. 001).

The defendant, Lisa Schlich (hereinafter the defendant), moves for an Order dismissing the plaintiff's complaint on the basis that: (1) the plaintiff did not provide the required RPAPL 1304 notices; and (2) the statute of limitations expired prior to the filing of this action (Mot. Seq. 002). The plaintiff submits opposition. The defendant submits reply.

This action was commenced on September 29, 2025, to foreclose a mortgage on the premises located at 2 Richmond Road, Unit #3HH a/k/a 234, Lido Beach, NY 11561. The subject mortgage was executed by Jean Avidon (hereinafter Avidon), and it is undisputed that she passed away on July 16, 2017. The defendant is the surviving spouse of Avidon's son, Harvey Avidon.

Defendant's Motion to Dismiss (Mot. Seq. 002)

The Court will first consider the defendant's motion to dismiss the plaintiff's complaint.

The defendant argues that she was not provided with the required CPLR 1304 90-day notice prior to the commencement of this foreclosure action. The defendant also argues that the statute of limitations within which to commence this action had already expired.

The statutory defense created by RPAPL 1302 (2) for noncompliance with RPAPL 1304 is a "personal defense" that cannot be raised by a defendant who is a stranger to the underlying note and mortgage (see *U.S. Bank v Orlando*, 226 AD3d 946 [2d Dept 2024]). Here, the defendant, who is not a party to the note and underlying mortgage, lacks standing to raise the issue of compliance with RPAPL 1304 as a defense (*Citimortgage, Inc. v Etienne*, 172 AD3d 808 [2d Dept 2019]). In any event, in the pro se defendant's reply affirmation, she conceded point one, noting, "Defendant agrees with Plaintiff on count one of the Motion to Dismiss" (NYSCEF Doc No. 65 at 2).

"In moving to dismiss a cause of action pursuant to CPLR 3211(a)(5) as barred by the applicable statute of limitations, a defendant bears the initial burden of demonstrating, prima facie, that the time within which to commence the action has expired" (*City of*

Yonkers v 58A JVD Indus., Ltd., 115 AD3d 635, 637 [2d Dept 2014]. "To make a prima facie showing, the defendant must establish, inter alia, when the plaintiff's cause of action accrued" *Matteawan On Main, Inc. v City of Beacon*, 109 AD3d 590, 590 [2d Dept 2013]).

Pursuant to CPLR 213 (4), an action to foreclose a mortgage is subject to a six-year statute of limitations. "Even if a mortgage is payable in installments, once a noteholder elects to accelerate the debt, the entire amount is due and the statute of limitations begins to run on the entire debt" (*Fed. Natl. Mtge. Assn. v Metz*, 214 AD3d 709, 710 [2d Dept 2023]). A valid election to accelerate is one made by an unequivocal overt act that discloses the noteholder's choice, such as the filing of a verified complaint seeking foreclosure which contains a sworn statement that the noteholder is demanding repayment of the entire outstanding debt (see *Wilmington Sav. Fund Socy., FSB v Burgess*, 232 AD3d 933 [2d Dept 2024]).

Here, although the plaintiff had the option to accelerate the subject debt upon the death of the borrower,¹ there is no evidence that plaintiff undertook any affirmative act until the commencement of this action where the entire principal of the loan was sought (see *Reverse Mtge. Solutions, Inc. v Fattizzo*, 172 AD3d 768 [2d Dept 2019]). Accordingly, the statute of limitations did not begin to run until the plaintiff filed the summons and complaint on September 9, 2025, and, contrary to the defendant's contention, the instant action is timely (see *U.S. Bank N.A. v Gordon*, 158 AD3d 832 [2d Dept 2018]).

Plaintiff's Motion Pursuant to CPLR 315 and CPLR 316 (Mot. Seq. 001)

The Court will next consider the plaintiff's motion to serve the unknown heirs by publication and to appoint a Guardian ad Litem and Military Attorney for the unknown heirs.

In support of its motion, the plaintiff submits, inter alia, an

¹ According to the subject mortgage, the "[l]ender may require immediate payment in full of all sums secured by this Security Instrument if...a borrower dies" (see NYSCEF Doc No. 3 at 7).

affirmation of due diligence which outlines the efforts the plaintiff made to find the unknown heirs to the estate of Jean Avidon (see NYSCEF Doc No. 38). The plaintiff's efforts to find the unknown heirs included, inter alia, searching for death certificates and obituaries; reviewing court records; and using investigative databases to discover phone numbers with which to contact potential heirs.

The defendant has not opposed the motion.

"Pursuant to CPLR 315, service by publication should be ordered only if service cannot be made by another prescribed method with due diligence" (*Caban v Caban*, 116 AD2d 783, 784 [3d Dept 1986]; see CPLR 315).

Here, the Court finds that the plaintiff sufficiently demonstrated that service could not be made by another prescribed method with due diligence (see *Citibank, N.A. v Stefansky*, 255 AD2d 543 [2d Dept 1998]).

In light of the foregoing, it is hereby

ORDERED that the plaintiff's motion (Mot. Seq. 001) pursuant to CPLR 315 and CPLR 316 seeking leave to serve the unknown heirs via publication and for appointment of a Guardian ad Litem and Military Attorney, is **GRANTED** in its entirety; and it is further

ORDERED, that the proposed order as annexed to the Plaintiff's papers (NYSCEF Doc No. 41) shall be forwarded to the Foreclosure Clerk for review, and if found consistent with the terms of this Order, shall be executed upon completion of such review; and is it further **ORDERED** that the defendant's motion (Mot. Seq. 002) to dismiss is **DENIED** in its entirety.

This shall constitute the Decision and Order of the Court.

Dated: February 6, 2026
Mineola, New York

ENTER:



HON. JEFFREY A. GOODSTEIN, A.J.S.C.