

<b>CIT Bank, N.A. v Morgan</b>
2026 NY Slip Op 30389(U)
January 21, 2026
Supreme Court, Kings County
Docket Number: Index No. 513779/16
Judge: Cenceria P. Edwards
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At an IAS Term, Part FRP=1 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 21<sup>st</sup> day of January, 2026.

P R E S E N T:

HON. CENCERIA P. EDWARDS,

Justice.

-----X  
CIT BANK, N.A.,

Plaintiff,

- against -

Index No. 513779/16

ANN MARIE MORGAN AS HEIR AND DISTRIBUTE  
OF THE ESTATE OF ALBERT MORGAN; DORCAS  
MORGAN AS HEIR AND DISTRIBUTE OF THE  
ESTATE OF ALBERT MORGAN; ANGELIEIK  
MORGAN AS HEIR AND DISTRIBUTE OF THE  
ESTATE OF ALBERT MORGAN; any and all  
persons unknown to plaintiff, claiming, or  
who may claim to have an interest in this  
action; such unknown persons being herein  
generally described and intended to be included  
in the following designation, namely: the wife,  
widow, husband, widower, heirs at law, next  
of kin, descendants, executors, administrators,  
 devisees, legatees, creditors, trustees, committees,  
lienors, and assignees of such deceased, any and  
all persons deriving interest in or lien upon, or  
title to said real property by, through or under  
them, or either of them, and their respective wives,  
widows, husbands, widowers, heirs at law, next  
of kin, descendants, executors, administrators,  
 devisees, legatees, creditors, trustees, committees,  
lienors and assigns all of whom and whose names,  
except as stated, are unknown to the plaintiff; NEW  
YORK STATE DEPARTMENT OF TAXATION AND  
FINANCE; UNITED STATES OF AMERICA – INTERNAL  
REVENUE SERVICE; SECRETARY OF HOUSING AND  
URBAN DEVELOPMENT,

“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 premises, described in the complaint,

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/  
Petition/Cross Motion and

Affidavits (Affirmations) Annexed \_\_\_\_\_

163-164, 166-173 179-182

Opposing Affidavits (Affirmations) \_\_\_\_\_

179-182 184-189

Reply Affidavits (Affirmations) \_\_\_\_\_

184-189 191

Upon the foregoing papers in this action to foreclose a reverse mortgage encumbering the residential property, a condominium unit, at 2108 Dorchester Road, Unit 2A, in Brooklyn (Block 5185, Lot 1013) (Property), plaintiff CIT Bank, N.A. (CIT or Plaintiff) moves (in motion sequence [mot. seq.] four) for an order granting it leave to amend its supplemental summons and amended complaint, pursuant to CPLR 3025 (b) (NYSCEF Doc No. 163).

Defendant Ann Marie Morgan (Morgan or Defendant) cross-moves (in mot. seq. five) for an order: (1) tolling interest, pursuant to CPLR 5001 (a), and (2) denying Plaintiff's motion to amend the complaint (NYSCEF Doc No. 179).

**Background**

On August 9, 2016, CIT commenced this foreclosure action by filing a summons, an unverified complaint and a notice of pendency against the Property (NYSCEF Doc Nos. 1 and 3). On December 14, 2017, CIT e-filed a supplemental summons and an unverified

amended complaint alleging that on August 14, 2008, Albert Morgan executed and delivered a note in the amount of \$420,000.00, which is secured by a mortgage encumbering the Property (NYSCEF Doc No. 41 at ¶¶ 2, 4 and 5). The amended complaint alleges that Albert Morgan also executed and delivered Home Equity Conversion Loan Agreement, “which required plaintiff to pay the sums secured by the mortgage to the borrower monthly instead of in one sum at the time the loan documents were executed” and “[s]aid agreement provides that the loan is due upon the borrower’s death” (*id.* at ¶ 7). Albert Morgan allegedly died on April 30, 2015 (*id.* at ¶ 10). The complaint alleges that “Defendants have failed to comply with the terms and provisions of the said mortgage and said instrument secured by said mortgage, by failing and omitting to pay the balance due and owing upon the mortgagor’s death” (*id.* at ¶ 11).

Notably, annexed to the amended complaint is a copy of the August 14, 2008 “Adjustable Rate Note (Home Equity Conversion)” in favor of the original “Lender,” Financial Freedom Senior Funding Corp. (FFSFC), which provides that Borrower “[i]n return for amounts to be advanced by Lender to or for the benefit of Borrower under the terms of a Home Equity Conversion Loan Agreement dated August 14, 2008 . . . Borrower promises to pay to the order of Lender a principal amount equal to the sum of all Loan Advances made under the Loan Agreement with interest” (*id.* at 8-10). The subject note has an undated, blank endorsement executed by Nancy M. Armour, Vice President of FFSFC “A SUBSIDAIRY OF INDYMAC BANK” on the third page of the note (*id.* at 10).

Meanwhile, on October 5, 2016, Defendant Morgan, Albert Morgan's widow, e-filed a verified answer to CIT's complaint, asserted a general denial of the allegations therein and asserted affirmative defenses, including lack of standing and failure to comply with the reverse mortgage notice requirements (NYSCEF Doc No. 17).

***CIT's Prior Summary Judgment Motion***

On October 26, 2018, CIT moved for summary judgment, an order striking Morgan's answer, an order of reference, a default judgment and to amend the caption (NYSCEF Doc Nos. 54-75). Morgan opposed CIT's motion (NYSCEF Doc Nos. 77-104). By a March 13, 2019, decision and order, the court (Dear, J.) denied CIT's motion, directed the parties "to complete discovery and proceed to trial" and specifically held that "[a]s noted by the Appellate Division, a reverse mortgage line of credit is not a negotiable interest and, as such, possession thereof endorsed-in-blank does not convey standing (see, *OneWest Bank, N.A. v. FMCDH Realty, Inc.*, 165 AD3d 128, 135 [2d Dept 2018])" (NYSCEF Doc No. 108).

On May 21, 2019, CIT noticed an appeal from the court's March 13, 2019, decision and order denying CIT's motion for summary judgment and an order of reference (NYSCEF Doc No. 112). CIT's appeal was dismissed for failure to perfect it.

***CIT's Motion To Reargue***

On May 23, 2019, CIT moved for leave to reargue the March 13, 2019, decision and order based on an attorney affirmation asserting that "[t]he loan in question is a HUD insured Home Equity Conversion Mortgage and is materially different from the Line of

Credit Cash Account Agreement examined by the Second Department in FMCDH Realty, Inc.” and “the Court erred in concluding that the Note contained a line of credit feature, and therefore also erred in concluding that the Note was not a negotiable instrument” (NYSCEF Doc No. 114 at ¶¶ 24 and 28). Morgan opposed CIT’s motion to reargue (NYSCEF Doc No. 132). By an October 3, 2019, decision and order, the court (Dear, J.) denied CIT’s motion to reargue holding that “[t]he Court misapprehended neither law nor fact in rendering the prior determination” and “[t]he loan documents herein are sufficiently similar to those in *FMCDH* to warrant a similar result” (NYSCEF Doc No. 159).

On March 1, 2021, Defendant Morgan e-filed a Declaration of Covid-19 Related Hardship (NYSCEF Doc No. 161).

***CIT’s Instant Motion to Amend***

On February 1, 2022, CIT moved for an leave to amend the amended complaint, *nunc pro tunc*, pursuant to CPLR 3025 (b) (NYSCEF Doc No. 163). CIT submitted an attorney affirmation asserting that “Plaintiff herein seeks leave to amend its complaint so that Plaintiff’s standing in this action is more properly pleaded in light of the Court’s reliance on the FMCH Realty, Inc. decision in denying Plaintiff summary judgment” (NYSCEF Doc No. 164 at ¶ 24). CIT’s counsel asserts that “Plaintiff’s proposed pleading is not palpably insufficient as it clearly states a valid cause of action for foreclosure of the mortgage” (*id.* at ¶ 32).

CIT submits a proposed second amended complaint, by which CIT seeks to add the following allegations regarding FFSFC, the original lender, the acquisition of “Borrower’s

Loan” by Financial Freedom Acquisition LLC (FFA), pursuant to a “Reverse Mortgage Business Asset Purchase Agreement” and the subsequent transfer of the “Borrower’s Loan” to OneWest Bank, FSB (OneWest), which re-branded itself as a national association after which it merged with CIT:

“IndyMac Bank, F.S.B. (‘IMB’), the parent of FFSFC, was closed by the Office of Thrift Supervision (‘OTS’) and the Federal Deposit Insurance Company (‘FDIC’) was appointed as Receiver.

“Upon the appointment of FDIC as Receiver, the OTS (i) chartered IndyMac Federal Bank, FSB, Pasadena, California (‘IndyMac Federal’), (ii) placed IndyMac Federal in conservatorship, and (iii) appointed FDIC as conservator for IndyMac Federal, whereupon substantially all of IMB’s assets, *including its subsidiaries*, were transferred to IndyMac Federal.

“FFSFC, as a wholly-owned subsidiary of IMB, was transferred to IndyMac Federal Bank, in Conservatorship.

“Subsequently, on March 19, 2009, the FDIC was appointed Receiver of IndyMac Federal *and certain assets of FFSFC, including Borrower’s Loan*, were acquired by OneWest Bank, FSB’s wholly-owned subsidiary, Financial Freedom Acquisition LLC (‘FFA’) pursuant to a Reverse Mortgage Business Asset Purchase Agreement.

“On July 21, 2011, pursuant to the Reverse Mortgage Servicing Business Transfer and Assignment Agreement by and between FFA and OneWest Bank, FSB, OneWest Bank, FSB obtained ‘all of FFA’s rights, interest and title in, to and under’ the loans subject to the agreement, *including Borrower’s Loan*.

“Effective on February 28, 2014, OneWest Bank, FSB, switched its charter to a national association and became known as OneWest Bank N.A.

“On August 3, 2015, CIT Bank merged with and into OneWest Bank N.A. As part of that transaction, the name of OneWest Bank N.A. was changed to CIT Bank, N.A.” (NYSCEF Doc No. 173 at ¶¶ 6-12 [emphasis added]).

CIT also submitted a July 23, 2020, affidavit from Caryn Edwards, Assistant Secretary of “Compu-Link Corporation d/b/a Celink (‘Celink’) as assignee Attorney-in-Fact for Bank of New York Mellon Trust Company, N.A., as Trustee for Mortgage Assets Management Series 1 Trust (‘BONY’) and current sub-servicer for the loan herein . . .” (NYSCEF Doc No. 166 at ¶ 1). Edwards’ 2020 affidavit erroneously attests that her affidavit “is in further support of the within motion *for summary judgment*” and is based on her review of Celink’s business records, including records created by “a prior servicer, assignee or owner, including CIT [which] records have been certified for accuracy . . .” (*id.* at ¶¶ 2-3). Edwards attests to the new allegations in CIT’s proposed second amended complaint and annexes excerpts from the documents referenced therein *without the Mortgage Loan Schedules* (*id.* at ¶¶ 7-13). Edwards attests that “Financial Freedom a division of CIT Bank, N.A., One West Bank, N.A. f/k/a OneWest bank, F.S.B. and [FFA] are legacy entities of Plaintiff . . .” and that CIT subsequently transferred the “loan” to BONY pursuant to a December 4, 2018, mortgage assignment (*id.* at ¶¶ 14 and 16).

### ***Defendant Morgan’s Opposition and Cross-Motion***

Defendant Morgan opposed CIT’s motion with an attorney affirmation arguing that “Plaintiff’s Motion to Amend should be denied pursuant to the law of the case doctrine, and in consideration of judicial economy” (NYSCEF Doc No. 180 at ¶ 4). Defense counsel

asserts that “Plaintiff fails to explain how amending its Complaint will change its ability to satisfy the evidentiary standard imposed by *FMCDH Realty*, which this Court has already determined twice that Plaintiff failed to satisfy” and “Plaintiff should be precluded from introducing any new evidence at this late stage” (*id.* at ¶ 23).

Morgan cross-moved to toll interest, pursuant to CPLR 5001 (a), from the time CIT’s motion to reargue was denied on October 3, 2019, or alternatively, from the time CIT’s summary judgment motion was denied on March 13, 2019, “because Plaintiff has unreasonably delayed the prosecution of this action, causing interest and fees to accrue unnecessarily, and causing substantial financial harm to Ms. Morgan” (*id.* at ¶¶ 3 and 13). Defense counsel asserts that “[t]he Second Department has approved the withholding of interest in foreclosure actions where a plaintiff’s delay caused interest to accrue unfairly” (*id.* at ¶ 17). Defendant Morgan also submits an affidavit asserting that “I should not be liable for the interest and fees that have accrued as a result of either Plaintiff’s multiple unsuccessful attempts to prosecute this action, or their prolonged delays in doing so” (NYSCEF Doc No. 181 at ¶ 11).

### ***CIT’s Opposition and Reply***

CIT submitted an attorney affirmation in opposition to Morgan’s cross-motion and in further support of its motion to amend the amended complaint (NYSCEF Doc No. 184). Counsel asserted that “Plaintiff did not sit idly by after its motion to reargue was denied” because the parties engaged in settlement discussions, after which “the COVID-19 pandemic hit the State of New York resulting not only in court closures, but the issuance

of several foreclosure moratoriums . . .” and this action was stayed once Defendant Morgan e-filed a Covid-19 Hardship Declaration on March 1, 2021, pursuant to the Coronavirus Emergency Eviction and Foreclosure Prevention Act (CEEFPA), until January 15, 2022, when CEEFPA expired (*id.* at ¶¶ 4-6 and 25). Counsel explained that “[o]nce the federal foreclosure moratorium, and the stay associated with CEEFPA were lifted, Plaintiff filed this Motion . . .” less than one month later, on February 1, 2022 (*id.* at ¶ 7). Counsel notes that “Defendant conveniently omits from her Cross Motion any reference to filing a hardship declaration, which automatically and unilaterally caused this action to be stayed until January 15, 2022 . . .” (*id.* at ¶ 28).

CIT’s counsel asserts that “Defendant has failed to show that the proposed amended complaint is palpably improper, or that Defendant would be surprised or prejudiced should Plaintiff’s Motion be granted” (*id.* at ¶ 11). Counsel explains that CIT seeks leave to amend “in order to allege the documents that Plaintiff would be relying upon to establish its standing on a contractual basis” (*id.* at ¶ 31). Counsel asserts that “because there was no prior motion that sought leave to amend the complaint, and because the [second] amended complaint in fact is responsive to the Court’s prior order finding that the Note is not a negotiable instrument, the law of the case does not preclude this Court from granting Plaintiff’s Motion” (*id.* at ¶ 36). Counsel also asserts that “Defendant’s concern that Plaintiff may make a second summary judgment motion is ultimately premature at this stage . . .” and “[w]hether the Court would consider a renewed request for summary judgment ultimately will be at the Court’s discretion” (*id.* at ¶ 41).

## Discussion

### (1)

A party may amend its pleading by setting forth additional or subsequent transactions or occurrences, at any time by leave of the court (CPLR 3025 [b]; *Cullen v Torsiello*, 156 AD3d 680, 681 [2d Dept 2017]). “Leave shall be freely given upon such terms as may be just” (CPLR 3025 [b]; *see also Cullen*, 156 AD3d at 681). As a general rule, “a court hearing a motion for leave to amend will not examine the merits of the proposed amendment, unless the insufficiency or lack of merit is clear and free from doubt . . .” (*Ricca v Valenti*, 24 AD3d 647, 648 [2d Dept 2005] [internal quotations marks omitted]). A court has broad discretion to grant a motion to amend the pleadings . . . when there is no actual prejudice or surprise to the opposing party (*see Kimso Apartments, LLC v Gandhi*, 24 NY3d 403, 411 [2014]; *Murray v City of New York*, 43 NY2d 400, 405 [1977], *rearg dismissed* 45 NY2d 966 [1978]; *Cullen*, 156 AD3d at 681). A motion to amend must be accompanied by the proposed amendment with the changes or additions to the pleading (CPLR 3025 [b]; *Drice v Queens County District Attorney*, 136 AD3d 665 [2d Dept 2016]).

Here, CIT submitted the proposed second amended complaint containing additional factual allegations regarding the agreements that purportedly demonstrate CIT’s standing to commence this foreclosure action on a contractual basis. There is nothing in the record to suggest that Plaintiff’s new factual allegations in the proposed second amended complaint are palpably insufficient or patently devoid of merit. In addition, Defendant Morgan has failed to demonstrate that she would be prejudiced by the proposed second

amended complaint, nor can she, since note of issue has not yet been filed, and Defendant Morgan is entitled to discovery regarding CIT's alleged standing to foreclose based on the newly asserted allegations in the second amended complaint. The court has considered the parties' remaining arguments and has determined, in its discretion, that CIT is entitled to an order granting it leave to amend.

(2)

CPLR 5001 (a) provides, in relevant part, that "in an action of an equitable nature, interest and the rate and the date from which it shall be computed shall be in the court's discretion." "A foreclosure action is equitable in nature and triggers the equitable powers of the court" (*Bank of New York Mellon v George*, 186 AD3d 661, 663 [2d Dept 2020]). The Second Department has held that a tolling and cancellation of interest may be warranted "where there is an unexplained delay in prosecution of a mortgage foreclosure action" (*Deutsche Bank Tr. Co. Americas v Knights*, 231 AD3d 1016, 1018 [2d Dept 2024]; *GMAC Mortg., LLC v Yun*, 206 AD3d 798, 798-799 [2d Dept 2022]).

Here, Defendant Morgan failed to demonstrate that CIT engaged in a lengthy unexplained delay in prosecuting this foreclosure action warranting the tolling of interest. Any delays in the prosecution of this foreclosure action were due to the Covid-19 pandemic, the statutory moratoriums imposed in response thereto, and Defendant Morgan's filing of a Covid-19 Hardship Declaration, which stayed this action until January 15, 2022. CIT e-filed the instant motion on February 1, 2022, less than one month later. Accordingly, it is hereby

**ORDERED** that CIT's motion (mot. seq. four) for leave to amend the amended complaint is granted, pursuant to CPLR 3025 (b), and the second amended complaint (as proposed in NYSCEF Doc No. 173) shall be e-filed within 15 days of service of this decision and order with notice of entry thereof, after which Defendant Morgan may answer or otherwise respond to the second amended complaint and seek discovery from CIT; and it is further

**ORDERED** that Defendant Morgan's cross-motion (mot. seq. five) for an order, pursuant to CPLR 5001 (a), tolling interest is denied.

This constitutes the decision and order of the court.

E N T E R,



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Hon. Cenceria P. Edwards J.S.C., CPA