

<b>US Bank v Young</b>
2026 NY Slip Op 30421(U)
January 27, 2026
Supreme Court, Kings County
Docket Number: Index No. 509399/15
Judge: Cenceria P. Edwards
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At an IAS Term, Part FRP1, 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, on the 27th day of January, 2026.

**PRESENT:**

HON. CENCERIA P EDWARDS,

Justice.

-----X

US BANK,

Plaintiff,

-against-

ALTHEA YOUNG et al,

Defendant,

-----X

**Index No.:** 509399/15  
**Mot. Seq. No.:** 6  
**Calendar Date:** 1/24/24  
**Calendar No.:** 7

The following e-filed papers read herein:

NYSEF Nos.:

Notice of Motion/Order to Show Cause/  
Petition/Cross Motion and Affidavits (Affirmations)

Annexed \_\_\_\_\_

148-164 168

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

172-176

Affidavits/ Affirmations in Reply \_\_\_\_\_

Upon the foregoing papers in this action to foreclose a mortgage encumbering the residential property located at 1501 Nostrand Avenue in Brooklyn (Block 4884, Lot 49), Defendants Althea Young and Norman Young move for vacatur of the orders granting summary judgment in favor of Plaintiff and judgment of foreclosure and sale. Defendants further seek the tolling of interest due to alleged prosecutorial delays. Plaintiff opposes.

### *Background Facts and Procedural History*

Plaintiff commenced the instant foreclosure action on July 30, 2015. Defendants jointly answered through counsel, asserting eleven affirmative defenses. Pre-settlement conferences were scheduled.

On November 17, 2016, Plaintiff moved for summary judgment and an order of reference. After Defendants opposed and Plaintiff changed counsel, the motion was withdrawn.

Plaintiff filed another motion for the same relief on September 11, 2017. This time, no opposition was filed and the motion was taken on submission on default. On February 5, 2018, an order dated January 19, 2018 granting the requested relief was uploaded to NYSCEF.

Defendants, through counsel, filed a notice of appeal shortly thereafter challenging the decision on the merits.

A hearing was held before the appointed referee. Both parties appeared through counsel. Plaintiff proffered a witness – who was cross-examined by Defendants’ counsel – and three documentary exhibits. After the referee issued his oath and report, Plaintiff moved to confirm his findings and for judgment of foreclosure and sale. Defendants opposed and cross-moved for dismissal pursuant to King’s County Uniform Civil Term Rules Part F, Rule 8 and based upon Plaintiff’s alleged failure to strictly comply with RPAPL 1304. They also asserted that the referee’s conclusions were not based upon admissible evidence and that Plaintiff failed to provide a copy of the hearing transcript. After Plaintiff replied and provided the transcript, the cross-motion was marked off and the motion for judgment of foreclosure and sale taken sub judice. Noting it was considering the cross-moving papers as opposition, the Court granted Plaintiff’s motion by order dated December 10, 2019.

Defendants appealed the grant of judgment of foreclosure and sale. The Appellate Division, Second Department affirmed, finding by decision dated March 15, 2023, that the referee’s findings were substantially supported by the record.

#### The Instant Motion

An auction was scheduled for November 30, 2023. The instant motion was filed by order to show cause two days earlier. Though this Court declined to sign the order, a panel of the

Second Department did so but denied the requested interim stay. Nonetheless, the auction was cancelled after Norman filed bankruptcy.

Defendants argue that Norman filed an earlier bankruptcy on January 19, 2018 which was pending until March 6, 2018. As such, the summary judgment order – also apparently sign on January 19<sup>th</sup> – was entered during the bankruptcy stay and, Defendants argue, must be vacated. By extension, they suggest, the judgment of foreclosure and sale must also be voided – if the appointment of the referee is vacated, his retroactively unauthorized report could not be confirmed.

Noting that there was a significant lapse of time between their alleged default and the commencement of this action, Defendants argue that interest for that period should be tolled. Likewise, they assert that Plaintiff delayed at various stages of the action and should not benefit from its failure to efficiently proceed.

#### Plaintiff's Opposition

Plaintiff counters that the burden is on Defendants to show that there was a stay in effect at the time that the order was signed – and that they have not. Nothing in the record shows that the bankruptcy filing occurred before the order was executed. Defendants continued to proceed for years afterwards as if the order was properly entered. They filed a notice of appeal from it, participated in a referee's hearing, cross-moved in opposition to judgment of foreclosure and sale, and unsuccessfully appealed from the judgment – all without raising the 2018 bankruptcy or asserting that the Court lacked jurisdiction to grant summary judgment.

Plaintiff further argues that Defendants' tolling arguments are being raised for the first time post judgment of foreclosure and sale. It also notes that the order granting judgment of foreclosure and sale explicitly found that it had sufficiently explained the delay in moving for that relief, one of the periods for which Defendants seek tolling. Nor, Plaintiff asserts, have Defendants pointed to any wrongdoing or long unexplained delay during the action and no legal basis for pre-suit tolling has been advanced. As such, Plaintiff argues that tolling is unwarranted.

### *Analysis*

There is no evidence that the order granting summary judgment was signed during a bankruptcy stay. The bankruptcy was not filed until the afternoon and it is unclear when the judge executed the order. What is clear, however, is that Plaintiff and Defendants' counsel proceeded thereafter solely on the merits and that no one raised the 2018 bankruptcy until the eve of auction in late 2023. Defendants are, thus, estopped from seeking vacatur based upon the alleged stay. As such, though the order was definitely uploaded during a stay, this Court will not vacate it or the subsequent judgment of foreclosure and sale.

Nor is tolling warranted. Defendants improperly seek that relief long after judgment of foreclosure and sale was entered. Even were that not so, tolling for pre-litigation delay is generally unavailable (*US Bank v Frankfurter*, 228 AD3d 904, 905 [2d Dept 2024]; *Nationstar Mtge., LLC v Dunn*, 186 A.D.3d 836, 836-837 [2d Dept 2020]) and the Court has already found that Plaintiff offered a reasonable excuse for the period immediately pre-judgment of foreclosure and sale. None of the other alleged delay rises to the level to warrant tolling.

### *Conclusion*

Accordingly, it is

**ORDERED** that Defendants' motion to vacate and/or toll interest [MS 6] is denied in its entirety.

This constitutes the decision and order of the Court.

**ENTER:**



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