

Umeze v Moore

2026 NY Slip Op 30573(U)

February 16, 2026

Supreme Court, Bronx County

Docket Number: Index No. 300032/2019E

Judge: Veronica G. Hummel

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NEW YORK SUPREME COURT – COUNTY OF BRONX

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 20

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BEN UMEZE MD,

Index No. 300032/2019E

Plaintiff(s),

-against-

Hon. Veronica G. Hummel
Justice of the Supreme CourtSEDRICK MOORE, MANAGER, FAY SERVICING
LLC, FAY SERVICES, INC., JOHN WARCOP, SENIOR
VICE PRESIDENT, HSBC, CITY BANK, CITY BANK
GROUP,

Defendant(s).

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The following papers were read on defendants' motion (**Mot. Seq. No. 5**) for **summary judgment**.

| Documents | NYSCEF DOC Nos. |
|---|-----------------|
| Notice of Motion - Exhibits and Affirmation Annexed | 32-46, 117-119 |
| Affirmation in Opposition to Motion | 102, 121 |
| Affirmations in Reply | 122, 127, 132 |

Plaintiff commenced this action seeking, inter alia, damages for breach of contract, breach of the covenant of good faith and fair dealing, and fraud. Defendants Sedrick Moore, Fay Services, Inc., Fay Services LLC, Citibank, and Citibank Group (defendants) move for summary judgment dismissing the action. Although plaintiff submitted opposition papers, plaintiff failed to comply with the court's scheduling orders, and the opposition is therefore disregarded as untimely. For the reasons set forth below, defendants' motion is granted. Defendant HSBC (including defendant Warcop) was dismissed from the action by Court order dated October 4, 2019.

BACKGROUND

Pursuant to the affidavit of Michael J. Paterno, a Senior Litigation Representative of Fay Servicing, Inc.(Fay), on June 7, 1996, plaintiff executed and delivered a note in the principal sum of \$192,000.00 to Beneficial Homeowner Service Corp. (Beneficial). As security for repayment of the note, plaintiff executed a mortgage in favor of Beneficial on June 7, 1996, encumbering

the premises located at 1421-23 Glover Street, Bronx, New York 10462. As relevant herein, the mortgage provided that:

“You will pay when due all other mortgages, all taxes, assessments, sewer rents, and water rates which are assessed against the property. You will show us receipts for payment of such charges within ten (10) days after we request them. If you do not pay all taxes, assessments, sewer rents, or water rates, insurance premiums costs to protect the value of the property, maintenance and any other payments you are required to make, we may pay those charges, although we don’t have to. If we do pay them, you will repay us promptly at our request with interest at the rate provided in the agreement. If you fail to pay these amounts upon our request these amounts shall be added to the amount you owe us.”

On February 9, 2018, the mortgage was assigned from Beneficial to Citibank. Thereafter, on June 27, 2019, the mortgage was assigned from Citibank to U.S. Bank.

Beginning on or about December 12, 2017, Fay notified plaintiff of unpaid real estate taxes assessed against the mortgaged premises. By July 12, 2018, plaintiff had failed to pay the outstanding taxes identified in those notices. As a result, Fay advanced funds in the amount of \$194,904.76 to satisfy nearly ten years of unpaid real estate taxes on the property. Additional tax payments were made on September 12, 2018, and December 27, 2018, in connection with the loan’s conversion to an escrowed loan by Fay on behalf of Citibank and, thereafter, U.S. Bank.

Plaintiff thereafter defaulted under the terms of the loan documents by failing to make the monthly installment payment due on October 12, 2018, and remained in default through at least October 31, 2021, when Fay ceased servicing the subject loan.

Plaintiff asserts causes of action for breach of contract, breach of the covenant of good faith and fair dealing, and fraud. Plaintiff alleges that defendants unilaterally increased the required monthly mortgage payment from \$1,224.81 to \$9,417.17, contrary to the parties’ agreement; refused to accept plaintiff’s regular monthly mortgage payments; and misrepresented in a servicing transfer notice that “nothing else” about plaintiff’s mortgage would change.

On April 23, 2025, the Supreme Court, Bronx County (Index No. 36335/2019E), granted summary judgment and related relief against plaintiff in a related mortgage foreclosure action.

DISCUSSION

Defendants’ motion sequence No. 5 for summary judgment and to dismiss plaintiff’s action is granted.

Timeliness of Plaintiff’s opposition

Plaintiff’s opposition to defendants’ motion for summary judgment is disregarded as untimely. By interim order dated September 30, 2024 (NYSCEF Doc. No. 75), which was issued pursuant to CPLR 2004, the court adjourned defendants’ motion and expressly directed that

plaintiff's opposition papers be served by March 10, 2025. Court-ordered time frames are requirements to be taken seriously by the parties (*see* CPLR 2004; *Quinones v Joan and Sanford I. Weill Med. Coll. & Graduate Sch. of Med. Sciences of Cornell Univ.*, 114 AD3d 472, 473 [1st Dept 2014], citing *Gibbs v St. Barnabas Hosp.*, 16 NY3d 74, 81 [2010]; *Miceli v State Farm Mut. Auto. Ins. Co.*, 3 NY3d 725, 727 [2004]). Plaintiff did not serve or file opposition papers by the court-ordered deadline, and instead submitted an opposition dated May 27, 2025, and filed on May 29, 2025, more than two months late and without leave of court. As plaintiff failed to comply with the court's scheduling order, and no further extension was sought or granted, plaintiff's opposition is disregarded.

Plaintiff's Supplemental Response / Sur-Reply

Plaintiff's supplemental response is likewise disregarded. By court notice dated July 21, 2025 (NYSCEF Doc. No. 114), the court permitted the parties to submit limited supplemental papers, no later than September 19, 2025, addressing whether the decision in the related foreclosure action (Index No. 36335/2019E) had any effect on this action and on defendants' pending motion. Plaintiff's supplemental response, dated September 26, 2025, and filed on October 1, 2025, was untimely. Accordingly, plaintiff's supplemental response is disregarded.

In any event, even if the Court were to consider plaintiff's opposition papers notwithstanding their untimeliness, the opposition would not alter the result. Plaintiff fails to raise a triable issue of fact sufficient to defeat defendants' motion for summary judgment, and the submissions do not establish a viable basis for the damages sought. Accordingly, dismissal would remain warranted.

Res Judicata

Defendants argue that plaintiff's claims are barred by res judicata based on the judgment entered in the related foreclosure action, but that contention is unavailing. New York applies a transactional analysis approach to res judicata, under which a final judgment bars later claims arising out of the same transaction or series of transactions (*see Matter of Reilly v Reid*, 45 NY2d 24, 29–30 [1978]; *O'Brien v City of Syracuse*, 54 NY2d 353 [1981]). The doctrine applies where the subsequent claims arise from the same facts and circumstances and could have been resolved in the prior action. The foreclosure action adjudicated the lender's right to foreclose based on plaintiff's default under the note and mortgage. By contrast, plaintiff's claims in this action seek, *inter alia*, damages for alleged breaches of contract and breaches of the covenant of good faith and fair dealing arising from defendants' conduct during the life of the mortgage. These claims do not arise from the same facts and circumstances as the foreclosure judgment. Accordingly, res judicata does not bar plaintiff's claims.

Breach of contract

Defendants contend that plaintiff's breach of contract claim is without merit, as the increase in the monthly mortgage payment effective October 12, 2018, resulted from plaintiff's failure to pay outstanding real property taxes on the mortgaged premises, despite due demand, and from defendants' subsequent advance of those unpaid taxes pursuant to the terms of the mortgage (*see* Mortgage Agreement, "Payment of Taxes, Insurance Premiums and Other Mortgages," NYSCEF Doc No. 36). Defendants further argue that plaintiff's reliance on a

statement in the servicing transfer notice issued by nonparty Beneficial that “nothing else will change” is misplaced, as that notice does not constitute a contract or agreement binding upon defendants.

Plaintiff’s breach of contract claim, based on the increase in the monthly mortgage payment and on the statement contained in the servicing transfer notice, is dismissed. To state a cause of action for breach of contract, a plaintiff must allege the existence of a valid and enforceable agreement, plaintiff’s performance, defendant’s breach, and resulting damages (*see Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010]). Here, plaintiff identifies no provision of the mortgage prohibiting defendants’ conduct. To the contrary, the mortgage expressly requires plaintiff to pay all real property taxes assessed against the premises and authorizes defendants, upon plaintiff’s failure to do so, to advance such amounts, with plaintiff required to repay those advances upon demand, together with interest, as provided in the agreement (Mortgage Agreement, “Payment of Taxes, Insurance Premiums and Other Mortgages,” NYSCEF Doc No. 36).

The record further reflects that defendant Fay sent multiple written notices to plaintiff regarding the unpaid real property taxes, dated December 5, 2017; December 12, 2017; April 11, 2018; May 16, 2018; June 28, 2018; and July 2, 2018 (NYSCEF Doc No. 39). Plaintiff failed to remit payment of the outstanding taxes. Defendants therefore advanced the unpaid real property taxes in the amount of \$194,904.76. The resulting increase in the monthly mortgage payment reflected defendants’ contractual right to recover those advances, together with interest, and does not constitute a breach of the mortgage.

Plaintiff’s reliance on the statement by nonparty Beneficial that “nothing else will change” is likewise without merit. That statement was contained in a servicing transfer notice and is not part of the mortgage agreement executed by the parties. As such, it does not modify or supersede the terms of the mortgage, does not impose any contractual obligation upon defendants, and cannot serve as a basis for a breach of contract claim.

Breach of the implied covenant of good faith and fair dealing

Plaintiff’s cause of action for breach of the implied covenant of good faith and fair dealing is dismissed. Implicit in every contract is a covenant of good faith and fair dealing (*Dalton v Educational Testing Serv.*, 87 NY2d 384 [1995]). The implied covenant exists only “in aid and furtherance of other terms of the agreement of the parties” (*Murphy v American Home Prods. Corp.*, 58 NY2d 293, 304 [1983]). The covenant of good faith and fair dealing “cannot be construed so broadly as to effectively nullify other express terms of the contract, or to create independent contractual rights” (*National Union Fire Ins. Co. of Pittsburgh, PA v Xerox Corp.*, 25 AD3d 309, 310 [1st Dept 2006]). To prove a breach of the implied covenant of good faith and fair dealing, a plaintiff must demonstrate the existence of a contractual relationship between the parties, as the implied covenant cannot exist in the absence of a contract (*see Duration Mun. Fund, L.P. v J.P. Morgan Sec., Inc.*, 77 AD3d 474, 475 [1st Dept 2010]).

Here, plaintiff alleges that defendants refused to accept monthly payments tendered in the amount due prior to the tax advance. That allegation, however, arises from defendants’ enforcement of the express mortgage provisions permitting the advancement of unpaid real property taxes and plaintiff’s corresponding obligation to repay those advances, together with

interest. Plaintiff does not allege conduct apart from defendants’ exercise of their contractual rights under the mortgage. Because the implied covenant of good faith and fair dealing may not be used to override or negate the terms of the parties’ agreement, plaintiff fails to state a cause of action for breach of the implied covenant of good faith and fair dealing (*see id.*).

Fraud

Plaintiff’s fraud claim is dismissed. To state a claim for fraud, a plaintiff must allege a material misrepresentation of fact, knowledge of its falsity and intent to deceive, justifiable reliance, and resulting damages (*see Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 178 [2011]). Plaintiff relies on a statement in a servicing transfer notice that “nothing else will change” with respect to the mortgage. That statement is general in nature and concerns future performance under the mortgage, not an existing material fact of the contract. Plaintiff fails to allege facts showing that defendants knew the statement was false when made or that it was made with the intent to deceive. Moreover, plaintiff’s reliance on that statement was not reasonable in light of the express terms of the mortgage permitting the advancement of unpaid taxes. As plaintiff fails to plead the essential elements of fraud, the fraud claim is dismissed.

Accordingly, it is hereby,

ORDERED that the motion for summary judgment [Mot. Seq.5]by defendants Sedrick Moore, Fay Services, Inc., Fay Services LLC, Citibank, and Citibank Group is granted; and it is further

ORDERED that the Clerk of the Court shall enter judgment dismissing the complaint in its entirety and mark the action disposed in court records; and it is further

ORDERED that defendants shall serve a copy of this decision and order with notice of entry on *pro se* plaintiff by regular and overnight mail by March 10, 2026 and upload an affidavit of service by March 15, 2026.

This constitutes the decision and order of the court.

Dated:2/16/2026

Hon. [s/Hon. Veronica G Hummel/signed 02/16/2026](#)

Hon. Veronica G. Hummel, A. J. S. C.

- 1. CHECK ONE.....
- 2. MOTION IS.....
- 3. CHECK IF APPROPRIATE.....

- CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
- GRANTED DENIED GRANTED IN PART OTHER
- SETTLE ORDER SUBMIT ORDER SCHEDULE APPEARANCE FIDUCIARY APPOINTMENT REFEREE APPOINTMENT

Cancel future appearance