

<b>US Bank v Bartholomew</b>
2026 NY Slip Op 31261(U)
February 26, 2026
Supreme Court, Kings County
Docket Number: Index No. 516974/2017
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 26th day of February, 2026.

**PRESENT:**

HON. CENCERIA P EDWARDS,  
Justice.

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US BANK,

Plaintiff,

-against-

**Index No.:** 516974/2017  
**Mot. Seq.:** 2+3  
**Calendar Date:** 1/17/24  
**Calendar No.:** 6+7

WILBUR BARTHOLOMEW et al,

Defendant,

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**The following e-filed papers read herein:**

**NYSEF Nos.:**

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	<u>63-83 118</u>
Opposing Affidavits (Affirmations) _____	<u>102-107</u>
Affidavits/ Affirmations in Reply _____	<u>108-109</u>

Upon the foregoing papers in this action to foreclose a mortgage encumbering the residential property located at 1446 East 104<sup>th</sup> Street in Brooklyn (Block 8306, Lot 63), Plaintiff US Bank moves for judgment of foreclosure and sale. Defendant Michelle Dowden cross-moves for vacatur of the order granting summary judgment in favor of the Plaintiff on default. Plaintiff opposes.

***Background Facts and Procedural History***

Plaintiff commenced the instant foreclosure action on August 31, 2017. Defendants Wilbur Batholomew and Michelle Dowden jointly answered pro se, asserting a variety of affirmative defenses.

After release from Settlement Conferences, Plaintiff filed a motion for summary judgment and an order of reference on January 30, 2019. No opposition was filed and the motion was granted by order dated April 12, 2019.

On October 9, 2019, Plaintiff filed the instant motion for judgment of foreclosure and sale. Noting that Bartholomew died on February 16, 2019 and that his interest in the property passed by operation of law to his wife (Dowden), Plaintiff seeks to drop him from the caption. Proffering the referee's oath and report, Plaintiff argues that the report should be confirmed and judgment of foreclosure and sale granted.

Dowden cross-moved for vacatur of the order granting summary judgment and, thereafter, for a stay of this action. Arguing that Bartholomew's death shortly after the filing of the prior motion stayed the case, she asserts that the case was stayed and the Court lacked jurisdiction to issue the April 12, 2019 order. Though his interest in the property passed to her, she notes that Plaintiff was still seeking a potential deficiency judgment against him at the time and, thus, that he remained a necessary party. In the alternative, Dowden asserts that Bartholomew's death was a reasonable excuse for her default in opposing the motion for summary judgment. She further argues that she has meritorious opposition to that relief as Plaintiff's RPAPL 1304 notices were defective,<sup>1</sup> it failed to demonstrate its standing,<sup>2</sup> and it failed to demonstrate her default.<sup>3</sup>

Noting that no objections were raised to its motion, Plaintiff argues that the requested relief should be granted. It further asserts that it is seeking to discontinue this action as to Bartholomew and that, as his interest in the property passed to Dowden, neither he nor his estate are necessary parties. Turning to Dowden's motion, Plaintiff asserts that the cross-motion is untimely, having been filed three years after she became aware of the order of reference. Plaintiff further alleges that laches attaches due to the delay. As the case could proceed in the absence of

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<sup>1</sup> Dowden more specifically asserts a "separate envelope" violation under the Second Department's now-overruled *Kessler* decision.

<sup>2</sup> Dowden suggests, among other arguments, that the multiple different versions of the note that have been proffered and that it is not properly endorsed as the endorsements are unsigned – both calling into question claims of standing via possession of the original.

<sup>3</sup> Plaintiff's affiant asserted that there was a default but failed to append the business records relied upon.

Bartholomew, Plaintiff suggests that there was no stay. Nor does his death provide a reasonable excuse for Dowden's continued default in challenging the judgment.

In reply, Downden argues that Bartholomew was still a necessary party at the time summary judgment was granted as he was still a party, and Plaintiff was seeking a potential deficiency judgment against him. Even were that not so, Dowden suggests, CPLR 1022 extends her time to respond to the motion for summary judgment until fifteen days after Bartholomew is removed as a party. She further asserts that her husband's illness and death and the COVID-19 pandemic provide a reasonable excuse for her failure to oppose Plaintiff's motion and the delay in seeking vacatur. Especially as no actual prejudice resulting from the delay has been asserted, Dowden suggests that the grant of summary judgment should be vacated.

### *Analysis*

"Generally, the death of a party divests a court of jurisdiction to act, and automatically stays proceedings in the action pending the substitution of a personal representative for the decedent ... However, where a party's demise does not affect the merits of a case, there is no need for strict adherence to the requirement that the proceedings be stayed pending substitution" (*US Bank v Esses*, 132 AD3d 847, 847-848 [2d Dept 2015] [internal citations omitted]). Here, Bartholomew was still a necessary party at the time the motion was decided – he had asserted affirmative defenses, and a potential deficiency judgment was being sought against him. As such, the Court lacked jurisdiction to grant summary judgment and an order of reference (*id.*, at 848; *Wells Fargo v Schnubel*, 176 AD3d 1353, 1353-1354 [3d Dept 2019]; cf. *Bethpage Federal Credit Union v Hughes*, 239 AD3d 584, 585 [2d Dept 2025] [death after answer stricken but before JFS]; *US Bank NA v Sanon*, 238 AD3d 800, 801-802 [2d Dept 2025] [death of a defaulting defendant]).

Even were that not so, vacatur pursuant to CPLR 5015[a][1] would also be appropriate. Dowden was dealing with Bartholomew's final illness and death at the relevant time. She provided copies of his death certificate to Plaintiff shortly thereafter and was under the impression that the action was stayed. Coupled with the ensuing pandemic, Dowden's delay in seeking to vacate her default in opposing could be overlooked. Her assertion that her defenses to

the motion are potentially meritorious is also correct – among other things, she accurately notes that no admissible evidence of a default on the loan was proffered.

***Conclusion***

Accordingly, it is

**ORDERED** that Dowden’s cross-motion [MS 3] to vacate the April 12, 2019 order granting summary judgment in favor of the Plaintiff and an order of reference is granted and that order is vacated; and it is further

**ORDERED** that Plaintiff’s motion [MS 2] for judgment of foreclosure and sale is denied.

This constitutes the decision and order of the Court.

**ENTER:**



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