

Palm Ave. Hialeah Trust v Knowles
2026 NY Slip Op 31280(U)
April 1, 2026
Supreme Court, Queens County
Docket Number: Index No. 703456/20
Judge: Timothy J. Dufficy
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. TIMOTHY J. DUFFICY
Justice

PART 35

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**PALM AVENUE HIALEAH TRUST, A DELAWARE
STATUTORY TRUST, FOR AND ON BEHALF AND
SOLELY WITH RESPECT TO PALM AVENUE
HIALEAH TRUST, SERIES 2014-1,**

**Index No.: 703456/20
Mot. Date: 7/29/2025
Mot. Seq. 9**

Plaintiff,

-against-

**HAROLD KNOWLES, THE CHASE MANHATTAN
BANK, NEW YORK CITY ENVIRONMENTAL
CONTROL BOARD, BARBARA FOLKES, JEAN
FOLKES, JEANPAUL FOLKES, "JOHN DOE"
REFUSED NAME, JOSHUA TOMLINSON, and
TREVOR FOLKES,**

Defendants.

FILED
4/3/2026
COUNTY CLERK
QUEENS COUNTY

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The following papers were read on this motion by plaintiff for an order appointing a substitute Referee, pursuant to CPLR 4314; and, on the cross-motion by defendant Harold Knowles for an order "pursuant to CPLR 3211(5), RPAPL § 1501(4), and CPLR 213(4) dismissing the Complaint as time barred pursuant to the Foreclosure Abuse Prevention Act (FAPA)."

	PAPERS
	<u>NUMBERED</u>
Notice of Motion-Affirmation-Exhibits.....	EF 201- 205
Notice of Cross Motion-Affidavits-Exhibits.....	EF 206-211

Upon the foregoing papers, it is ordered that this motion by plaintiff is granted; and, the cross-motion by defendant Harold Knowles (defendant/Knowles) is denied, as set forth below.

This is an action to foreclose a residential mortgage on the property, located at Block 15737, Lot 64; and, also commonly known as 2536 Beach Channel Drive, Far Rockaway, in Queens County (Subject Premises).

Plaintiff moves for an order appointing a substitute Referee, in place and stead of Referee Morton Povman, pursuant to CPLR 4314. Defendant Knowles cross-moves for an order "pursuant to CPLR 3211(5), RPAPL § 1501(4), and CPLR 213(4) dismissing the Complaint as time barred pursuant to the Foreclosure Abuse Prevention Act (FAPA)."

As an initial matter, the Court finds it necessary to provide a recitation of the recent motion practice in this matter, for the sake of clarity. By Order, dated February 24, 2022, and entered on February 25, 2022, the plaintiff was granted summary judgment and an Order of Reference (February 2022 Order) (NYSCEF Doc. No. 101). Pursuant to the February 2022 Order, Morton Povman, Esq., was appointed to serve as Referee, and the defendants' Answer was stricken.

Thereafter, defendant moved, under Motion Sequence No. 5, for an order "discharging the mortgage pursuant to the new foreclosure act, Foreclosure Abuse Prevention Act S.5473-S, (FAPA), CPLR 213(4) and RPAPL 1501." By Order, dated July 31, 2024, and entered on August 1, 2024, the defendant's motion was granted, and this action was dismissed, as being time barred (July 2024 Order). Plaintiff then moved, under Motion Sequence No. 7, for leave to renew and reargue the July 2024 Order, and, upon re-argument, vacating the July 2024 Order. Plaintiff's motion was granted, without opposition, by Order, dated and entered on May 16, 2025 (NYSCEF Doc. No. 193), and the July 2024 Order was vacated and set aside (May 2025 Order). Therefore, the May 2025 Order, in effect, revived the Order of Reference, as granted by the February 2022 Order.

Defendant then moved, under Motion Sequence No. 8, to vacate his default in opposing the plaintiff's motion, under Motion Sequence No. 7. In an Order, dated February 27, 2026, and entered on March 3, 2026, the Court denied the defendant's motion, finding that he failed to demonstrate a reasonable excuse for failing to oppose the plaintiff's motion (NYSCEF Doc. No. 220). Therefore, the May 2025 Order remained in effect.

This Court, in its discretion, will first address the defendant's cross-motion. Defendant cross-moves for "an Order pursuant to CPLR 3211(5), RPAPL 1501(4) and CPLR 213(4) dismissing the Complaint as time barred pursuant to the Foreclosure Abuse Prevention Act (FAPA)."

The law of the case doctrine applies to "legal determinations that were necessarily resolved on the merits in the prior decision, and to the same questions presented in the same case" (*Wieder v Home Depot U.S.A., Inc.*, 208 AD3d 535, 538 [2d Dept 2022]; see *Matter of B.Z. Chiropractic, P.C. v Allstate Ins. Co.*, 197 AD3d 144, 152–153 [2d Dept 2021]), and where the parties had a " 'full and fair opportunity to litigate the initial determination' " (*Fidler v Gordon–Herricks Corp.*, 173 AD3d 840, 841

[2d Dept 2019] quoting, *Sterngass v Town Bd. of Town of Clarkstown*, 43 AD3d 1037 [2d Dept 2007]).

Here, the defendant already raised RPAPL 1501(4) and CPLR 213(4), in connection with the July 2024 Order, and he failed to vacate his default in opposing the plaintiff's motion to reargue said Order. Additionally, while the defendant raised CPLR 3211(a)(5), as a defense in his Answer, his Answer was stricken, pursuant to the February 2022 Order, wherein the Court found that "Defendant's first affirmative defense that raises the statute of limitations has no merit" (NYSCEF Doc. No. 94). Therefore, the defendant's contentions are barred by the law of the case. As such, the cross-motion by defendant Knowles is denied.

Plaintiff's motion to appoint a Successor Referee, in place and stead of the now deceased Referee Morton Povman, Esq., pursuant to CPLR 4314, is granted. A substitute referee shall appointed herein to ascertain and compute the amount due. The substitute Referee shall be paid the statutory fee, pursuant to CPLR 8003(a), as set forth below.

Accordingly, it is

ORDERED that the motion by plaintiff is hereby granted, in that: it is

ORDERED that the Order, dated February 24, 2022, and entered on February 25, 2022 (NYSCEF Doc. No. 101), is hereby modified, to the sole extent that Scott H. Siller, Esq., with an address of: 706 Equestrian Way, Westbury, NY 11590, telephone number: (516) 644-6769, and email address: scotthesq@aol.com, is hereby appointed as substitute Referee, in place and stead of Morton Povman, Esq., pursuant to the directives contained in said Order; and it is further

ORDERED that substitute Referee Siller shall be paid the statutory fee of \$350.00 for the computation of the amount due and the filing of his report, pursuant to CPLR 8003(a); and it is further

ORDERED that the Order, dated February 24, 2022, and entered on February 25, 2022 (NYSCEF Doc. No. 101), in all other respects, is still in full force and effect; and it is further

ORDERED that the cross-motion by defendant Harold Knowles (Knowles) is hereby denied; and it is further

ORDERED that a copy of this Order be served upon Scott H. Siller, Esq., the substitute Referee appointed herein, and all parties entitled to notice.

Dated: April 1, 2026



TIMOTHY J. DUFFICY, J.S.C.

FILED
4/3/2026
COUNTY CLERK
QUEENS COUNTY