

<b>Tropp v Yishtabach Shimchu NY LLC</b>
2026 NY Slip Op 31473(U)
April 6, 2026
Supreme Court, Kings County
Docket Number: Index No. 531451/2025
Judge: Richard J. Montelione
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At IAS Part 99 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, NY 11201, on the 6 day of April 2026.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: PART 99

**DECISION  
and  
ORDER**

-----X  
UDY TROPP,

Plaintiff,  
-against-

Index No.: 531451/2025  
Motion Date: 4/1/2026  
Motion Cal. No.: 53  
Mot. Seq. 1

YISHTABACH SHIMCHU NY LLC, EVIATOR MOR, 12248,  
GROUP INC., SELECT PORTFOLIO SERVICING, INC., and  
HUNTINGTON BANK, successor by merger to TCF  
NATIONAL BANK,

Defendants.

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After oral argument, the following papers were read on this motion pursuant to CPLR 2219(a):

Papers	NYSCEF DOC. #
Defendant Select Portfolio Servicing, Inc.'s pre-answer Notice of Motion to dismiss (CPLR 3211(a)(1) & (a)(3)) and cancel plaintiff's filed lis pendens/Attorney Affirmation in Support/Exhibits A-J .....	9-20
Plaintiff's Answering Affirmation/ Exhibits A-D; Memorandum of Law in Opposition.....	24-29
Reply Affirmation.....	30

MONTELIONE, RICHARD J., J.

This decision and order supersedes any prior decision and order made on the record after oral argument on April 1, 2026.

This action commenced with the filing of a notice of pendency on September 11, 2025, together with the summons and complaint seeking declaratory relief. The subject property is a two-family home located at 1222 48<sup>th</sup> Street, Brooklyn, NY Block 5634, Lot 14. The plaintiff first owned the property by deed dated April 10, 2002 and recorded on May 8, 2002 from Pinkas Steinberger and Lena Steinberger to Nathan Daniel Tropp and Udy Tropp. There is a subsequent deed dated March 5, 2013 and recorded on April 4, 2013 from Nathan Daniel Tropp and Udy Tropp to Yishtabach Shimchu Corp. Plaintiff seeks an order declaring that 1) a subsequent deed dated March 24, 2013 and recorded on May 5, 2014 (from Nathan D. Tropp and Udy Tropp and

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Yishtabach Shimchu Corp. to Yishtabach Shimchu NY, LLC) was void and invalid; 2) a certain deed dated August 1, 2018 and recorded on August 7, 2018 was void and invalid; 3) that a certain mortgage dated August 1, 2018 and recorded on August 7, 2018 was void and invalid; 4) that a certain mortgage dated October 19, 2018 and recorded on October 31, 2018 was void and invalid; that a certain deed dated January 30, 2023 and recorded on February 8, 2023 was void and invalid; and 5) a declaration that any title derived in others after the filing of the notice of pendency is null and void.

The defendant Select Portfolio Servicing, Inc. moves to dismiss the complaint and cancel the plaintiff's notice of pendency on the basis that the plaintiff lacks standing because under a deed dated March 5, 2013, and recorded on April 4, 2013, plaintiff relinquished all her rights to the subject property. The foregoing deed was between Nathan Daniel Tropp and Udy Tropp to Yishtabach Shimchu Corp. and conveys one-hundred percent ownership interest of plaintiff Udy Tropp.

The plaintiff in her affidavit indicates that "(f)or avoidance of all doubt, prior to the commencement of this action the Corp. relinquished any claim of ownership to the premises by executing a deed transferring all of its Corp's right, title and interest that they might have in the property to me." (NYSCEF #24, ¶ 5)." A deed from the Yishtabach Shimchu Corp. to plaintiff dated August 27<sup>th</sup>, 2025, gives all its interest in the real property to plaintiff. The plaintiff argues that the deed dated March 24, 2013 and recorded on May 5, 2014 (from Nathan D. Tropp and Udy Tropp and Yishtabach Shimchu Corp. to Yishtabach Shimchu NY, LLC) was void and invalid but does not seek to set aside the 2013 deed that *conveys all her interest in the property* to the Yishtabach Shimchu Corp. because a deed transferring the interest of the Yishtabach Shimchu Corporation to her is dated August 27, 2025, a date which is 15 days before the commencement of this action (September 11, 2025) and therefore this deed gives her standing.

The court takes judicial notice<sup>1</sup> of the official website of the City of New York, Automated City Register Information System (ACRIS), New York City Department of Finance,

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<sup>1</sup> See *Kingsbrook Jewish Med. Ctr. v Allstate Ins. Co.*, 61 AD3d 13, 871 NYS2d 680, 2009 NY Slip Op 00351, 2009 WL 146158 [2d Dept 2009]; see also *La Sonde v Seabrook*, 89 AD3d 132, 137, 933 N.Y.S.2d 195 [2011] [holding that "[t]his Court has discretion to take judicial notice of material derived from official government web sites such as those generated by the New York State Department of State"]. "We take judicial notice of the most recent filing on ACRIS concerning the subject property, which seems to indicate that plaintiff assigned its interests in the mortgage and note on July 7, 2017, to a nonparty, MTGLQ Investors. This assignment is not mentioned in the parties' papers. While we take judicial notice of this filing we assign no dispositive weight to it on appeal, as its effect on the litigation is not clear. Given this lack of clarity, the parties should be heard below concerning the relevance, if any, of this apparent assignment (see *Caffrey v. North Arrow Abstract & Settlement Servs., Inc.*, 160 A.D.3d 121, 127, 73 N.Y.S.3d 70 [2d Dept. 2018] )," see *HSBC Bank USA, N.A. v Santos*, 185 AD3d 475, 478, 128 NYS3d 2, 5, 2020 NY Slip Op 03976, 2020 WL 4005949 [1st Dept 2020].

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that the deed dated August 27, 2025, *is not recorded*. There is no indication of any consideration for the transfer. The court also notes that plaintiff authorized Nathan Daniel Tropp by power of attorney dated March 5, 2013, pursuant to sections 5-1502A through 5-1502N of the New York General Obligations Law to act in her stead on matters involving “real estate transactions,” and “banking transactions,” (ACRIS City Register File No. 20130000135353, filed April 4, 2013). The power of attorney indicates that “(t)his power of attorney continues until I revoke it or it is terminated by my death...” The court did not see any revocation of this power of attorney in ACRIS. The “correction deed” indicates that it went from the grantor/sellers Nathan D. Tropp, Udy Tropp, and Yishtabach Shimchu Corp. to Yishtabach Shimchu NY, LL, but there is no affidavit from Nathan D. Tropp, the individual holding the power of attorney for plaintiff, disclaiming the deed as a forgery or indicating that he did not sign the correction deed with the authority of plaintiff’s power of attorney.

There is an affidavit from Eviatar Mor, one of the defendants, stating, “(t)he subject property located at 1222 48th Street, Brooklyn, New York 11219 was my home and primary residence since I acquired it on August 1, 2018 through January 30, 2023, when I transferred it. The plaintiff in her affidavit states that she has been in continuous possession for the last 20 years and has collected rent from the other tenant on the premises.

The court takes judicial notice of a foreclosure action involving the subject property, *Flagstar Bank, NA v. Eviatar M. Mor*, Kings County Index No. 529250/2023. The plaintiff did not seek intervention in that case, but moved the court to be substituted for the “John Doe” and to vacate any default against her. The plaintiff directed the court’s attention to an order issued by that court regarding its findings that, “(a)ssuming there is some defect in the conveyance from Shimchu Corp. to Shimchu LLC, and the deed to defendant owner and the mortgage are void, Tropp’s rights would be superior to that of defendant borrower, defendant owner and plaintiff’s mortgage, her absence from the action leaves whatever rights she may have unaffected by these proceedings, and any sale would simply be an assignment of mortgage.” *Flagstar Bank, N.A. v. Mor*, 2025 N.Y. Misc. LEXIS 10584, \*9, 2025 NY Slip Op 35116(U), 4, 2025 LX 696736 (Kings County Index No. 529250/2023). However, the court in the foreclosure matter also stated in its decision and order,

...

Accordingly, Tropp’s cross-motion is denied in its entirety. However, because the Court only recently ordered the discontinuance of the action against the John Does and it being undisputed that Tropp is an occupant of the property claiming an interest therein, Tropp shall be permitted to seek intervention, upon a proper, thorough showing of her interest in the property. Additionally, given the allegation of deed fraud which this Court finds troubling and takes very seriously, defendant borrower and Tropp are directed to explain the relevant deed transfers and history of this matter. Based upon the briefing the Court will

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determine whether a criminal referral to the District Attorney or Attorney General is appropriate

...

ORDERED, non-party Tropp's cross-motion is DENIED WITHOUT PREJUDICE with leave to seek intervention upon a proper showing; and it is further

...

ORDERED, that within forty-five (45) days of entry of this Order, defendant Eviatar M. Mor, Udy Tropp and Nathan Tropp are each directed to submit testimony in the form of affirmations under penalty of perjury, explaining the history of this matter, including the deed transfers, the identities of the various corporate grantees/grantors of the subject property and the relationship to defendant Eviatar M. Mor, Udy Tropp and Nathan Tropp.

No party complied with the court's directive "to submit testimony...explaining the history of this matter, including the deed transfers, the identities of the various corporate grantees/grantors of the subject property and the relationship to defendant Eviatar M. More, Udy Tropp and Nathan Tropp.

#### Legal Analysis

The plaintiff argues that the LLC did not come into existence until March 6, 2014, and therefore the "correction deed" dated March 24, 2013, and recorded on May 5, 2014, was void and invalid. The court rejects this reasoning. The LLC did not exist on the date of the deed, but this court will not set it aside when at the time *it was recorded the LLC did in fact exist*. (*Cf. Canandaigua Nat. Bank and Tr. Co. v Palmer*, 119 AD3d 1422, 1423-24, 990 NYS2d 747, 749, 2014 NY Slip Op 05263, 2014 WL 3377265 [4th Dept 2014], " '[A]n equitable mortgage may be constituted by any writing from which the intention so to do may be gathered, and an attempt to make a legal mortgage, which fails for the want of some solemnity, is valid in equity' " (*Hamilton Trust Co. v Clemes*, 163 N.Y. 423, 428, 57 N.E. 614; *see Federal Deposit Ins. Corp.*, 258 A.D.2d at 21, 692 N.Y.S.2d 69). "While '[a] court will impose an equitable mortgage where the facts surrounding a transaction evidence that the parties intended that a specific piece of property is to be held or transferred to secure an obligation' ..., 'it is necessary that an intention to create such a charge clearly appear from the language and the attendant circumstances' " [*Tornatore v. Bruno*, 12 A.D.3d 1115, 1118, 785 N.Y.S.2d 820; *see J.P. Morgan Chase Bank, N.A. v. Cortes*, 96 A.D.3d 803, 803-804, 947 N.Y.S.2d 528, *lv. denied* 20 N.Y.3d 853, 2012 WL 6117342].) The court may strike a notice of pendency "if the plaintiff has not commenced or prosecuted the action in good faith," *see Vanderbilt Brookland, LLC v Vanderbilt Myrtle, Inc.*, 147 AD3d 1106, 1110-11, 48 NYS3d 433, 437, 2017 NY Slip Op 01402, 2017 WL 690572 [2d

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Dept 2017]; (CPLR 6511[a]).

The issue before this court on defendant Select Portfolio Servicing, Inc.'s pre-answer motion to dismiss is a well known standard of whether the complaint fails to state a cause of action viewed in a light most favorable to the plaintiff. "Initially, the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail" (*Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275, 401 N.Y.S.2d 182, 372 N.E.2d 17; see *J.A. Lee Elec., Inc. v. City of New York*, 119 A.D.3d 652, 654, 990 N.Y.S.2d 223; *Pacific Carlton Dev. Corp. v. 752 Pac. LLC*, 62 A.D.3d 677, 679, 878 N.Y.S.2d 421), see *Hersh v Cohen*, 131 AD3d 1117, 1118, 16 NYS3d 606, 608, 2015 NY Slip Op 06888, 2015 WL 5568992 [2d Dept 2015]. Here, the plaintiff has not sought to set aside the deed dated March 5, 2013 and recorded on April 4, 2013 from Nathan Daniel Tropp and Udy Tropp to Yishtabach Shimchu Corp. Although the corporation conveyed its interest in the real property to the plaintiff shortly before commencement of this litigation, there are no facts in the complaint which details any of the various corporate grantees/grantors of the subject property and the relationship to defendant Eviatar M. Mor, Udy Tropp and Nathan Tropp or a denial from a corporate officer as to authorizing the transfer as found in the deed recorded in 2014. The plaintiff states in her affidavit, "I did not name Yishtabach Shimchu, Corp (the "Corp") as a defendant in this action because their deed was erroneous and the Corp was never the intended Grantee," but then fails to state the name of the intended grantee. Plaintiff asserts she has no idea of the facts surrounding the deed recorded in 2014 but fails to allege any facts regarding whether her designated agent acted on her behalf or any facts regarding the corporation's involvement. These allegations are critical in asserting the rights of a corporation now conveyed to the plaintiff. In other words, plaintiff's rights are no greater than the rights of the corporation as found in the 2013 deed. Without an allegation that the corporation did not authorize the transfer in 2013 which was recorded in 2014, the complaint must be dismissed for lack of standing and failure to state a cause of action.

Further, in the context of a pending foreclosure action where plaintiff has failed, "to submit testimony in the form of affirmations under penalty of perjury, explaining the history of this matter, including the deed transfers, the identities of the various corporate grantees/grantors of the subject property and the relationship to defendant Eviatar M. Mor, Udy Tropp and Nathan Tropp," it cannot be said that plaintiff overlooked addressing these facts. This court finds that the failure of the plaintiff to provide this information to the court in the foreclosure matter, as directed, or to provide the same information to this court, shows that the filing of the notice of pendency was in bad faith which is a basis to vacate the notice of pendency even if the complaint had survived.

Based on the foregoing, it is

**ORDERED** that the defendant Select Portfolio Servicing, Inc.'s motion to dismiss is **GRANTED** and the notice of pendency is vacated and upon delivery of a certified copy of this order to the Kings County Clerk, the Clerk shall vacate the notice of pendency filed against the

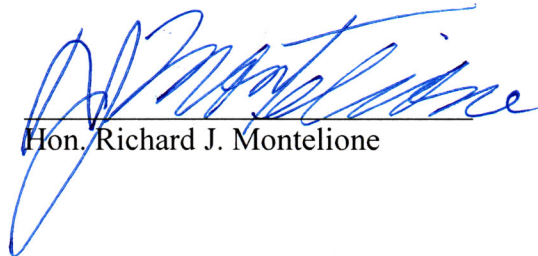
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real property located at 1222 48th Street, Brooklyn, New York, Block 5634 Lot 14 on the Tax Map of Kings County; and it is further

**ORDERED** that the action herein is **DISMISSED** in its entirety; and it is further

**ORDERED** that all other requests for relief are **DENIED**.

This constitutes the decision and order of the Court.

  
Hon. Richard J. Montelione

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