

<b>Richards v U.S. Bank Trust N.A.</b>
2026 NY Slip Op 31807(U)
April 30, 2026
Supreme Court, Queens County
Docket Number: Index No. 713454/2025
Judge: Scott Dunn
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**Short Order Form**

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. SCOTT DUNN

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JAMES RICHARDS and LESLEY DREPAUL,

Plaintiffs,

-against-

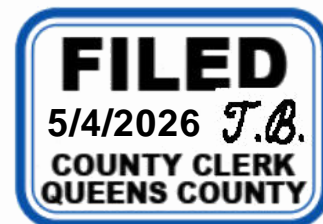
U.S. BANK TRUST NATIONAL ASSOCIATION AS TRUSTEE, CP-SRMOF II 2012-A TRUST, WILMINGTON SAVINGS FUND, FSB, FLAGSTAR BANK, FSB, and PALE HORSE REALTY, LLC,

Defendants.  
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PART 5

Index No.: 713454/2025

Mot. Seq. Nos. 1, 2 and 3



The e-filed papers listed by NYSCEF as document numbers, 3-34, 36, 64 and 71-72 (motion seq. no. 1) and NYSCEF document numbers 39-49, 63, 65 and 73 (motion seq. no. 2) and NYSCEF document numbers 50-62, 66, 69-70 AND 74-78 (motion seq. no. 3) were read on the motion of the Defendants PALE HORSE REALTY, LLC , FLAGSTAR BANK, FSB, and U.S. BANK TRUST NATIONAL ASSOCIATION AS TRUSTEE, CP-SRMOF II 2012-A TRUST, respectively (“Defendants”)<sup>1</sup> for an Order, in the main, pursuant to CPLR 3211, dismissing the complaint of the plaintiffs JAMES RICHARDS and LESLEY DREPAUL (“Plaintiffs”) (NYSCEF Doc. No. 1).

**I. BACKGROUND**

This action seeks to vacate a judgment of foreclosure and sale entered on November 18, 2016, relating to the property known as 137-02 130<sup>th</sup> Ave., South Ozone Park, NY 11436 (NYSCEF Doc. No. 13). Plaintiffs commenced this action by filing a summons and complaint on May 9, 2025. In the complaint, Plaintiffs challenge the legality of the judgment of foreclosure and sale and argue that it is wrongful, fraudulent, and unjustly enriches the Defendants (NYSCEF Doc. No. 1). Since the issuance of the judgment of foreclosure and sale, Plaintiffs have endeavored to sell the property six different times (NYSCEF Doc. Nos. 16, 19, 21, 23, 28 and 30), but had been prevented from doing so by the eight bankruptcy petitions filed by Plaintiffs (NYSCEF Doc Nos. 18, 20, 22, 24, 26 27 and 29). Finally, on May 9, 2025, the property was sold (NYSCEF Doc. No. 49).

<sup>1</sup> Flagstar Bank was assigned the mortgage and note by the original lender. Flagstar then assigned the mortgage and note to U.S. Bank Trust National Association. U.S. Bank Trust National Association then assigned the mortgage and note to Pale Horse Realty LLC.

## II. DISCUSSION

As a threshold matter, here, Plaintiffs effectively seek to vacate the judgment of foreclosure and sale. When as here, a party seeks to vacate a default judgment pursuant to CPLR 5015(a)(1), the “party is required to demonstrate a reasonable excuse for his or her default and a potentially meritorious opposition to the motion” (*Rocco v Family Foot Ctr.*, 94 AD3d 1077, 1079 [2d Dept 2012]). Plaintiffs have failed to provide a reasonable excuse, indeed any excuse, for their default, and therefore the judgment of foreclosure and sale may not be vacated. Further, as set forth below, Plaintiffs have failed to set forth a meritorious claim.

Moreover, and in any event, “[a] judgment of foreclosure and sale is final as to all questions at issue between the parties and concludes all matters of defense which were or could have been litigated in the foreclosure action” (*Ciraldo v JP Morgan Chase Bank, N.A.*, 140 AD3d 912, 913 [2d Dept 2016]). Indeed, all of Plaintiffs’ arguments are barred by the doctrines of *res judicata* and *collateral estoppel* as Plaintiffs may no longer litigate issues raised or that could have been raised in litigating the judgment of foreclosure and sale (*see Allen v McCurry*, 494 US 90, 94 [1980]; *see also Mazzurco v Astoria Fed. Sav. And Loan Assn.*, 157 AD3d 943, 944 [2d Dept 2018 [application of *res judicata*]]; *Parolisi v Slavin*, 98 AD3d 488, 489 [2d Dept 2012] [application of *res judicata*]; *Ryan v. N.Y. Tel Co.*, 62 NY2d 494, 500 [1984] [application of *collateral estoppel*]; *Karakash v Trakas.*, 163 AD3d 788, 789 [2d Dept 2018] [application of *collateral estoppel*]). And these doctrines have been applied in the mortgage foreclosure context (*Ciraldo*, 140 AD3d at 913). In this regard, an alleged “wrongful foreclosure” claim is conclusively barred by *res judicata* (*Sakal v Bank of New York Mellon*, 172 AD3d 640, 641 [1st Dept 2019]).

Finally, the complaint must be dismissed as Plaintiffs have failed to state a cause of action. In assessing whether a complaint states a cause of action, “[d]ismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery” (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]).

“A plaintiff asserting a cause of action alleging fraud must plead all of the following elements: (1) a material misrepresentation or a material omission of fact which was false and which the defendant knew to be false, (2) made for the purpose of inducing the plaintiff to rely upon it, (3) the plaintiff’s justifiable reliance on the misrepresentation or material omission, and (4) injury” (*Nabathorian v Nabathorian*, 127 AD3d 1043, 1043-44 [2d Dept 2015]). Here, Plaintiffs fail to plead any of these elements. Indeed Plaintiffs provide no evidence whatsoever to establish any of these elements, but rather offers only conclusory and unsupported arguments and assertions. Accordingly, the fraud claim must be dismissed.

Likewise, Plaintiffs fail to make out a claim relating to unjust enrichment. To state a claim of unjust enrichment, a plaintiff must establish that: (1) the defendant benefited; (2) the defendant benefited at the plaintiff’s expense; and (3) that equity and good conscience require restitution (*Cruz v McAnaney*, 31 AD3d 54 [2d Dept 2006]; *Marini v Lombardo*, 79 AD3d 932, 934 [2d Dept 2010]).

As a threshold matter, it is settled law that the existence of a valid and enforceable contract precludes equitable causes of action such as unjust enrichment (*see Clark-Fitzpatrick, Inc. v Long*

*Island R.R. Co.*, 70 NY2d 382, 388 [1987]). Here, the parties have signed a mortgage contract. In any event, Plaintiffs have wholly failed, to demonstrate that the elements required for an unjust enrichment claim have been met. Rather, they only offer conclusory and unsupported statements in support of their claim.

**III. CONCLUSION**

Based on the foregoing, it is hereby:

ORDERED, that Defendants' motions to dismiss the complaint are granted, and this action is hereby dismissed, and it is further,

ORDERED, that any applications for relief not specifically addressed in this Order are denied.

This constitutes the Decision and Order of the Court.

Dated: Long Island City, New York  
April 30, 2026

SD

SCOTT DUNN, J.S.C.

HON. SCOTT DUNN

