Federal Natl. Mtge. Assn. v Berquin
2026 NY Slip Op 31909(U)
April 30, 2026
Supreme Court, Kings County
Docket Number: Index No. 507882/2014
Judge: Carolyn Walker-Diallo
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FRP4, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 320 Jay Street, Brooklyn, New York, on the 30th day of April 2026.

PRESENT:

HON. CAROLYN WALKER-DIALLO, J.S.C.

Index No.: 507882/2014

_____ x

FEDERAL NATIONAL MORTGAGE ASSOCIATION,

Plaintiff,

DECISION AND ORDER

-against-

JUDE BERQUIN, et al.,

Defendants.

_____ x

Recitation, as required by CPLR 2219 (a), of the papers considered in the review of this Motion:

Papers	**Numbered**
Motion, Affirmations in Support, and Exhibits	NYSCEF Doc. Nos. 244-266
Affirmation in Opposition	NYSCEF Doc. No. 270
Affirmation in Reply	NYSCEF Doc. No. 271
Plaintiff's Supplemental Affirmation	NYSCEF Doc. No. 278
Defendant and Non-Party's Supplemental Affirmation	NYSCEF Doc. No. 280

Motion Sequence #9

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

Plaintiff moves for an Order: (1) discontinuing this action as against Jude Berquin ("Defendant Berquin" or "borrower"); (2) granting default judgment; (3) granting an order of reference; and (4) amending the caption. Defendant Berquin and Non-Party 1057 EAST 83RD ST LLC ("the LLC") oppose, and Plaintiff submits reply papers. Pursuant to the interim order by this

Court dated December 2, 2025, Plaintiff, Defendant Berquin and the LLC submit supplemental papers. *See* Decision and Order of the Hon. Carolyn Walker-Diallo dated December 2, 2025, NYSCEF Doc. No. 277. For the foregoing reasons, Plaintiff's motion is GRANTED in part and DENIED in part.

RELEVANT FACTUAL AND PROCEDURAL HISTORY

As is relevant here, this Court previously denied Plaintiff's motion for the same relief sought in the instant motion by order dated August 26, 2024. *See* Decision and Order of the Hon. Carolyn Walker-Diallo dated August 26, 2024, NYSCEF Doc. No. 229. Plaintiff subsequently moved to reargue the order but then withdrew its motion. The instant motion follows.

DISCUSSION

"The determination of a motion for leave to voluntarily discontinue an action pursuant to CPLR 3217 (b) rests within the sound discretion of the court. Generally such motions should be granted unless the discontinuance would prejudice a substantial right of another party, circumvent an order of the court, avoid the consequences of a potentially adverse determination, or produce other improper results." *Cenlar FSB v. Rabinovitz*, 241 A.D.3d 1261, 1262 (2d Dep't 2025) (Internal quotation marks and citations omitted).

"Pursuant to RPAPL 1311 (1), 'necessary defendants' in a mortgage foreclosure action include, among others, '[e]very person having an estate or interest in possession, or otherwise, in the property . . . after the determination of a particular estate therein.'" *Nationstar Mtge., LLC v. Foltishen Inst.*, 199 A.D.3d 1011, 1012 (2d Dep't 2021), citing RPAPL 1311 (1). However, "[a] mortgagor who has made an absolute conveyance of all his or her interest in the mortgaged

premises is not a necessary party to a foreclosure action unless a deficiency judgment is sought." *Cenlar FSB*, 241 A.D.3d at 412.

Here, there is no dispute that Defendant Berquin transferred the property to the LLC post-commencement, and that Plaintiff has waived its claim for deficiency judgment against the borrower. *See* Affirmation of Robert Ortega dated September 24, 2024, NYSCEF Doc. No. 265 at ¶15. Therefore, Defendant Berquin is not a necessary party to this action. Accordingly, Plaintiff's motion to discontinue as against Defendant Berquin is GRANTED.

Once this action is discontinued against Defendant Berquin, the LLC is no longer a purchaser from Defendant pursuant to CPLR 6501 (a). This section provides, in relevant part, that a "notice of pendency may be filed in any action in a court of the state or of the United States in which the judgment demanded would affect the title to . . . real property . . . The pendency of such an action is constructive notice, from the time of filing of the notice only, *to a purchaser from, or incumbrancer against, any defendant named in a notice of pendency* indexed in a block index against a block . . . *or any defendant against whose name a notice of pendency is indexed*. A person whose conveyance or incumbrance is recorded after the filing of the notice is bound by all proceedings taken in the action after such filing to the same extent as a party" (*Emphasis added*). Without a defendant for the LLC to step into the shoes of in this action, its rights under CPLR 1018 are effectively extinguished.

CPLR 1018, titled Substitution upon transfer of interest, provides that "[u]pon any transfer of interest, the action may be continued by or against the original parties unless the court directs the person to whom the interest is transferred to be substituted or joined in the action." In the absence of substitution or joinder, discontinuing the action against Defendant Berquin also operates as to discontinue against the LLC, its successor in interest, which would be an absurd

result. Under CPLR 6501 (a), the purchaser bound "to the same extent as a party" only serves to bind the purchaser as long as the defendant remains a party. Once the defendant, here the borrower, is discontinued from the action, the LLC is no longer a *purchaser from defendant*. "When an action is discontinued, it is as if it had never been; everything done in the action is annulled and all prior orders in the case are nullified." *Stone Mountain Holdings, LLC v. Spitzer*, 119 A.D.3d 548, 549 (2d Dep't 2014); *see also Loeb v. Willis*, 100 N.Y. 231 (1885).

As such, discontinuing this action against Defendant Berquin without *also* seeking to substitute or join the LLC effectively nullifies the impact of the notice of pendency on the LLC, which has "a statutory right, pursuant to CPLR 1018, to continue the prior action in the prior holder's place, even in the absence of a formal substitution." *Wells Fargo Bank, N.A. v. Eitani*, 148 A.D.3d 193, 194 (2d Dep't 2017); *see also Holtz v. Blackstone Bldrs. Holding Co., LLC*, 235 A.D.3d 1207 (2d Dep't 2025). *See Wells Fargo Bank, NA v. McKenzie*, 183 A.D.3d 574, 575 (2d Dep't 2020) ("in the absence of formal substitution, Plotch, as McKenzie's successor in interest, was entitled to continue to defend the action in McKenzie's name"). Finding otherwise would render CPLR 1018's protections meaningless in a non-foreclosure-related context and allow a plaintiff to strategically circumvent its named successor's rights. *See Wells Fargo Bank*, 148 A.D.3d at 194; CPLR 1018. Thus, the successor's statutory right to continue the action would exist solely on paper, subject to extinguishment at the plaintiff's election. A plain reading of the statute disallows such interpretation as statutory rights are not to be read in a manner that renders them superfluous or permits a party to accomplish indirectly what it cannot do directly. *See Matter of Hoffmann v. N.Y. State Ind. Redistricting Commn.*, 41 N.Y.3d 341 (2023); *see also Matter of Jun Wang v. James*, 40 N.Y.3d 497 (2023).

Where the Legislature has conferred a procedural right on a party whose interests are impacted, a plaintiff's tactical maneuvering cannot be permitted to defeat that right. Here, once Plaintiff elected not to proceed against the borrower, Plaintiff also effectively elected to discontinue against the LLC, his successor. Plaintiff provides no authority to discontinue as against one party without also proceeding against its successor (and has not moved for such relief), nor for its right to strip the LLC's statutory and due process rights in this action. The LLC does not bear the burden of seeking joinder or substitution when exercising its rights under CPLR 1018.

The Court finds the reasoning of the court in *U.S. Bank N.A. v. Rodney*, 2026 NY Slip Op 30223 (U) at 13 (Sup. Ct. Kings Co. 2026), persuasive on this issue: "[a]s a simple matter of procedural due process, it is the duty of a plaintiff to join the proper parties, and not on the non-party to seek discretionary intervention," citing *Martin v. Wilks*, 490 U.S. 755, 763 (1989) ("a party seeking judgment binding on another cannot obligate that person to intervene; he must be joined"). *See also Deutsche Bank Natl. Trust Co. v. Palma*, 2026 NY Slip Op 02103 at 3 (2d Dep't 2026) ("contrary to the plaintiff's contention, the Supreme Court should have considered the merits of the motion of IPA, as successor in interest to the Palma defendants, notwithstanding its failure to request substitution for the Palma defendants"). Therefore, upon Defendant Berquin's discontinuation, the LLC is no longer bound to this case.

However, as the LLC is an indispensable party, this action may not proceed in its absence. *See LaSalle Bank N.A. v. Benjamin*, 164 A.D.3d 1223 (2d Dep't 2018). "CPLR 1001(b) requires the court to order such persons summoned, where they are subject to the court's jurisdiction . . . The nonjoinder of necessary parties may be raised at any stage of the proceedings, by any party or by the court on its own motion, including for the first time on appeal." *Miller v. Wendy Joan St.*

Wecker Trust U/A Aug. 28, 1997, 173 A.D.3d 1007, 1009 (2d Dep't 2019). Thus, joinder of the LLC is necessary for this action to continue.

Accordingly, the Court may direct joinder of the LLC under the unusual circumstances herein. CPLR 3217 (b) grants the Court authority to grant a motion for discontinuance "upon terms and conditions, as the court deems proper." Moreover, CPLR 1018 expressly provides that "the action may be continued by or against the original parties unless the court directs the person to whom the interest is transferred to be substituted or joined in the action." Unlike in the cases cited by Plaintiff, this Court is not directing or substitution[1] or joinder[2] "on its own initiative." Rather, Plaintiff invoked CPLR 3217 (b), which expressly grants the Court authority to grant discontinuance "upon terms and conditions, as the court deems proper." Permitting discontinuance as to Defendant Berquin without *also* joining the LLC would unquestionably prejudice the LLC's substantial rights. *See Cenlar FSB*, 241 A.D.3d at 1262.

Consequently, the Court finds in its discretion that discontinuance without joinder would be amount to "substantial prejudice" to the LLC and would produce "improper results." Under the powers afforded the Court to grant discontinuance "upon terms and conditions, as the court deems proper," the Court directs joinder of the LLC. *See Mahinda v. Bd. of Collective Bargaining*, 91 A.D.3d 564, 565 (1st Dep't 2012) ("compulsory joinder provisions are intended 'not merely to

[1] The Court notes that Plaintiff is correct no motion for substitution has been filed. However, this is now moot given the discontinuance against the borrower, Defendant Berquin, as there is no longer a party to substitute. Therefore, joinder or dismissal are the only available remedies because the Court may not proceed in the absence of an indispensable party.

[2] *See Matter of Schenectady County. Dept. of Social Servs. v. Noah DD.*, 200 A.D.3d 1509 (3d Dep't 2021).

provide a procedural convenience but to implement a requisite of due process--the opportunity to be heard before one's rights or interests are adversely affected"). Therefore, it is hereby

ORDERED, that the branch of plaintiff's motion to discontinue the action as against Defendant Jude Berquin is GRANTED pursuant to the terms set forth above; that it is further

ORDERED, that 1057 EAST 83RD ST LLC is not bound to this action, and the discontinuance of this action against Defendant Jude Berquin also operates to discontinue the action against its successor in interest, 1057 EAST 83RD ST LLC; and it is further

ORDERED, that upon the discontinuance, the caption of this action and notices of pendency are amended *nunc pro tunc* to commencement of this action to remove Defendant Jude Berquin as a party defendant, and the caption of this action shall be amended to read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----------X

FEDERAL NATIONAL MORTGAGE ASSOCIATION,

Plaintiff,

-against- Index No.: 507882/2014

AMERICAN EXPRESS BANK, F.S.B.; AMERICAN EXPRESS CENTURION BANK; CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD; CITY OF NEW YORK PARKING VIOLATIONS BUREAU; CITY OF NEW YORK TRANSIT ADJUDICATIONS BUREAU; GREG BROTH; MARY FOSTER; CHARLES FOSTER; BEATRICE JEANTY; EDELYN JEANTY; WENDELL CHAPMAN,

Defendants.

----------X

and the County Clerk is directed to amend the caption upon presentment of this Order; and it is further

ORDERED, that within thirty (30) days from upload of this Order to NYSCEF, Plaintiff shall file and serve a supplemental summons and amended complaint that joins 1057 EAST 83RD ST LLC as a party defendant; and it is further

ORDERED, that in the event Plaintiff fails to effect such joinder within thirty (30) days of entry of this Order, the Court may, upon motion or on its own initiative, dismiss this action for non-joinder of an indispensable party; and it is further

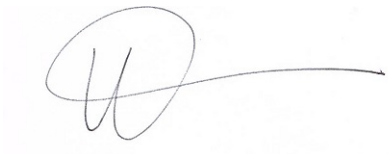
ORDERED, the branches of Plaintiff's motion seeking default judgment, an order of reference, and further amendment of the caption are DENIED.

CONCLUSION

Accordingly, Plaintiff's motion is GRANTED in part and DENIED in part. The Court has considered the additional contentions of the parties not specifically addressed herein. To the extent that any relief requested was not addressed by the Court, it is hereby DENIED. Plaintiff shall serve notice of entry of this order within ten (10) days of upload to NYSCEF upon the LLC, Defendants and all parties in this action, with those not participating in e-filing to be noticed via first-class mail.

This constitutes the Decision and Order of the Court.

ENTER:



Hon. Carolyn Walker-Diallo, J.S.C.