

Bayview Loan Servicing, LLC v 1070 Park Place, LLC
2026 NY Slip Op 31982(U)
May 5, 2026
Supreme Court, Kings County
Docket Number: Index No. 511927/19
Judge: Genine D. Edwards
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At an IAS Term, Commercial Part 6 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 5th day of May 2026.

P R E S E N T:

HON. GENINE D. EDWARDS,
Justice.

-----X

BAYVIEW LOAN SERVICING, LLC,
a Delaware Limited Liability Company,

Plaintiff,

-against-

1070 PARK PLACE, LLC,
REGINALD WHITE,
WINSTON WHITE, *et al.*,

Defendants.

-----X

DECISION AND ORDER

Index No. 511927/19

Mot. Seq. No. 6

1070 Park Place
Brooklyn, NY 11213
Block 1243, Lot 34

The following e-filed papers read herein:

NYSCEF Doc Nos.:

Order to Show Cause, Affirmations, and Exhibits Annexed. . . .	121-127, 137-144
Opposing Affirmations and Exhibits Annexed.	145-154
Other Papers (Interim Orders).	130, 136

In this action to foreclose a mortgage on a five-family brownstone located at 1070 Park Place in Brooklyn, New York (the property), and titled in defendant 1070 Park Place, LLC (LLC), codefendant Winston White (Winston) moved, by Order to Show Cause with Temporary Restraining Order, dated February 3, 2026, for an order: (1) “vacating the summary judgment motion entered against [him]”; (2) “vacating the default judgment motion entered against [him]”; (3) “reinstating [his] answer to the complaint”; (4) “stopping the foreclosure of the [p]roperty”; and/or (5) “staying the foreclosure sale of the [P]roperty for 120 days”; and for a further order that, pending a hearing thereon, the aforementioned “temporary restraining

order shall remain in full force and effect until the return date of [his] application” (the OSC) (NYSCEF Doc No. 127). By order, dated February 5, 2026, the Court granted the OSC “to the extent of staying [the then-scheduled] foreclosure sale [of the property] until May 28, 2026” (the interim order) (NYSCEF Doc No. 130). The interim order further provided, in relevant part, that “[Winston’s] answer is reinstated; [and] the summary judgment motion and default judgment motion shall be heard on March 31, 2026.” By order, dated March 31, 2026, the Court adjourned, at Winston’s request, the OSC hearing date to April 30, 2026 (NYSCEF Doc No. 136). Plaintiff Bayview Loan Servicing, LLC (plaintiff) opposed Winston’s OSC. After oral argument on April 30, 2026, the Court reserved decision on Winston’s OSC.

Background

Winston’s contentions in support of his OSC (and the vacatur of the underlying orders in this action) are three-fold: first, he “did not execute the note or mortgage at issue in this [action]”; second, he “did [not] . . . mortgage the [p]roperty . . . as collateral to secure [the note and mortgage]”; and third, the “[d]ocuments mortgaging the [p]roperty . . . were done without [his] knowledge or consent.”¹ The alleged merits of Winston’s contentions must be assessed against the background of two prior related actions, both in Supreme Court, Kings County, and against the earlier events in this action. The two prior related actions are: (1) a later action commenced by plaintiff against Winston, his brother Reginald White (Reginald), and the LLC under index No. 13553/2013, titled *Bayview Loan Serv., LLC v Winston White, Reginald White, and 1070 Park Place, LLC* (the quiet-title action); and (2) the earlier action commenced

¹ Supporting Affirmation of Winston White, dated January 30, 2026, ¶¶ 2-3 (NYSCEF Doc No. 122).

by Winston against Reginald and the LLC under index No. 9552/2008, titled *Winston White v Reginald White and 1070 Park Place, LLC* (the partition action).

1. Summary of the Events in the Prior Actions

In a prior appeal in the quiet-title action, the Second Judicial Department summarized the prior actions, as follows:

“The property . . . was [originally] owned by the defendants Reginald . . . and Winston . . . as tenants-in-common, with each holding a 50% interest in the property. In a deed dated March 30, 2006, executed by Reginald, he purported to convey the entire property to the defendant [LLC], a company of which Reginald was a principal. On or about December 14, 2007, as security for a loan given by [nonparty] InterBay Funding, LLC (. . . InterBay), to [the LLC], [the LLC] gave InterBay a mortgage purporting to encumber the entire property. This mortgage was later assigned to the plaintiff.

In March 2008, Winston commenced an action against Reginald and Park, *inter alia*, to partition the subject property (. . . the partition action). Neither InterBay nor the plaintiff was named as a party in the partition action, and no notice of pendency was filed with respect to the property in the partition action. Reginald and [the LLC] failed to appear in the partition action, and *in a default judgment dated February 9, 2009, the Supreme Court [Miller, J.], inter alia, declared that the conveyance of the property from Reginald to [the LLC] by deed[,] dated December 14, 2007, was void ab initio.*

In 2013, the plaintiff commenced this [quiet-title] action against Reginald, [the LLC], and Winston, asserting three causes of action, two of which are relevant to this appeal. In the first cause of action, the plaintiff sought a judgment declaring that it is not bound by the judgment in the partition action, that [the LLC] holds a 50% interest in the property, and that the plaintiff’s mortgage encumbers [the LLC’s] interest. In its second cause of action, the plaintiff alternatively sought a judgment declaring that the plaintiff is the holder of an equitable lien against Reginald’s interest in the property according to the terms and conditions of its mortgage. Reginald and Park did not appear in this action. Winston moved pursuant to CPLR 3211 (a) (1) and (7) to dismiss the complaint insofar as asserted against him. The plaintiff appeals from so much of an order[,] dated June 12, 2014 [Martin, J.], as granted those branches of Winston’s motion which were pursuant to CPLR 3211 (a) (1) and (7) to dismiss the first and second causes of action insofar as asserted against him.

Here, the Supreme Court should have denied those branches of Winston's motion which were pursuant to CPLR 3211 (a) (1) and (7) to dismiss the first and second causes of action insofar as asserted against him. While the default judgment in the partition action declared that the deed from Reginald to [the LLC] is void, *the plaintiff is not bound by that judgment because the plaintiff was not a party in the partition action, or in privity with a party in the partition action*. Further, when a cotenant who has a partial interest in real property executes a deed that purports to convey full title to the property, the deed is not entirely void; rather, the deed is effective, but only to the extent of conveying the grantor's interest in the property. Thus, *since Reginald had a 50% interest in the subject property at the time he executed the deed that purported to convey full title of the property to [the LLC], this deed effectively conveyed a 50% interest in the property to [the LLC]*. Moreover, a mortgage given by one of several parties with an interest in the mortgaged property is not invalid; it gives the mortgagee security, but only up to the interest of the mortgagor. Thus, the mortgage given by [the LLC] to InterBay and later assigned to the plaintiff encumbers [the LLC's] 50% interest in the property. Accordingly, the documentary evidence does not utterly refute the plaintiff's factual allegations with respect to the first cause of action, and *the first cause of action sufficiently states a cause of action for a judgment declaring that the plaintiff is not bound by the judgment in the partition action, that [the LLC] holds a 50% interest in the property, and that the plaintiff's mortgage encumbers [the LLC's] interest*. The documentary evidence also does not utterly refute the plaintiff's factual allegations regarding the second cause of action, and *the second cause of action sufficiently states a cause of action for a judgment declaring that the plaintiff is the holder of an equitable lien against Reginald's interest in the property according to the terms and conditions of its mortgage.*"

Bayview Loan Serv., LLC v. White, 134 A.D.3d 755, 24 N.Y.S.3d 310 (2d Dept. December 5, 2015) (internal quotations marks and citations omitted; emphasis added).

2. Post-Remand Court Orders in the Quiet-Title Action

Following remand of the quiet-title action by the Second Judicial Department to Justice Larry D. Martin, the latter issued two final, res judicata determinations on the merits, in the form of the orders, dated June 13, 2017, and September 10, 2018.

By order, dated June 13, 2017, Justice Martin held that:

"The plaintiff's motion for a default judgment against defendants Reginald . . . and [the LLC] on the first cause of action [in the quiet-title action] is granted. In accordance with the [aforementioned Second Judicial Department's decision], the plaintiff is not bound by the judgment in the partition action . . . recorded

under [City Register File No. or CRFN] that declared void the December 14, 2007 deed between Reginald . . . and [the LLC].

The deed[,] dated December 14, 2007[,] between Reginald . . . and [the LLC], recorded January 10, 2008 under [CRFN] is a valid conveyance of Reginald[’s] . . . 50% interest in the property . . . to [the LLC].

The \$650,000.00 mortgage[,] dated December 14, 2007[,] given by [the LLC] to InterBay . . . , recorded January 10, 2008 under [CRFN] is a valid lien and encumbrance upon [the LLC’s] 50% interest in the property.

The Kings County Office of the New York City Register is . . . directed to record a certified copy of this Order against the property, Block 1243, Lot 34.”²

Further, by order, dated September 10, 2018. Justice Martin held, in relevant part, that:

“Plaintiff holds an equitable mortgage lien on the . . . property . . . in the amount of \$397,899.06, plus interest at the legal rate from December 19, 2007. *superior and paramount in priority to the liens, claims, and interests of Defendant, Winston . . . , and the liens, claims and interests of all other Defendants [i.e., Reginald]*

[T]he Kings County Office of the New York City Register . . . is directed to record a certified copy of this Order . . . against . . . Block 1243, Lot 34”³

3. Court Orders Pre-Dating the OSC in this Action

Following the resolution of the quiet-title action by the foregoing orders, plaintiff commenced this action to foreclose both its legal mortgage in the principal sum of \$650,000 and (as determined by Justice Martin in the quiet-title action) its equitable mortgage in the principal sum of \$397,899.06. Winston participated in this action by four sets of different counsel: (1) Jaime Lathrop, Esq.;⁴ (2) Jaime Lathrop, Esq., and Charles Fine, Esq.,

² NYSCEF Doc No. 147, recorded against the property under CRFN 2017000250166 on July 7, 2017.

³ NYSCEF Doc No. 148, recorded against the property under CRFN 2018000350966 on October 22, 2018.

⁴ Winston’s Answer with Counterclaims, dated June 17, 2019 (NYSCEF Doc No. 10).

concurrently;⁵ (3) Thomas Tyrell, Jr., Esq., of The Sharova Law Firm;⁶ and (4) currently by Joam Alisme, Esq., of Alisme Law LLC on the OSC.

By order, dated July 18, 2022, Justice Lawrence Knipel of this court granted (as relevant herein) plaintiff's summary judgment motion and struck Winston's answer, in each instance, without opposition (the default-judgment order).⁷ On Winston's motion (by counsel Jaime Lathrop, Esq.) to vacate the default-judgment order, Justice Knipel denied outright.

In a tersely worded order, dated November 15, 2022, Justice Knipel held that:

“Mere failure to oppose [the motion] is not law office failure, and is not a reasonable excuse required for vacatur.

The record herein is bereft of the reason that the motion for summary judgment was unopposed.

Accordingly, [the] motion to vacate is denied.”⁸

Thereafter, by Order of Reference and Default Judgment, dated January 23, 2023, Justice Knipel appointed a referee to compute.⁹

Approximately one year later on October 29, 2024, Justice Knipel issued the Order Confirming Referee Report and Judgment of Foreclosure and Sale (the JFS), greenlighting the foreclosure sale of the property.¹⁰

⁵ Winston and Reginald's joint Answer & Counterclaims, dated August 5, 2019, which was re-filed one year later as the LLC and Reginald's joint Answer & Counterclaims, dated August 5, 2020 (NYSCEF Doc Nos. 11 and 37, respectively).

⁶ Referee's Recommendation After Hearing, dated May 10, 2024, page 1 (listing Attorney Tyrell as Winston's counsel). Transcript of Hearing before the Referee to Compute, dated July 31, 2023, reflecting Attorney Tyrell's participation in the hearing. Both the Referee's Recommendation and the Hearing Transcript are e-filed under NYSCEF Doc No. 57.

⁷ NYSCEF Doc No. 39.

⁸ NYSCEF Doc No. 48 (underlining in the original).

⁹ NYSCEF Doc No. 52.

¹⁰ NYSCEF Doc No. 96.

4. Winston's OSC and Supporting Documents

In January 2026, Winston (by his newly retained counsel, Joam Alisme, Esq.) filed the instant OSC. The OSC is supported by Winston's affirmation which (as quoted above) averred that: (1) he "did not execute the note or mortgage at issue in this [action]"; (2) he "did [not] . . . mortgage the [p]roperty . . . as collateral to secure [the note and mortgage]"; and (3) the "[d]ocuments mortgaging the [p]roperty . . . were done without [his] knowledge or consent."¹¹

Winston's counsel, Joam Alisme, Esq., contended that:

[¶ 6] "[Winston] timely appeared in this action and filed an answer asserting fifteen affirmative defenses, demonstrating his clear intent to defend this case on the merits.

[¶ 7] The summary judgment and default judgments entered against [Winston] were not the product of willful neglect or abandonment. Rather, they resulted from law office failure by prior counsel, including the failure to oppose dispositive motions and the failure to advise [Winston] that his ownership interest was at risk of being extinguished.

[¶ 8] [Winston] was never informed by his prior attorneys that summary judgment had been entered against him. He learned of these defects only through an unrelated attorney, at which point he promptly sought new counsel and pursued relief."¹²

In the accompanying memorandum of law, Winston's counsel contended that the default-judgment order and the JFS should be set aside on the grounds of "an inadvertent mistake" and "a reasonable excuse."¹³ Significantly, however, Winston's counsel failed to mention (and thus completely ignored) the Second Judicial Department's decision/order, and Justice Martin's post-remand orders, in the quiet-title action. Further, Winston's counsel

¹¹ Winston's Supporting Affirmation, dated January 30, 2026, ¶¶ 2-3 (NYSCEF Doc No. 122).

¹² Affidavit [Affirmation] of Joam Alisme in Support of Application to Stay Foreclosure Sale and Vacate Summary and Default Judgment Orders, dated January 30, 2026, ¶¶ 6-8, unnumbered page 3 of 4 (NYSCEF Doc No. 123).

¹³ Memorandum of Law in Support of Defendant Winston White's Emergency Order to Show Cause to Stay Foreclosure Sale and Vacate Summary and Default Judgments, dated January 30, 2026, pages 4-6 (NYSCEF Doc No. 125).

included as part of the supporting papers the February 9, 2009 order (Miller, J.) in the partition action, which order (as discussed above) was subsequently vacated and declared void in the quiet-title action on remand from the Second Judicial Department.¹⁴

Discussion

As noted, in response to the OSC, the Court issued an interim order, dated February 5, 2026, which (in relevant part) held that “[Winston’s] answer is reinstated; [and] the summary judgment motion and default judgment motion shall be heard on [a date certain].” After oral argument and on full review of the record, however, the Court finds that the interim order, in reinstating Winston’s answer, in effect, vacated the default-judgment order and the JFS, in contravention of the “law of the case” doctrine.¹⁵

“The doctrine of the ‘law of the case is a rule of practice, an articulation of sound policy that, when an issue is once judicially determined, that should be the end of the matter as far as Judges and courts of co-ordinate jurisdiction are concerned.” *Martin v. City of Cohoes*, 37 N.Y.2d 162, 371 N.Y.S.2d 687 (1975), *rearg denied* 37 N.Y.2d 817, 375 N.Y.S.2d 1029 (1975). “Such a rule is essential to an orderly and seemly administration of justice in a court composed of several judges.” *Carbon Cap. Mgt., LLC v. American Exp. Co.*, 88 A.D.3d 933, 932 N.Y.S.2d 488 (2d Dept. 2011) (internal quotation marks omitted). “The doctrine of the law of the case seeks to prevent relitigation of issues of law that have already been determined at an earlier stage of the proceeding.” *Brownrigg v. New York City Hous. Auth.*, 29 A.D.3d 721,

¹⁴ NYSCEF Doc No. 144.

¹⁵ Plaintiff raised the doctrine of the law of the case in its Reply and Affirmation in Opposition to the OSC, dated April 22, 2026, ¶ 16, and in its counsel’s preceding letters to the Court, dated March 12, 2026 and March 27, 2026 (NYSCEF Doc Nos. 145, 132, and 135, respectively).

815 N.Y.S.2d 681 (2d Dept. 2006). “The law of the case doctrine applies only to legal determinations that were necessarily resolved on the merits in a prior decision and to the same questions presented in the same case.” *U.S. Bank N.A. v. Moss*, 186 A.D.3d 1753, 129 N.Y.S.3d 801 (2d Dept. 2020) (internal quotation marks and citations omitted). “[T]he doctrine of the law of the case . . . forecloses reexamination of [an issue previously determined] *absent a showing of newly discovered evidence or a change in the law.*” *Kaygreen Realty Co., LLC v. IG Second Generation Partners, L.P.*, 116 A.D.3d 667, 983 N.Y.S.2d 293 (2d Dept. 2014) (emphasis added).

Here, Winston failed to come forward with any “newly discovered evidence or a change in the law.” Winston’s averments of ignorance and of his non-involvement with the property and in the underlying litigation are contradicted not once, but twice: (1) the Second Judicial Department’s decision/order and Justice Martin’s post-remand orders in the quiet-title action; and (2) Winston’s continued legal representation by multiple consecutive counsel in this action. Winston’s bare assertion that he was misled or misinformed by prior counsel is based solely on his say-so (or what lawyers call *ipse dixit* [“he himself said it”]). Accordingly, the doctrine of “law of the case” precludes this Court from reconsidering Justice Knipel’s prior orders; namely, the default-judgment order and the JFS. *See e.g. Deutsche Bank Natl. Tr. Co. v. Clark*, 246 A.D.3d 1029, ___ N.Y.S.3d ___ (2d Dept. 2026); *U.S. Bank N.A. v. Ramanababu*, 202 A.D.3d 1139, 163 N.Y.S.3d 254 (2d Dept. 2022).

The Court considered the parties’ remaining contentions and found them either unavailing or moot in light of its determination. The internal resident’s progress note, dated

March 13, 2026, regarding Winston then “receiving emergent care” was unaffirmed and thus was not considered.¹⁶ All relief not specifically granted herein is denied.

Conclusion

Based on the foregoing, it is

ORDERED that the interim order, dated February 5, 2026 (NYSCEF Doc No. 130), is *vacated*; and it is further

ORDERED that the OSC, dated February 3, 2026 (NYSCEF Doc No. 127), is *denied in its entirety*, and all stays thereunder are vacated; and it is further

ORDERED that, absent a prior stay from the Second Judicial Department, the foreclosure sale of the property shall take place as scheduled on Thursday, May 28, 2026, at 2:30 PM;¹⁷ and it is further

ORDERED that the Part Clerk is directed to delete the marking for Motion Seq. No. 6 as “Decided: 02/05/2026[;] Granted to the Extent of the Order” with the following: “Denied,” with the applicable date; and it is further

ORDERED that, inasmuch as the partition action under index No. 9552/2008, titled *Winston White v Reginald White and 1070 Park Place, LLC*, remains pending before Justice Saul Stein, plaintiff’s counsel is directed to electronically file a copy of this Decision and Order with notice of entry in the partition action; and it is further

¹⁶ NYSCEF Doc No. 134. The resident’s note is unredacted and reflects that Winston (born in the first quarter of 1965) is 61 years old.

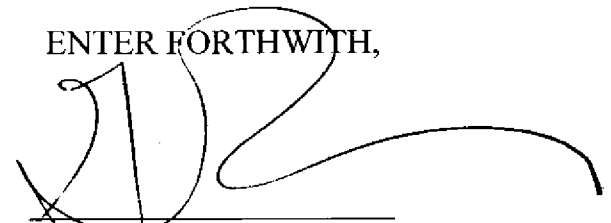
¹⁷ Since July 2020, the property has become part of the Crown Heights North Historic District III, Brooklyn, Designation List No. 479. See Notice of Designation Pursuant to Chapter 74 Section 3020 of the New York City Charter and Chapter 3 of Title 25 of the Administrative Code of the City of New York, dated July 27, 2020, CRFN 2020000213058 (available on ACRIS).

ORDERED that the Kings County Office of the New York City Register is directed to record a certified copy of this Order and index same against Block 1243, Lot 34 to reflect the relief granted herein; and it is further

ORDERED that plaintiff's counsel is directed to electronically serve a copy of this Decision and Order with notice of entry on the other parties' respective counsel (and on the U.S. Attorney's General Office for the Eastern District of New York, contact person, Cyril Murray, cyril.murray@usdoj.gov and on Beth P. Schwartz, Assistant U.S. Attorney, beth.schwartz@usdoj.gov in accordance with the United States Treasury's Notice of Appearance, Waiver, and Conditional Assertion of Claim to Surplus Monies, dated June 17, 2019 at NYSCEF Doc No. 9), and to electronically file an affidavit of service thereof with the Kings County Clerk.

This constitutes the Decision and Order of the Court.

ENTER FORTHWITH,



Gene D. Edwards
J. S. C.