

U.S. Bank Trust, N.A. v Alibocas
2026 NY Slip Op 32024(U)
May 8, 2026
Supreme Court, Kings County
Docket Number: Index No. 503368/2016
Judge: Rupert V. Barry
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At an IAS Term, Part 13, 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, NY on the 8th day of May 2026.

P R E S E N T:

HON. RUPERT V. BARRY, J.S.C.

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U.S. BANK TRUST, N.A., as TRUSTEE FOR LSF8
MASTER PARTICIPATION TRUST,

Plaintiff,

Index No.: 503368/2016

-against-

FLOYD ALIBOCAS a/k/a FLOYD ALI BOCAS a/k/a
FLOYD S. ALIBOCAS, AUDRA ALIBOCAS a/ka
AUDRA ALI BOCAS, HOME HEATING OIL CORP.,
PARAGON OIL BURNER SERVICE AND REPAIR
COMPANY INC., CACH LLC,
DISCOVER BANK, and “JOHN DOE #1” through
“JOHN DOE #10” , the last 10 names being fictitious and
unknown to the Plaintiff, the person or parties intended being
the persons or parties , if any, having or claiming an interest
in or lien upon the mortgaged premises described in the
verified complaint

Defendant.

DECISION/ORDER & JUDGMENT
AFTER BENCH TRIAL

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A bench trial of the above captioned case was held before this Court on April 24, 2025,
with a further hearing held on April 20, 2026.

Upon due consideration of the evidence presented at this trial, this Court finds as follows:

Background

Plaintiff U.S Bank Trust asserts a breach of contract claim against Defendants. Plaintiff
serves as trustee for LSF8 Master Participation Trust, a fully organized limited liability company,

corporation, association, bank, credit union or trust company. Defendant AUDRA ALIBOCAS a/ka AUDRA ALI BOCAS (hereinafter “Defendant Audra”) and Defendant FLOYD ALIBOCAS a/k/a FLOYD ALI BOCAS a/k/a FLOYD S. ALIBOCAS (hereinafter “Defendant Floyd”) resided and presently reside at 1775 East 48th Street, Brooklyn, NY 11234 (hereafter “the Property”).

This action was to foreclose on the consolidated mortgage on the Property issued April 13, 2005. The consolidated mortgage was in the principal amount of \$517,413.34. The interest rate was 7.890% with monthly payments of \$3,178.22. The note and mortgage were executed by Defendants Floyd and Audra Alibocas. The mortgage agreement was made between Beneficial Homeowner Service Corporation (hereinafter “Beneficial”) and Alibocas Defendants.

The note and mortgage authorized Plaintiff to accelerate the entire debt secured by the mortgage and sell the mortgaged premises if Defendants Floyd and Audra failed to make any payment of the principal and interest. On or about November 6, 2009, Beneficial commenced a foreclosure action against Defendants Floyd and Audra asserting that Defendants had defaulted.

After participating in a Neighborhood Assistance Corporation of America’s (hereafter “NACA”) “Same Day Mortgage Modifications Save the Dream Tour” at the Jacob Javits Center in December 2009, Defendant Floyd’s loan payment was reduced to a rate of 3%. Defendants Floyd and Audra continued to make mortgage payments into 2012 at a reduced rate. On November 18, 2012, Defendants failed to pay the principal and interest due, and every month thereafter. Consequently, in 2016, Plaintiff filed a foreclosure action against Defendants.

Plaintiff asserts the following causes of action in its verified complaint: breach of contract for failure to comply with the terms and conditions of the April 13, 2005, loan agreement and the and mortgage, by failing to pay the principal and interest, taxes, assessments, water rates, insurance

premiums, and/or other charges.

Defendants raised two issues in their opposition to Plaintiff's claims. First, Defendants claim improper notice under RPAPL § 1304. Second, Defendants assert that Plaintiff's action is untimely under the statute of limitations.

RPAPL PRE FORECLOSURE NOTICE REQUIREMENTS

Defendants claim that Plaintiff failed to properly serve Defendants in violation of RPAPL § 1304. Section 1304 of the RPAPL provides that, "at least ninety days before a lender, ... commences legal action against the borrower... such lender...shall give notice to the borrower." RPAPL § 1304 [2] states that the notice "shall be sent... by registered or certified mail and also by first-class mail to the last known address of the borrower, and to the residence that is the subject of the mortgage." The RPAPL also provides the required contents of the notice. Moreover, proper notice is a condition precedent to bringing a foreclosure action, and the failure to strictly comply with the notice requirement can result in a dismissal (*Citibank, N.A. v Conti-Scheurer*, 172 AD3d 17, 25 [2d Dept 2019]).

To demonstrate compliance with the statute, Plaintiff must supply proof of mailing. Proof of mailing may include "affidavits of mailing or domestic return receipts with attendant signatures, or proof of a standard office mailing procedure designed to ensure that items are properly addressed and mailed, sworn to by someone with personal knowledge of the procedure" (*Wells Fargo Bank, NA v Mandrin*, 160 AD3d 1014, 1016 [2d Dept 2018]). "Such proof need not be supplied by the employee charged with mailing the document but can be offered in the form of an affidavit of an employee with "personal knowledge of the practices utilized by the [company] at the time of the alleged mailing" (*Cit Bank N.A. v Schiffman*, 36 NY3d 550, 556 [2021] [*internal citations omitted*]).

Here, to demonstrate compliance with the RPAPL notice requirements, Janet Gioello testified for Plaintiff. Ms. Gioello, a litigation representative for Fay Servicing LLC, the current servicer of the loan. Ms. Gioello testified that she inspected the books and records of U.S. Bank. Ms. Gioello testified that in 2015, the default letter was sent by first-class mail by Caliber Home Loans (servicer on record at the time) to the Property address. Ms. Gioello stated that the notice was sent by Covius a third-party company who was commonly used by servicers to send out notices. This Court finds that Ms. Gioello established that she had personal knowledge as to the manner in which the notice was sent. Finally, Ms. Gioello stated that an additional 90-day notice was sent by first class and certified mail on August 14, 2015. This Court finds Janet Gioello's testimony credible. This Court also finds that the RPAPL notice requirements were met.

STATUTE OF LIMITATIONS

a. Loan Modification

On November 6, 2009, Defendants defaulted on their mortgage payments. On November 9, 2009, Beneficial commenced a foreclosure action against Defendants due to default. The 2009 foreclosure action caused the remaining balance to become immediately due and payable. On or about 2009, Defendant Floyd attended a NACA meeting held at the Jacob Javitz Center to receive assistance with the due and remaining mortgage payments (tr at 94, lines 4-9). At the conclusion of the meeting, Defendant Floyd testified that he filled out the paperwork containing information regarding the loan (tr at 94, line 18; to tr at 95, line 2). Defendant Floyd also stated that he was told that he would be contacted by NACA regarding the forms that he submitted (tr at 94, line 24; to tr 95, line 2).

However, Defendant claims that he was never contacted regarding the forms. Defendant took it as an indication that he had not been approved for a loan reduction (tr at 95, lines 6-14).

However, between 2010 and 2012, Defendants resumed payments under the loan agreement at a reduced rate of 3%. When presented evidence of these reduced payments Audra and Floyd Alibocas stated that they were unaware that the mortgage had been reduced (tr at 71, lines 25; to tr at 72, line 12; tr at 87, line 8; to tr at 88, line 3).

Evidenced by the reduced payments made on behalf of Defendants, this Court finds that Defendants entered into an agreement with NACA. Testimony from Plaintiff's expert Janet Gioello regarding her review of the payment history demonstrates that the terms of the loan were modified due to the NACA loan modification (tr at 55, line 2; tr at 56, line 8). Defendants' payment history also demonstrates that there was a NACA modification (*see* NYSCEF Doc. No.: 109).

Both Defendant Floyd and Audra Alibocas testified to being unaware that their payments had been reduced. This Court does not find Defendants' testimony that they were unaware that the mortgage payments had been reduced to be credible.

b. Acceleration of the loan

Plaintiff argues that the acceleration of the loan had been revoked because there was an affirmative act that occurred within six years of the earlier acceleration (*see* NYSCEF Doc No.: 124). This affirmative act being Defendants making payments under the loan agreement. Plaintiff argues that Defendants' subsequent payments led to abandonment of the prior action through a unilateral stipulation of discontinuance on February 28, 2012. However, Defendants later defaulted in 2015, which led to the 2016 action. According to CPLR 213(4), an action for mortgage foreclosure is governed by a six-year statute of limitations. Defendants argue that this motion is untimely as it occurred over six years after the 2009 foreclosure action or their first default. Plaintiff argues that the 2009 action was discontinued through the 2012 Unilateral Stipulation of discontinuance, and that the action is timely.

A lender may revoke acceleration of its loan but must only do so through “an affirmative act of revocation occurring during the six-year statute of limitations period” (*NMNT Realty Corp. v Knoxville 2012 Tr.*, 151 AD3d 1068, 1069 [2d Dept 2017]). Initially, the burden is on the defendant to prove that the action is untimely (*Bank of New York Mellon v Craig*, 169 AD3d 627, 629 [2d Dept 2019]). If this burden is met, the plaintiff must “raise a question of fact as to whether it affirmatively revoked its election to accelerate the mortgage within the six-year limitations period” (*id.* at 629). Here, while the original default action commenced in 2009, Plaintiff abandoned that action by way of a unilateral stipulation of discontinuance in 2012. This discontinuance was endorsed by Defendants in their subsequent payments that were in line with the NACA loan modification. Consequently, when Plaintiff filed their 2016 action asserting that Defendants defaulted on their mortgage payments in 2015, Plaintiff’s filing was within six-year statute of limitations referred to in CPLR 213. This Court therefore finds that Defendants failed to adequately prove that Plaintiff’s 2016 action is untimely.

Accordingly, it is

ORDERED that, judgment is in favor of Plaintiff against all Defendants. It is further

ORDERED that, all Defendants and all persons claiming under them or any of them, subsequent to the filing of the notice of pendency of this action, be barred and foreclosed of all right, title, claim, lien and equity of redemption in the mortgaged premises; that said mortgaged premises be decreed to be sold in one parcel according to law; that the money arising from the sale be brought into court; that Plaintiff be paid the amount of principal and interest due on said Note and Mortgage as hereinbefore set forth with interest to the time of such payment, and any sums paid by Plaintiff for real estate taxes, assessments, water charges and sewer rents, insurance premium and other necessary charges or expenses to protect the lien of the Mortgage, and any

sums expended for the protection or preservation of the property covered by said Mortgage, with interest thereon from the time of such payment ; it is further

ORDERED that, Plaintiff be awarded reasonable attorneys' fees, and the costs and disbursement of this action as against Defendants Floyd Alibocas , and Audra Alibocas, and all other amounts due Plaintiff under said Note and Mortgage, so far as the amount of such money properly applicable thereto will pay the same; and that Defendants Floyd Alibocas , and Audra Alibocas be adjudged to pay any deficiency which may remain, after applying all moneys received from the sale of the mortgaged premises, of the indebtedness secured by the Note and Mortgage or to be paid to Plaintiff as costs or otherwise hereunder. It is further

ORDERED that, the monetary judgment in favor of Plaintiff is against Defendants Floyd and Audra Alibocas who owe Plaintiff as follows: (i) Unpaid Principle Balance of Note and Mortgage: \$445,296.38; (ii) Interest on Principal from October 25, 2021 to April 20, 2026, totaling \$180,136.88; (iii) Deferred Principal of \$63,419.73; (iv) taxes of \$140,559.43; (v) hazard insurance of \$26,580.20; (vi) property inspections \$2,415.00, and (vii) appraisals/BPO \$118.50; **totaling \$858,525.62.** It is further

ORDERED that, Plaintiff is awarded **attorney's fees as against** Defendants Floyd and Audra Alibocas **in the amount of \$9,4000.00**, and **cost, fees, and disbursements in the amount of \$1,892.26.**

This constitutes the decision and order of this Court.

R. V. BARRY
HON RUPERT V. BARRY, J.S.C.