

**HSBC Bank USA, N.A. v Jessup**

2024 NY Slip Op 34440(U)

November 15, 2024

Supreme Court, Nassau County

Docket Number: Index No. 609862/2021

Judge: Leonard D. Steinman

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU**

-----X  
**HSBC BANK USA, N.A., AS INDENTURE TRUSTEE  
FOR THE REGISTERED NOTEHOLDERS OF  
RENAISSANCE HOME EQUITY LOAN TRUST  
2006-3,**

**IAS Part 6  
Index No. 609862/2021  
Mot. Seq. Nos. 003-004**

**Plaintiff,**

**-against-**

**DECISION AND ORDER**

**QUENTIN M. JESSUP, CAPITAL ONE BANK  
(USA), N.A., "JOHN DOE #1" through "JOHN DOE  
#12," the last twelve names being fictitious and unknown  
to plaintiff, the persons or parties intended being the  
tenants, occupants, persons or corporations, if any,  
having or claiming an interest in or lien upon the  
Subject Property described in the Complaint.**

**Defendants.**

-----X  
**LEONARD D. STEINMAN, J.**

The following papers, in addition to any memoranda of law and/or statement of material facts, were reviewed in preparing this Decision and Order:

Defendant Jessup's Notice of Motion, Affirmation & Exhibits.....	1
Plaintiff's Affirmation in Opposition & Cross-Motion.....	2
Defendant Jessup's Affirmation in Opposition & Exhibit.....	3

Defendant Quentin M. Jessup (hereinafter "defendant") moves for an order pursuant to CPLR 2221(d) granting leave to reargue this court's decision and order dated July 8, 2024 (referred to as the "prior order") and, upon such reargument, modifying its prior order to (1) direct the Nassau County Clerk to cancel the notice of pendency pursuant to CPLR § 6514 upon the plaintiff's payment of all costs and expenses occasioned by the filing and cancellation thereof; (2) cancel and discharge the underlying mortgage in accordance with RPAPL §1501(4) and (3) award counsel fees in the sum of \$25,307.80.

Plaintiff, HSBC Bank USA, N.A., As Indenture Trustee for the Registered Noteholders of Renaissance Home Equity Loan Trust 2006-3 cross-moves for an order

vacating the Order of Dismissal issued by the Honorable R. Bruce Cozzens on July 22, 2024. The motions are decided as set forth below.

### **BACKGROUND & PROCEDURAL HISTORY**

On December 1, 2009, the plaintiff commenced a mortgage foreclosure action (hereafter referred to as “the 2009 Action”) in connection to the defendant’s residence located at 39 Byrd Street, Hempstead, New York. On August 9, 2012, an order was entered dismissing the 2009 Action as abandoned pursuant to CPLR § 3215(c). On September 14, 2012, the plaintiff commenced a second foreclosure action against the defendant (“the 2012 Action”). On May 26, 2021, the 2012 Action was dismissed by the Appellate Division, Second Department pursuant to CPLR § 3215(c) as abandoned.

On August 3, 2021, the plaintiff commenced the underlying action and subsequently moved for various forms of relief including summary judgment against the defendant and for the appointment of a referee to compute the amount due under the loan documents. The defendant opposed the application and cross-moved for an order: (1) dismissing the plaintiff’s complaint as time-barred; (2) directing the Nassau County Clerk to cancel the notice of pendency upon plaintiff’s payment of all costs and expenses occasioned by the filing and cancellation thereof pursuant to CPLR § 6514; (3) directing the Nassau County Clerk to cancel and discharge the subject mortgage pursuant to RPAPL § 1501(4); and (4) awarding counsel fees and costs.

In its prior order, this court granted defendant’s cross-motion dismissing the plaintiff’s complaint as “time-barred” and, after finding defendant was entitled to an award of counsel fees, directed that a “fee application” be filed “within 21 days” of the prior order. The remaining portions of defendant’s cross-motion were not addressed. Plaintiff’s application was denied as moot.

On July 22, 2024, the Honorable R. Bruce Cozzens issued an order *sua sponte* dismissing the within action “with prejudice, and without costs and disbursements” pursuant to 22 NYCRR 202.27. The July 22 order was precipitated by the plaintiff’s failure to appear at a compliance conference scheduled in CCP for July 18, 2024. Plaintiff seeks to vacate the July 22 order as superfluous.

### LEGAL ANALYSIS

A motion seeking leave to reargue “shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion . . .” CPLR 2221(d)(2). As relevant here, CPLR §6514 provides, that “[t]he court, upon motion of any person aggrieved and upon such notice as it may require, shall direct any county clerk to cancel a notice of pendency, . . . if the action has been settled, discontinued or abated.” Additionally, RPAPL §1501 (4) states, in pertinent part, “[w]here the period allowed by the applicable statute of limitation for the commencement of an action to foreclose a mortgage, . . . has expired, any person having an estate or interest in the real property subject to such encumbrance may maintain an action . . . to secure the cancellation and discharge of record of such encumbrance.”

Based upon a review of the prior order, it is clear that this court inadvertently neglected to include the requisite direction to the Nassau County Clerk to cancel the notice of pendency pursuant to CPLR §6514 and to discharge the mortgage as unenforceable in accordance with RPAPL §1501(4). Plaintiff’s contention that the cancellation of the lis pendens and discharge of the mortgage is premature because its time to appeal as of right has not been exhausted is unpersuasive. *See 21 st Mtge. Corp. v. Nweke*, 165 A.D.3d 616 (2d Dept. 2018)(defendant established entitlement to judgement on counterclaim to cancel and discharge the mortgage by demonstrating that the foreclosure action was time-barred).

As to plaintiff’s cross-motion seeking to vacate the July 22 order, this court refers the application to the Honorable R. Bruce Cozzens for decision.

Based upon the foregoing, it is hereby

**ORDERED**, that the branch of defendant’s motion seeking leave to reargue this court’s prior order pursuant to CPLR § 2221 (d) is granted, and, upon reargument; it is further

**ORDERED**, that the Nassau County Clerk is directed to cancel the notice of pendency filed in connection with the underlying action indexed against Section 34, Block 547, Lot 14; and it is further

**ORDERED**, that the Nassau County Clerk is directed to cancel and discharge the underlying mortgage dated, June 26, 2006, and recorded on July 17, 2006, in liber book M30737, at pages 224-244, as assigned by the assignment of mortgage instrument dated August 5, 2008, and recorded on August 19, 2008, in liber book M33194, at pages 771-775 encumbering the premises commonly known as 39 Byrd Street, Hempstead, New York 11550, situated in the Town of Hempstead and designated by the County of Nassau, State of New York, as Tax Map: Section 34, Block 547, and Lot 14; and it is further

**ORDERED**, that defendant is awarded counsel fees and costs in the amount totaling \$26,957.80; and it is further

**ORDERED**, that the plaintiff's cross-motion is referred for decision.

Any relief requested not specifically addressed herein is denied.

This constitutes the Decision and Order of this court.

Dated: November 15, 2024  
Mineola, New York

**ENTER**

  
LEONARD D. STEINMAN, J.S.C.

**ENTERED**

**Dec 20 2024**

NASSAU COUNTY  
COUNTY CLERK'S OFFICE