

<b>One W. Bank FSB v Umanzor</b>
2018 NY Slip Op 31951(U)
July 31, 2018
Supreme Court, Suffolk County
Docket Number: 039561/2009
Judge: Denise F. Molia
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SHORT FORM ORDER

INDEX NO. 039561/2009

SUPREME COURT - STATE OF NEW YORK  
IAS PART 39 - SUFFOLK COUNTY

PRESENT: Hon. DENISE F. MOLIA  
Acting Supreme Court Justice

\_\_\_\_\_  
One West Bank FSB,  
  
Plaintiff,

MOTION DATE: 2-24-17(004)  
3-31-17 (005)  
ADJ. DATE: 5-26-17 (004, 005)  
Mot. Seq. # 004 -MG  
Mot. Seq. # 005 -MD

-against-

Delmi Esperanza Umanzor, as Administratrix of the Estate of Jose Angel Umanzor a/k/a Jose A. Umanzor and as Natural Guardian for Jose Angel Umanzor and Kevin Andres Umanzor, Iris Mariela Umanzor, as Heir to the Estate of Jose Angel Umanzor a/k/a Jose A. Umanzor, if living and if she be dead, any and all persons who are spouses, widows, grantees, mortgages, lienor, heirs, devisees, distributees, or successors in interest of such of the above as may be dead, and their spouses, heirs, devisee, distributees and successors in interest, all of whom and whose names and places of residences are unknown to Plaintiff, Angel Mauricio Umanzor, as Heir to the Estate of Jose Angel Umanzor a/k/a Jose A. Umanzor, Wilber Daniel Umanzor, as Heir to the Estate of Jose Angel Umanzor a/k/a Jose A. Umanzor, People of the State of New York, Island Surgical & Vascular Group PC, Good Samaritan Hospital, Midland Funding dba in New York as Midland Funding of Delaware, LLC Clerk of the Suffolk County District Court, Suffolk County Department of Social Services, United States of America, New York State Department of Taxation and Finance, "Jane Doe", "Jane Doe", "John Doe", Mortgage Electronic Registration Systems, In c., as a nominee for IndyMac Bank, F.S.B., its successors and assigns

Defendants.  
\_\_\_\_\_x

FRENKEL, LAMBERT, WEISS, WEISMAN & GORDON  
Attorney for Plaintiff  
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Bay Shore, NY 11706

CABANILLAS & ASSOCIATES, P.C.  
Attorneys for Defendant  
DELMÍ ESPERANZA ULLOA sued herein as DELMI ESPERANZA UMANZOR, as Administratrix of the Estate of Jose Angel Umanzor and as Natural Guardian for Jose Angel Umanzor and Kevin Andres Umanzor  
120 Bloomindale Road, Ste. 400  
White Plains, NY 10605

IRIS MARIELA UMANZOR,  
as Heir Estate of Jose Angel Umanzor  
65 Matthews Ave.  
West Babylon, NY 11704

HARRY F. GEORGE, ESQ.  
Guardian for Iris Mariela Umanzor  
2631 Merrick Road, Suite 406  
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ANGEL MAURICIO UMANZOR,  
as Heir Estate of Jose Angel Umanzor  
65 Matthew Ave.  
West Babylon, NY 11704

WILBER DANIEL UMANZOR,  
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RST

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Upon the reading and filing of the following papers in this matter: (1) Notice of Motion by the plaintiff, dated January 5, 2017, and supporting papers; (2) Notice of Motion mislabeled a Notice of Cross Motion by the defendant Delmi Esperanza Ulloa sued herein an Delmi Esperanza Umanzor, as Administratrix of the Estate of Jose Angel Umanzor also known as Jose A. Umanzor dated March 9, 2017, and supporting papers; (3) Affirmation in Opposition and Reply by the plaintiff's counsel Barry M. Weiss, Esq., dated May 18, 2017, and supporting papers; (4) the Affirmation in Reply of defendant's counsel, Quenten E. Gilliam, Esq., dated May 23, 2017; and now it is

**ORDERED** that this motion by the plaintiff (004), and the motion by the defendant Delmi Esperanza Ulloa sued herein an Delmi Esperanza Umanzor, as Administratrix of the Estate of Jose Angel Umanzor also known as Jose A. Umanzor (005), which was improperly labeled a cross motion, are consolidated for the purpose of this determination; and it is

**ORDERED** that this motion (004) by the plaintiff for, inter alia, an order fixing the defaults of the non-answering defendants pursuant to CPLR 3215(f), appointing a referee to compute pursuant to RPAPL § 1321 and amending the caption is granted; and it is

**ORDERED** that the caption of this action is amended nunc pro tunc to correctly reflect the name of the defendant, Delmi Esperanza Umanzor also known as Delmi Esperanza Ulloa as Administratrix of the Estate of Jose Angel Umanzor also known as Jose A. Umanzor in the caption; and it is

**ORDERED** that the caption of this action is also amended to reflect that the plaintiff is now, CIT Bank, N.A. formerly known as One West Bank, N.A. formerly known as One West Bank, FSB; and it is

**ORDERED** that the plaintiff shall serve a copy of this order amending the caption of this action upon the Calendar Clerk of this Court; and it is

**ORDERED** that this motion (005) by the defendant Delmi Esperanza Ulloa sued herein an Delmi Esperanza Umanzor, as Administratrix of the Estate of Jose Angel Umanzor also known as Jose A. Umanzor for, inter alia, an order: (1) denying the plaintiff's motion for an order of reference; (2) pursuant to CPLR 2004, 2005, 3012(d) and 5015 vacating her default and extending her time to interpose an answer; (3) restoring this action to the foreclosure conference program for another settlement conference; or, in the alternative, or, in the alternative, (4) pursuant to CPLR 3215(c) dismissing the complaint insofar as asserted against her is denied; and it is further

**ORDERED** that the moving parties shall serve a copy of this order with notice of entry upon opposing counsel and upon all other defendants that have appeared herein and not waived further notice, within thirty (30) days of the date herein and they shall thereafter promptly file the affidavits of service with the Clerk of the Court.

The plaintiff commenced the instant foreclosure action by the filing of the lis pendens, summons and complaint on October 7, 2009, against Jose A. Umanzor also known as Jose Angel Umanzor ("Umanzor") and certain other defendants, apparently unaware that Umanzor had already died on December 15, 2007. In the instant action, Delmi Esperanza Ulloa also known as Delmi Esperanza Umanzor and initially sued herein as Delmie Ulloa ("Ulloa"), was served by personal delivery of a copy



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of the summons and complaint to her on October 10, 2009, as an heir to the Estate of Umanzor and "John Doe #1." On October 10, 2012, the plaintiff then filed a successive lis pendens in this action.

The plaintiff subsequently commenced a related action entitled, *One West Bank FSB v Delmi Esperanza Umanzor* ("the second action"), filed under Index No.: 064640/2014, on June 18, 2014. In the second action, Ulloa, who was sued therein as Administratrix of Umanzor's estate, was served by personal delivery of a copy of the summons and complaint to her on June 30, 2014. The plaintiff then filed an RJI in the second action on or about December 18, 2014, and, upon motion of the plaintiff, the second action was consolidated into this action by order dated May 11, 2015 (Molia, J.). By the same order, the plaintiff was permitted to serve the defendant Iris Mariela Umanzor ("Iris"), if living, and if she be dead, her unknown heirs-at-law by publication, and Harry F. George, Esq., was appointed as Guardian Ad Litem and Military Attorney for Iris, etc. Service by publication was then completed in this action on or about July 2, 2015. The court also notes that a second successive lis pendens was filed in this action on May 20, 2015.

By notice of motion filed on or about October 21, 2015, the plaintiff's previously moved for an order of reference in this consolidated action. Although that motion was unopposed, it was denied without prejudice to renewal by order of the undersigned dated August 15, 2016, on account of certain deficiencies with respect to proof of ownership of the subject property.

The plaintiff now renews its motion for, inter alia, an order fixing the defaults of the non-answering defendants pursuant to CPLR 3215(f), appointing a referee to compute pursuant to RPAPL § 1321, and amending the caption. In response, Ulloa as Administratrix of the Estate of Umanzor requested and received an adjournment of the plaintiff's motion, memorialized by stipulation of adjournment dated February 13, 2017.

After securing the adjournment, Ulloa now opposes the plaintiff's motion and moves for, inter alia, an order: (1) denying the plaintiff's motion for an order of reference; (2) pursuant to CPLR 2004, 2005, 3012(d) and 5015 vacating her default and extending her time to interpose an answer; (3) restoring this action to the foreclosure conference program for another settlement conference; or, in the alternative, or, in the alternative, (4) pursuant to CPLR 3215(c) dismissing the complaint insofar as asserted against her. These motions were adjourned on consent, subject to the court's permission, as memorialized by way of letter from the plaintiff's counsel dated March 30, 2017.

Initially, Ulloa's motion was improperly denominated a cross motion because it was not made returnable at the same time as the plaintiff's motion (*see*, CPLR 2215). In the interest of judicial economy, however, these motions are consolidated. The court also notes that the branch of Ulloa's motion made pursuant to CPLR 5015(a)(1) is procedurally defective in that it was not made by way of order to show case (*see*, *Smith v Smith*, 291 AD2d 828, 736 NYS2d 557 [4<sup>th</sup> Dept 2002]). Nevertheless, the court considers said motion because the plaintiff did not object to the manner in which it was brought and because it responded to same on the merits (*see*, *Vin-Mike Enterprises v Grigg*, 2015 NY Misc LEXIS 3153, 2015 WL 5163987 2015 NY Slip Op 31625 [U] [Sup Ct, Suffolk County 2015]).



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CPLR 3215(c) requires that a plaintiff commence proceedings for the entry of a default judgment within one year after the default or demonstrate sufficient cause why the complaint should not be dismissed. Where the plaintiff has made an application to the court for the entry of a default judgment within one year of the defendant's default, even if unsuccessful, the court may not later dismiss the complaint as abandoned pursuant to CPLR 3215(c) (*see, Bono v DuBois*, 121 AD3d 932, 995 NYS2d 153 [2d Dept 2014]; *U.S. Bank N.A. v Poku*, 118 AD3d 980, 989 NYS2d 75 [2d Dept 2014]; *see also, Mortgage Elec. Registration Sys., Inc. v Smith*, 111 AD3d 804, 975 NYS2d 121 [2d Dept 2013]).

It is not necessary for a plaintiff to actually obtain a default judgment within one year of the default in order to avoid dismissal pursuant to CPLR 3215(c) (*US Bank N.A. v Dorestant*, 131 AD3d 467, 469, 15 NYS3d 142 [2d Dept 2015]; *see, Wells Fargo Bank, N.A. v Combs*, 128 AD3d 812, 813, 10 NYS3d 121 [2d Dept 2015]; *Jones v Fuentes*, 103 AD3d 853, 853, 962 NYS2d 263 [2d Dept 2013]). Nor is a plaintiff required to specifically move for the entry of a judgment within a year. "As long as proceedings are being taken, and these proceedings manifest an intent not to abandon the case but to seek a judgment, the case should not be subject to dismissal" (*US Bank N.A. v Dorestant*, 131 AD3d at 469, quoting *Brown v Rosedale Nurseries*, 259 AD2d 256, 257, 686 NYS2d 22 [1<sup>st</sup> Dept 1999] [internal quotation marks and citation omitted]; *see, Wells Fargo Bank, N.A. v Combs*, 128 AD3d 812, *supra*).

In cases wherein no motion is interposed within the one-year time limitation period, avoidance of a dismissal of the complaint as abandoned requires the plaintiff to offer a reasonable excuse for the delay in moving for leave to enter a default judgment and it must demonstrate a potentially meritorious cause of action (*see, Maspeth Fed. Sav. & Loan Assn. v Brooklyn Heritage, LLC*, 138 AD3d 793, 28 NYS3d 325 [2d Dept 2016]; *Giglio v NTIMP, Inc.*, 86 AD3d 301, 308, 926 NYS2d 546 [2d Dept 2011]; *see also, Kohn v Tri-State Hardwoods, Ltd.*, 92 AD3d 642, 937 NYS2d 865, 866 [2d Dept 2012]). In addition, a moving defendant's failure to show prejudice by the plaintiff's delay in moving for the default may tip the balance in favor of a finding of sufficient cause to excuse the delay provided an explanation of the delay is advanced which evinces no intent to abandon the action and a meritorious cause of action is shown to exist (*see, LNV Corp. v Forbes*, 122 AD3d 805, 996 NYS2d 696 [2d Dept 2014]; *Brooks v Somerset Surgical Assoc.*, 106 AD3d 624, 966 NYS2d 65 [2d Dept 2013]). Delays attributable to the parties' engagement in mandatory settlement conference procedures, or in litigation communications, notices of pendency filings, motion practice and discovery or other pre-trial proceedings have been held to negate any intention to abandon the action and are thus excusable under CPLR 3215(c) (*see, Brooks v Somerset Surgical Assoc.*, 106 AD3d 624, *supra*).

The plaintiff took the preliminary step toward obtaining a default judgment of foreclosure and sale by moving first for service by publication, and secondly by moving for an order of reference in October 2015, within one year of the default of all of the defendants in the second action, which was subsequently consolidated into this action (*see, Wells Fargo Bank, N.A. v Mayen*, 155 AD3d 811, 64 NYS3d 291 [2d Dept 2017]; *State of New York Mtge. Agency v Linkenberg*, 150 AD3d 1035, 55 NYS3d 126 [2d Dept 2017]; *Jones v Fuentes*, 103 AD3d 853, *supra*). Accordingly, the plaintiff demonstrated that it did not abandon this action (*see, CPLR 3215[c]; HSBC Bank USA, N.A. v Traore*, 139 AD3d 1009, 32 NYS3d 283 [2d Dept 2016]).



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In any event, the plaintiff demonstrated sufficient cause for its failure to move for a default judgment against Ulloa within one year of her default in this action, especially where, as here, Ulloa had not been joined as Administratrix until 2014 (*see, Wells Fargo Bank, N.A. v Mayen*, 155 AD3d 811, *supra*; *see also, HSBC Bank USA, N.A. v Clayton*, 146 AD3d 942, 45 NYS3d 543 [2d Dept 2017]; *BAC Home Loans Servicing, LP v Reardon*, 132 AD3d 790, 18 NYS3d 664 [2d Dept 2015]; *Iorizzo v Mattikow*, 25 AD3d 762, 807 NYS2d 663 [2d Dept 2006]; *Countrywide Home Loans, Inc. v Brown*, 19 AD3d 638, 797 NYS2d 295 [2d Dept 2005]; *North Fork Bank v Cantico Intl.*, 284 AD2d 442, 726 NYS2d 570 [2d Dept 2001]). Also, the plaintiff's instant motion also preceded Ulloa's motion for dismissal by approximately eight weeks (*see, CPLR 3215[c]; US Bank N.A. v Dorestant*, 131 AD3d 467, *supra*; *Wells Fargo Bank, N.A. v Combs*, 128 AD3d 812, *supra*). Further, it appears from the moving papers that the plaintiff has a meritorious claim for the foreclosure and sale of the subject property which is uncontested by Ulloa (*see, Rivera v Shlagbaum*, 204 AD2d 524, 612 NYS2d 68 [2d Dept 1994]; *cf., Richards v Lewis*, 243 AD2d 615, 663 NYS2d 233 [2d Dept 1997]). Moreover, Ulloa has neither demonstrated nor alleged that she sustained any prejudice herein, especially where, here the loan has been in default for more than 10 years (*see, Iorizzo v Mattikow*, 25 AD3d 762, *supra*), and where she failed to oppose the plaintiff's prior motion for an order of reference. The court finds that all of these factors, when considered together, constitute sufficient cause as to why the complaint should not be dismissed. Accordingly, the branch of Ulloa's motion for an order pursuant to CPLR 3215(c) dismissing the complaint as abandoned insofar as asserted against her is denied.

The court next turns to the remaining branches of Ulloa's motion made pursuant to CPLR 2004, 2005, 3012(d) and 5015. A defendant who has failed to timely appear or answer the complaint must provide a reasonable excuse for the default and demonstrate the existence of a potentially meritorious defense to the action in order to avoid the entry of a default judgment (*see, CPLR 5015[a][1]; Eugene Di Lorenzo, Inv. v A.C. Dutton Lbr. Co.*, 67 NY2d 138, 501 NYS2d 8 [1986]; *Paulus v Christopher Vacirca, Inc.*, 128 AD3d 116, 6 NYS3d 572 [2d Dept 2015]; *Cervini v Cisco Gen. Constr., Inc.*, 123 AD3d 1077, 1 NYS3d 195 [2d Dept 2014]). A defendant who moves to compel the plaintiff to accept late service of an answer pursuant to CPLR 3012(d) is required to make a similar showing (*see, Gershman v Ahmad*, 131 AD3d 1104, 16 NYS3d 836 [2d Dept 2015]; *Citimortgage, Inc. v Stover*, 124 AD3d 575, 2 NYS3d 147 [2d Dept 2015]; *Mannino Dev., Inc. v Linares*, 117 AD3d 995, 986 NYS2d 578 [2d Dept 2014]; *Maspeth Fed. Sav. & Loan Assn. v McGown*, 77 AD3d 889, 909 NYS2d 403 [2d Dept 2010]). The determination as to what constitutes a reasonable excuse lies within the sound discretion of the trial court (*see, Segovia v Delcon Constr. Corp.*, 43 AD3d 1143, 842 NYS2d 536 [2d Dept 2007]). Moreover, absent a valid jurisdictional or abandonment defense, a party in default may not appear in the action and contest the plaintiff's right to relief unless the defaulter can establish grounds for the vacatur of his or her default (*see, Schwartz v Reisman*, 112 AD3d 909, 976 NYS2d 883 [2d Dept 2013]; *HSBC Mtge. Corp. (USA) v Morocho*, 106 AD3d 875, 965 NYS2d 570 [2d Dept 2013]; *U.S. Bank N.A. v Gonzalez*, 99 AD3d 694, 952 NYS2d 59 [2d Dept 2012]).

The branch of Ulloa's motion for an order vacating her default and extending her time to interpose an answer is denied because she did not demonstrate a reasonable excuse for her lengthy default in answering (*see, Deutsche Bank Trust Co. Ams. v Marous*, 127 AD3d 1012, 5 NYS3d 883 [2d Dept 2015]; *Mannino Dev., Inc. v Linares*, 117 AD3d 995, *supra*). Ulloa's allegations, among other things,



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that she was dealing with grief due to Umanzor's death in 2007, and that she was also dealing with a subsequent medical malpractice action related to Umanzor's death is insufficient to demonstrate a reasonable excuse for the lengthy default in answering in this action (*see, US Bank N.A. v Louis*, 148 AD3d 758, 48 NYS3d 458 [2d Dept 2017]; *Wells Fargo Bank, NA v Besemer*, 131 AD3d 1047, 16 NYS3d 819 [2d Dept 2015]; *Mannino Dev., Inc. v Linares*, 117 AD3d 995, *supra*).

Ulloa has attempted to place the blame for her default in answering upon the plaintiff, however, she was already in default for nearly 20 months by the time this case was initially assigned to the foreclosure settlement conference part for a scheduled conference (*see, Wells Fargo Bank, N.A. v Cervini*, 84 AD3d 789, 921 NYS2d 643 [2d Dept 2011]; *Bethune v Prioleau*, 82 AD3d 810, 918 NYS2d 352 [2d Dept 2011]). Ulloa also waited to move to vacate her default until after the plaintiff had already moved twice for an order of reference (*see, JP Morgan Chase Bank, N.A. v Russo*, 121 AD3d 1048, 996 NYS2d 68 [2d Dept 2014]). In any event, Ulloa's remaining contentions are belied by the content and warning contained in the specialized summons served in this action to foreclose a residential mortgage (*see, Morgan Stanley Mtge. Loan Trust 2006-17XS v Waldman*, 131 AD3d 1140, 16 NYS3d 331 [2d Dept 2015]; *HSBC Bank USA, N.A. v Lafazan*, 115 AD3d 647, 983 NYS2d 32 [2d Dept 2014]). Therefore, it is also unnecessary to consider whether Ulloa sufficiently demonstrated the existence of a potentially meritorious defense (*see, Bank of America, N.A. v Agarwal*, 150 AD3d 651, 57 NYS3d 153 [2d Dept 2017]; *Citimortgage, Inc. v Bustamante*, 107 AD3d 752, 968 NYS2d 513 [2d Dept 2013]).

Ulloa's request for an order restoring this action to this court's mortgage foreclosure part for an additional settlement conference is denied because she failed to establish that she has a genuine interest in negotiating a trial loan modification (*see, JPMorgan Chase Bank, N.A. v Mantle*, 134 AD3d 903, 23 NYS3d 258 [2d Dept 2015]). The court's records reflect that Ulloa was already afforded the benefit of a settlement conference, and that the parties were unable to modify the loan or otherwise settle this action. The court has considered Ulloa's remaining contentions in support of her motion, and finds that the same lack merit. Accordingly, Ulloa's motion is denied in its entirety.

The court next turns to the motion-in-chief. The plaintiff has submitted sufficient evidence entitling it to the relief requested (*see, HSBC Bank USA, N.A. v Alexander*, 124 AD3d 838, 4 NYS3d 47 [2d Dept 2015]; *Wells Fargo Bank, NA v Ambrosov*, 120 AD3d 1225, 993 NYS2d 322 [2d Dept 2014]). This proof consists of, inter alia, the mortgage, the note, the default thereunder, an affidavit of the facts constituting the claim pursuant to CPLR 3215(f), a and affidavits of service. The plaintiff also submitted a supplemental affidavit from an officer of the plaintiff submitted in opposition to Ulloa's motion and in reply to her opposition (*see generally, Studer v Newpointe Estates Condominium*, 152 AD3d 555, 58 NYS3d 509 [2d Dept 2017] [evidence submitted in direct response to the defendants' opposition arguments properly considered]; *Central Mtge. Co. v Jahnsen*, 150 AD3d 661, 56 NYS3d 107 [2d Dept 2017] [inclusion of evidence submitted for first time in reply properly considered where offered in response to specific allegations first raised in opposition papers]; *Citimortgage, Inc. v Espinal*, 134 AD3d 876, 23 NYS3d 251 [2d Dept 2015] [defendant given opportunity to file surreply]). Thus, the plaintiff demonstrated its prima facie burden.



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"[S]uccessful opposition to a CPLR 3215 motion for leave to enter a default judgment requires the same showing as an affirmative motion for leave to extend the time to answer," including, inter alia, demonstrating the existence of a reasonable excuse for the default (*Fried v Jacob Holding, Inc.*, 110 AD3d 56, 66, 970 NYS2d 260 [2d Dept 2013]; see, *Weinstein v Schacht*, 98 AD3d 1106, 950 NYS2d 711 [2d Dept 2012]). Additionally, defaulting defendants are "deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them" (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71, 760 NYS2d 727 [2003] [internal quotation marks and citations omitted]).

As discussed above, Ulloa failed to demonstrate that she had a reasonable excuse for her default (see, *Deutsche Bank Natl. Trust Co. v Kuldip*, 136 AD3d 969, 25 NYS3d 653 [2d Dept 2016]; *Deutsche Bank Trust Co. Ams. v Marous*, 127 AD3d 1012, *supra*). Because Ulloa failed to answer the complaint and did not make a timely motion to dismiss, she also waived the purported defenses she now attempts to raise (see, CPLR 3211[a][e]). In any event, Ulloa was not the borrower and, therefore, she was not entitled to either a notice of default or a 90-day notice in this action (see generally, *Wells Fargo Bank, NA v Balk*, 50 Misc3d 1205 [A], 29 NYS3d 850 [Sup Ct, Suffolk County 2015] [RPAPL 1304 inapplicable where obligor/borrower died prior to action]; *U.S. Bank N.A. v Pontecorvo*, 2014 NY Misc LEXIS 5784, 2014 WL 7653336, 2014 NY Slip Op 33413 [U] [Sup Ct, Suffolk County 2014] [borrower was deceased prior to commencement; no evidence that the co-executors assumed the mortgage or obtained a new mortgage in their own names]).

Because the plaintiff has established the default in answering by all of the defendants in this action, it is entitled to an order appointing a referee to compute amounts due under the subject note and mortgage (see, RPAPL § 1321; *Green Tree Servicing, LLC v Cary*, 106 AD3d 691, 965 NYS2d 511 [2d Dept 2013]; *Ocwen Fed. Bank FSB v Miller*, 18 AD3d 527, 794 NYS2d 650 [2d Dept 2005]).

The branch of the plaintiff's motion for an order amending the caption nunc pro tunc to correctly reflect the correct name of the defendant, "Delmi Esperanza Umanzor also known as Delmi Esperanza Ulloa as Administratrix of the Estate of Jose Angel Umanzor also known as Jose A. Umanzor," is granted (see, CPLR 1024; *Deutsche Bank Natl. Trust Co. v Islar*, 122 AD3d 566, 996 NYS2d 130 [2d Dept 2014]; *Neighborhood Hous. Servs. of N.Y. City, Inc. v Meltzer*, 67 AD3d 872, 889 NYS2d 627 [2d Dept 2009]; see also, *Madison Physical Therapy, P.C. v 3211 Shore Parkway Realty Corp.*, 79 AD3d 978, 912 NYS2d 889 [2d Dept 2010]). The branch of the motion for an order substituting CIT Bank, N.A. formerly known as One West Bank, N.A. formerly known as One West Bank, FSB for the plaintiff is also granted (see, CPLR 1018; 1021; 3025[b]; *TCIF REO GCM, LLC v Walker*, 139 AD3d 704, 32 NYS3d 223 [2d Dept 2016]; *Citibank, N.A. v Van Brunt Props., LLC*, 95 AD3d 1158, 945 NYS2d 330 [2d Dept 2012]). By its submissions, the plaintiff established the basis for the above-noted relief. All future proceedings shall be captioned accordingly.



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Accordingly, the motion by the plaintiff for an order appointing a referee is granted, and the proposed order of reference, as modified by the court, has been signed with this decision.

Dated: July 31, 2018

  
\_\_\_\_\_  
Hon. DENISE F. MOLIA, AJSC

\_\_\_\_ FINAL DISPOSITION     X  NON-FINAL DISPOSITION