

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Champion Mortgage v. Williams

2026 NY Slip Op 02960 · No. 2022-09958 · Decided May 13, 2026

SUMMARY

The Appellate Division, Second Department dismissed the appeal and vacated an order and judgment of foreclosure and sale. The court held that the death of a defendant who remained subject to a deficiency provision affected the merits, and that the failure to substitute a representative under CPLR 1015(a) deprived the Supreme Court of jurisdiction to issue the judgment. The judgment was therefore a nullity.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Lara J. Genovesi, J.P.; Linda Christopher; Lillian Wan; Donna-Marie E. Golia
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	May 13, 2026
DOCKET	2022-09958
DISPOSITION	vacated
PROCEDURAL POSTURE	Rosemarie E. Williams appealed from an order and judgment of foreclosure and sale entered by the Supreme Court, Queens County. The Appellate Division dismissed the appeal and vacated the order and judgment because the proceedings continued after the death of a defendant without substitution of a personal representative.
PRECEDENTIAL VALUE	Published
PARTIES	Rosemarie E. Williams v. U.S. Bank Trust, N.A.

TOPICS

- foreclosure
- mortgages
- appellate jurisdiction
- civil procedure
- probate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Supreme Court had jurisdiction to issue an order and judgment of foreclosure and sale after a defendant died and before a representative of the defendant's estate was substituted.
2. Whether the death of the defendant affected the merits of the action because the foreclosure judgment included a deficiency provision applicable to the decedent.
3. Whether the Appellate Division had jurisdiction to entertain the appeal from a judgment that was a nullity.

HOLDINGS

1. Because Trevor P. Williams died before entry of the foreclosure judgment and no proper substitution was made as required by CPLR 1015(a), the Supreme Court lacked jurisdiction to issue the order and judgment of foreclosure and sale.
2. The order and judgment of foreclosure and sale was a nullity and had to be vacated, and the appeal had to be dismissed because the Appellate Division lacked jurisdiction to entertain an appeal from that nullity.

KEY QUOTATIONS

“Generally, the death of a party divests a court of jurisdiction to act, and automatically stays proceedings in the action pending the substitution of a personal representative for the decedent” ([*1])

“Therefore, under the circumstances of this case, since a proper substitution was not made as required by CPLR 1015(a), the Supreme Court was without jurisdiction, inter alia, to issue the order and judgment of foreclosure and sale.” ([*2])

FACTUAL BACKGROUND

Champion Mortgage brought a foreclosure action involving real property in Queens and sought both a judicial sale and a deficiency judgment against Rosemarie E. Williams and Trevor P. Williams. Trevor P. Williams died before the foreclosure judgment was issued, and no personal representative was substituted. Despite notice of his death by July 2021, the Supreme Court issued a judgment in March 2022 containing a deficiency provision applicable to him.

PROCEDURAL HISTORY

Champion Mortgage commenced a mortgage foreclosure action in 2006 against, among others, Rosemarie E. Williams and Trevor P. Williams, and sought a deficiency judgment against both. Trevor P. Williams died after the action commenced and before entry of the order and judgment of foreclosure and sale, but no representative of his estate was substituted. The Supreme Court proceeded to issue the foreclosure judgment in March 2022 after learning of his death, and Rosemarie E. Williams appealed.

DISPOSITION

vacated

CASES CITED

- Wells Fargo Bank, N.A. v. Miglio, 197 AD3d 776, 777
- Nationstar Mtge., LLC v. Azcona, 186 AD3d 614, 615-616
- Pierre v. King, 240 AD3d 531, 532
- Nationstar Mtge., LLC v. Persaud, 231 AD3d 842, 844
- CitiMortgage, Inc. v. Clement, 209 AD3d 971, 972
- DLJ Mtge. Capital, Inc. v. 44 Brushy Neck, Ltd., 51 AD3d 857, 859
- Toporoff v. Galli, 242 AD3d 924
- People v. Terryl E., 242 AD3d 767
- NYCTL 2004-A Trust v. Archer, 131 AD3d 1213
- JPMorgan Chase Bank, N.A. v. Rosenberg, 90 AD3d 713, 714
- Klaus v. Schepps, 15 AD3d 626

OPINION

Champion Mtge. v. Williams 2026 NY Slip Op 02960

PER CURIAM.

Champion Mtge. v Williams - 2026 NY Slip Op 02960 skip to main content It appears you are using Adblock. Please disable Adblock to best experience our website. Law Reporting Bureau Thomas J.K. Smith, State Reporter Court Decisions Resources About Home All Court Decisions Decisions Champion Mtge. v Williams 2026 NY Slip Op 02960 May 13, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This decision is uncorrected and subject to revision before publication in the Official Reports. Champion Mortgage, etc., plaintiff, v Rosemarie E. Williams, appellant, et al., defendants; U.S. Bank Trust, N.A., etc., nonparty-respondent. Supreme Court of the State of New York, Appellate Division, Second Judicial Department Decided on May 13, 2026 2022-09958, (Index No. 704558/21) Lara J. Genovesi, J.P. Linda Christopher Lillian Wan Donna-Marie E. Golia, JJ. Andrea S. Gross, St. Albans, NY, for appellant. Locke Lord LLP, New York, NY (Harry K. Tiwari of counsel), for nonparty-respondent. [*1] DECISION & ORDER In an action to foreclose a mortgage, the defendant Rosemarie E. Williams appeals from an order and judgment of foreclosure and sale (one paper) of the Supreme Court, Queens County (Janice A. Taylor, J.), entered March 17, 2022. The order and judgment of foreclosure and sale, among other things, upon an order of the same court entered June 29, 2021, granting the motion of nonparty U.S. Bank Trust, N.A., to confirm an amended report of a referee and for a judgment of foreclosure and sale, and denying the cross-motion of the defendants Rosemarie E. Williams and Trevor P. Williams to dismiss the complaint insofar as asserted against them, granted the same relief to that nonparty,

denied the same relief to those defendants, and directed the sale of the subject property. ORDERED that the appeal is dismissed, without costs or disbursements, and the order and judgment of foreclosure and sale is vacated. In 2006, the plaintiff commenced this action against, among others, the defendants Rosemarie E. Williams and Trevor P. Williams to foreclose a mortgage on certain real property located in Queens. In addition to the judicial sale of the subject property, the amended complaint sought a deficiency judgment against both Rosemarie E. Williams and Trevor P. Williams. After the commencement of the action, but prior to the issuance of the order and judgment of foreclosure and sale appealed from, Trevor P. Williams died. The parties failed to move for the substitution of a representative of Trevor P. Williams's estate. "Generally, the death of a party divests a court of jurisdiction to act, and automatically stays proceedings in the action pending the substitution of a personal representative for the decedent" (Wells Fargo Bank, N.A. v Miglio , 197 AD3d 776, 777 , quoting Nationstar Mtge., LLC v Azcona , 186 AD3d 614, 615). Ordinarily, any determination rendered without such a substitution is deemed a nullity (see Pierre v King , 240 AD3d 531 , 532; Nationstar Mtge., LLC v Persaud , 231 AD3d 842 , 844; CitiMortgage, Inc. v Clement , 209 AD3d 971, 972). However, under certain circumstances, where a party's death does not affect the merits of a case, this Court has found that there is no need for strict adherence to the requirement that the proceedings be stayed pending substitution (see Nationstar Mtge., LLC v Persaud , 231 AD3d at 844; Wells Fargo Bank, N.A. v [*2] Miglio , 197 AD3d at 777 ; Nationstar Mtge., LLC v Azcona , 186 AD3d at 615-616). Here, the record demonstrates that as of July 2021, the plaintiff and the Supreme Court were on notice that Trevor P. Williams had died. Nevertheless, the proceedings continued after that date, and in March 2022, the court issued the subject order and judgment of foreclosure and sale, which contains a deficiency provision applicable to Trevor P. Williams. Given the deficiency provision contained in the order and judgment of foreclosure and sale, the demise of Trevor P. Williams affects the merits of the case (see DLJ Mtge. Capital, Inc. v 44 Brushy Neck, Ltd. , 51 AD3d 857, 859). The contention of nonparty U.S. Bank Trust, N.A., that it waived the right to seek a deficiency against Trevor P. Williams is based on evidence dehors the record and, therefore, is not properly considered on this appeal (see Toporoff v Galli , 242 AD3d 924 ; People v Terryl E. , 242 AD3d 767). Therefore, under the circumstances of this case, since a proper substitution was not made as required by CPLR 1015(a), the Supreme Court was without jurisdiction, inter alia, to issue the order and judgment of foreclosure and sale. Accordingly, the order and judgment of foreclosure and sale appealed from is a nullity and must be vacated and the appeal must be dismissed, as this Court has no jurisdiction to entertain the appeal (see NYCTL 2004-A Trust v Archer , 131 AD3d 1213 ; JPMorgan Chase Bank, N.A. v Rosemberg , 90 AD3d 713, 714 ; Klaus v Schepps , 15 AD3d 626). The parties' remaining contentions either are without merit, are not properly before this Court, or need not be considered in light of our determination. GENOVESI, J.P., CHRISTOPHER, WAN and GOLIA, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision

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PER CURIAM.

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NY Slip Op 02960</p> <p>May 13, 2026</p> <p>Appellate Division, Second Department</p>
<p>Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.</p>
<p>This decision is uncorrected and subject to revision before publication in the Official Reports.
</p> </div> <div> <p>Champion Mortgage, etc., plaintiff,</p> <p>v</p> <p>Rosemarie E.
Williams, appellant, et al., defendants; U.S. Bank Trust, N.A., etc., nonparty-respondent.</p>
</div> <p>Supreme Court of the State of New York, Appellate Division, Second Judicial
Department</p> <p>Decided on May 13, 2026</p> <p>2022-09958, (Index No. 704558/21)</p>
<p>Lara J. Genovesi, J.P.</p> <p>Linda Christopher</p> <p>Lillian Wan</p> <p>Donna-Marie
E. Golia, JJ.</p> <div> <p>Andrea S. Gross, St. Albans, NY, for appellant.</p> <p>Locke Lord
LLP, New York, NY (Harry K. Tiwari of counsel), for nonparty-respondent.</p> </div>
[*1] <p>DECISION & ORDER</p> <p>In an action to foreclose a mortgage, the
defendant Rosemarie E. Williams appeals from an order and judgment of foreclosure and sale (one
paper) of the Supreme Court, Queens County (Janice A. Taylor, J.), entered March 17, 2022. The
order and judgment of foreclosure and sale, among other things, upon an order of the same court
entered June 29, 2021, granting the motion of nonparty U.S. Bank Trust, N.A., to confirm an
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motion of the defendants Rosemarie E. Williams and Trevor P. Williams to dismiss the complaint
insofar as asserted against them, granted the same relief to that nonparty, denied the same relief to
those defendants, and directed the sale of the subject property.</p> <p>ORDERED that the appeal
is dismissed, without costs or disbursements, and the order and judgment of foreclosure and sale is
vacated.</p> <p>In 2006, the plaintiff commenced this action against, among others, the
defendants Rosemarie E. Williams and Trevor P. Williams to foreclose a mortgage on certain real
property located in Queens. In addition to the judicial sale of the subject property, the amended
complaint sought a deficiency judgment against both Rosemarie E. Williams and Trevor P.

Williams. After the commencement of the action, but prior to the issuance of the order and judgment of foreclosure and sale appealed from, Trevor P. Williams died. The parties failed to move for the substitution of a representative of Trevor P. Williams's estate.

"Generally, the death of a party divests a court of jurisdiction to act, and automatically stays proceedings in the action pending the substitution of a personal representative for the decedent" (*Wells Fargo Bank, N.A. v Miglio*, 197 AD3d 776, 777, quoting *Nationstar Mtge., LLC v Azcona*, 186 AD3d 614, 615). Ordinarily, any determination rendered without such a substitution is deemed a nullity (*see* *Pierre v King*, 240 AD3d 531, 532; *Nationstar Mtge., LLC v Persaud*, 231 AD3d 842, 844; *CitiMortgage, Inc. v Clement*, 209 AD3d 971, 972). However, under certain circumstances, where a party's death does not affect the merits of a case, this Court has found that there is no need for strict adherence to the requirement that the proceedings be stayed pending substitution (*see* *Nationstar Mtge., LLC v Persaud*, 231 AD3d at 844; *Wells Fargo Bank, N.A. v Miglio*, 197 AD3d at 777; *Nationstar Mtge., LLC v Azcona*, 186 AD3d at 615-616).

Here, the record demonstrates that as of July 2021, the plaintiff and the Supreme Court were on notice that Trevor P. Williams had died. Nevertheless, the proceedings continued after that date, and in March 2022, the court issued the subject order and judgment of foreclosure and sale, which contains a deficiency provision applicable to Trevor P. Williams.

Given the deficiency provision contained in the order and judgment of foreclosure and sale, the demise of Trevor P. Williams affects the merits of the case (*see* *DLJ Mtge. Capital, Inc. v 44 Brushy Neck, Ltd.*, 51 AD3d 857, 859). The contention of nonparty U.S. Bank Trust, N.A., that it waived the right to seek a deficiency against Trevor P. Williams is based on evidence dehors the record and, therefore, is not properly considered on this appeal (*see* *Toporoff v Galli*, 242 AD3d 924; *People v Terryl E.*, 242 AD3d 767). Therefore, under the circumstances of this case, since a proper substitution was not made as required by CPLR 1015(a), the Supreme Court was without jurisdiction, inter alia, to issue the order and judgment of foreclosure and sale. Accordingly, the order and judgment of foreclosure and sale appealed from is a nullity and must be vacated and the appeal must be dismissed, as this Court has no jurisdiction to entertain the appeal (*see* *NYCTL 2004-A Trust v Archer*, 131 AD3d 1213; *JPMorgan Chase Bank, N.A. v Rosenberg*, 90 AD3d 713, 714; *Klaus v Schepps*, 15 AD3d 626).

The parties' remaining contentions either are without merit, are not properly before this Court, or need not be considered in light of our determination.

GENOVESI, J.P., CHRISTOPHER, WAN and GOLIA, JJ., concur.

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PER CURIAM.

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Decided on May 13, 2026

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