

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

U.S. Bank N.A. v. Moschetta

2023 NY Slip Op 02556 (N.Y. Ct. App. 2023) · No. 2020-08103 · Decided May 10, 2023

SUMMARY

The Appellate Division, Second Department affirmed an order granting a mortgage foreclosure plaintiff's motion to confirm a referee's report and supplemental report and for a judgment of foreclosure and sale. The court held that the referee's findings were substantially supported by the record and determined that the defendant's challenges to the interest calculation and date of default were unpreserved.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Betsy Barros, J.P.; Joseph J. Maltese, J.; Joseph A. Zayas, J.; Deborah A. Dowling, J.
JURISDICTION	New York
DECIDED	May 10, 2023
DOCKET	2020-08103
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant Paul Moschetta appealed from an order granting the plaintiff's motion to confirm a referee's report and supplemental report and granting a judgment of foreclosure and sale.
STANDARD OF REVIEW	A referee's report should be confirmed when the findings are substantially supported by the record and the referee clearly defined the issues and resolved credibility matters. Issues not preserved in the trial court are not reviewable on appeal.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Paul Moschetta v. U.S. Bank National Association

TOPICS

- foreclosure
- mortgages
- appellate procedure
- standard of review
- remedies

PRACTICE AREAS

Mortgage foreclosure

Civil procedure

Appellate procedure

Remedies

QUESTIONS PRESENTED

1. Whether the Supreme Court properly confirmed the referee's report and supplemental report concerning the amount of unpaid principal and interest and the sale of the property in one parcel.
2. Whether the defendant's challenges to the calculation of interest and the evidence concerning the date of default were preserved for appellate review.

HOLDINGS

1. A referee's report should be confirmed when its findings are substantially supported by the record and the referee clearly defined the issues and resolved matters of credibility. The referee's findings here satisfied that standard.
2. The defendant's contentions that the interest calculation was based on unproduced business records and that there was insufficient evidence of the date of default were unpreserved for appellate review.

KEY QUOTATIONS

"The report of a referee should be confirmed whenever the findings are substantially supported by the record, and the referee has clearly defined the issues and resolved matters of credibility"

FACTUAL BACKGROUND

U.S. Bank sought to foreclose a mortgage on real property in Shelter Island. After Moschetta failed to answer, the Supreme Court appointed a referee to compute the amount due. Following a hearing and issuance of a supplemental report, the referee found the amount of unpaid principal and interest and that the property could be sold in one parcel.

PROCEDURAL HISTORY

U.S. Bank commenced a mortgage foreclosure action against Moschetta and others. Moschetta failed to answer. After the Supreme Court initially denied the plaintiff's motion to confirm the referee's report with leave to renew following a hearing and supplemental report, the court later confirmed the findings concerning unpaid principal and interest and sale of the property in one parcel, and entered a judgment of foreclosure and sale. The Appellate Division affirmed the order insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Wells Fargo Bank, N.A. v. Emanuel, 208 A.D.3d 825, 826
- U.S. Bank N.A. v. Sheth, 177 A.D.3d 1018, 1020

OPINION

PER CURIAM.

U.S. Bank N.A. v Moschetta (2023 NY Slip Op 02556) U.S. Bank N.A. v Moschetta 2023 NY Slip Op 02556 Decided on May 10, 2023 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on May 10, 2023 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department BETSY BARROS, J.P.

JOSEPH J. MALTESE JOSEPH A. ZAYAS DEBORAH A. DOWLING, JJ. 2020-08103 (Index No. 9105/10) [*1]U.S. Bank National Association, etc., respondent, vPaul Moschetta, etc., appellant, et al., defendants. Charles Wallshein Esq. PLLC, Melville, NY, for appellant. Parker Ibrahim & Berg, LLP, New York, NY (Brian A. Turetsky and Robert Pollock of counsel), for respondent.

DECISION & ORDER In an action to foreclose a mortgage, the defendant Paul Moschetta appeals from an order of the Supreme Court, Suffolk County (C. Randall Hinrichs, J.), dated February 28, 2020. The order, insofar as appealed from, after a hearing, granted that branch of the plaintiff's motion which was to confirm a referee's report and supplemental report to the extent of confirming the findings as to the amount of unpaid principal and interest due and that the property can be sold in one parcel, and granted that branch of the plaintiff's motion which was for a judgment of foreclosure and sale.

ORDERED that the order is affirmed insofar as appealed from, with costs. The plaintiff commenced this action to foreclose a mortgage on certain real property located in Shelter Island against the defendant Paul Moschetta (hereinafter the defendant), among others.

The defendant failed to answer the complaint. Subsequently, the Supreme Court appointed a referee to compute the amount due to the plaintiff. The referee issued a report of the amount due to the plaintiff, and the plaintiff moved to confirm the referee's report and for a judgment of foreclosure and sale.

In an order dated August 29, 2017, the court denied the plaintiff's motion with leave to renew following a hearing and the issuance of a supplemental report of the amount due. After a hearing, the referee computed the amount due to the plaintiff and issued a supplemental report.

The plaintiff moved to confirm the report and the supplemental report and for a judgment of foreclosure and sale. In an order dated February 28, 2020, the Supreme Court granted that branch of the plaintiff's motion which was to confirm the report and the supplement report to the extent of confirming the findings as to the amount of unpaid principal and interest due and that the property

can be sold in one parcel, and granted that branch of the motion which was for a judgment of foreclosure and sale.

The defendant appeals. "The report of a referee should be confirmed whenever the findings are substantially supported by the record, and the referee has clearly defined the issues and resolved matters of credibility" (Wells Fargo Bank, N.A. v Emanuel, 208 AD3d 825, 826 [internal quotation marks omitted]).

Here, the referee's findings are substantially supported by the record (see U.S. Bank N.A. v Sheth, 177 AD3d 1018, 1020). The defendant's contentions that the calculation of interest was based on unproduced business records, and that there was insufficient evidence of the date of default are unpreserved for appellate review.

The defendant's remaining contentions are without merit. Accordingly, we affirm the order insofar as appealed from. BARROS, J.P., MALTESE, ZAYAS and DOWLING, JJ., concur. ENTER: Maria T. Fasulo Clerk of the Court