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