

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

Eastern Savings Bank, FSB v. Linford W. Johnson, Individually, and as Administrator of the Estate of Mulvina Eccleston; New York City Environmental Control Board, Michael Johnson, William Robinson, Arlene Williamson, Kalich Williamson, and Agatha Johnson

No. 13-cv-6070 (AMD)(ST) (E.D.N.Y. Dec. 9, 2025) (report and recommendation) · No. 13-cv-6070 (AMD) (ST) · Decided December 9, 2025

SUMMARY

The court recommends that the District Court issue a writ of assistance under the All Writs Act and Federal Rule of Civil Procedure 70 to remove occupants from property purchased at a foreclosure sale. The recommendation concludes that the foreclosure judgment granted the purchaser possession and that the occupants failed to vacate or oppose the writ motion. The parties were advised of their fourteen-day period to object.

CASE DETAILS

COURT	United States District Court for the Eastern District of New York
WRITING FOR THE COURT	Steven Tiscione
JURISDICTION	United States District Court for the Eastern District of New York
DECIDED	December 9, 2025
DOCKET	13-cv-6070 (AMD)(ST)
DISPOSITION	other
PROCEDURAL POSTURE	Report and recommendation on Plaintiff's unopposed motion for an order to show cause and a writ of assistance under the All Writs Act following a completed foreclosure sale.
STANDARD OF REVIEW	The report and recommendation was subject to de novo review of timely objections under 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b)(2).
PRECEDENTIAL VALUE	Nonprecedential magistrate judge report and recommendation; subject to district judge review and adoption.

TOPICS

foreclosure

remedies

ejectment

civil procedure

PRACTICE AREAS

foreclosure

real estate

civil procedure

remedies

QUESTIONS PRESENTED

1. Whether the court should recommend issuance of a writ of assistance to enforce the foreclosure judgment and remove occupants who refused to vacate the property.
2. Whether the All Writs Act, Federal Rule of Civil Procedure 70, and New York Real Property Actions and Proceedings Law § 221 authorize the requested enforcement relief.

HOLDINGS

1. The court recommended that the District Court issue a writ of assistance authorizing removal of the occupants and granting ESB access to the foreclosed property.

KEY QUOTATIONS

“Rule 70 provides for the enforcement of the specific terms of a judgment.” (at 2)

“At bottom, ESB holds a valid judgment granting it possession of the property. The occupants are in violation of that judgment.” (at 3)

FACTUAL BACKGROUND

Melvina Eccleston executed two secondary mortgages and notes in favor of Eastern Savings Bank in the principal amount of \$113,500, with Linford Johnson as guarantor. Eccleston defaulted on the loans, and the loans remained outstanding. ESB obtained a foreclosure judgment, purchased the property at auction, and obtained an adjudicated right to possession, but the occupants continued to remain at the property despite repeated notice and did not oppose the requested writ.

PROCEDURAL HISTORY

Eastern Savings Bank filed the foreclosure action in 2013 and obtained summary judgment of foreclosure and sale on March 15, 2023. After a bankruptcy-related delay, the property was sold at auction to ESB, which assigned its winning bid to a subsidiary. Because the occupants refused to vacate, ESB moved on March 26, 2025, for a writ of assistance. The district judge referred the motion to Magistrate Judge Tiscione for a report and recommendation; the occupants did not oppose the motion after being given an opportunity to respond.

DISPOSITION

other

CASES CITED

- *Manway Construction Co. v. Housing Authority of City of Hartford*, 711 F.2d 501, 505 (2d Cir. 1983)

- Marcella v. Capital District Physicians' Health Plan, Inc., 293 F.3d 42, 46 (2d Cir. 2002)
- Small v. Secretary of Health & Human Services, 892 F.2d 15, 16 (2d Cir. 1989)
- Thomas v. Arn, 474 U.S. 140 (1985)

OPINION

Eastern Savings Bank, FSB v. Linford W. Johnson, Individually, and as Administrator of the Estate of Mulvina Eccleston; New York City Environmental Control Board, Michael Johnson, William Robinson, Arlene Williamson, Kalich Williamson, and Agatha Johnson

PER CURIAM.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

EASTERN SAVINGS BANK, FSB,

Plaintiff, -against- REPORT AND RECOMMENDATION 13-cv-6070 (AMD)(ST)

LINFORD W. JOHNSON, INDIVIDUALLY,

AND AS ADMINISTRATOR OF THE

ESTATE OF MULVINA ECCLESTON; NEW

YORK CITY ENVIRONMENTAL

CONTROL BOARD, MICHAEL JOHNSON,

WILLIAM ROBINSON, ARLENE

WILLIAMSON, KALICH WILLIAMSON,

and AGATHA JOHNSON, Defendants. TISCIONE, United States Magistrate Judge: This attenuated foreclosure action began in 2013. To summarize, Mulvina Eccleston had two secondary mortgages and notes dated April 26, 2007, in favor of Plaintiff, Eastern Savings Bank ("ESB") in the sum of \$113,500.!! Aff. in Supp. of Mot. for Writ 9] 3-5, ECF No. 161-2. Linford Johnson is the guarantor. /d. § 5. Eccleston defaulted on one mortgage April 1, 2008, and defaulted on the second December 1, 2009. Id. 6.7 Both mortgages matured May 1, 2010. Jd. The loans remain outstanding. ESB filed this foreclosure action November 1, 2013. See ECF No. 1. After a series of delays and flurry of motion practice, summary judgment of foreclosure and sale was entered in favor of ESB on March 15, 2023. See ECF No. 150; id. 9. A foreclosure auction and sale were initially scheduled for August 24, 2023. Id. 4 15. However, it was halted due to a Chapter 13 Bankruptcy Petition. Jd. The Bankruptcy Petition was The mortgaged property is 356 East 31st Street, Brooklyn, NY 11226 (Block: 4947, Lot: 30). ? Mulvina Eccleston passed away on June 10, 2014, and has since been removed from the case. dismissed on November 1, 2023, and the auction rescheduled for December 21, 2023. /d. All occupants were notified of the auction. See ECF No. 158. ESB purchased the property at auction and assigned its winning bid to an ESB subsidiary Quartz Enterprises, Inc. See ECF No. 160. On March 26, 2025, with the occupants showing no sign of voluntarily vacating, ESB filed a motion for an Order to Show Cause for a Writ of Assistance pursuant to 28 U.S.C. § 1651. See ECF No. 161. ESB specifically requests the United

States Marschalls eject all occupants from 356 East 31st Street, Brooklyn, NY 11226. On March 31, 2025, Judge Donnelly referred the motion to this Court for a report and recommendation. A hearing was held on April 7, 2025. Defendants failed to appear. See Minute Order dated April 7, 2025, ECF No. 162. A show cause hearing was scheduled for June 17, 2025. Both parties appeared. This Court issued an order directing Defendants to respond to the Motion for a Writ of Assistance by July 1, 2025. See Minute Order dated June 20, 2025, ECF No. 165. Defendants failed to file a response. To date, the occupants have not vacated the property, and the Writ of Assistance remains unopposed. ESB has sent three letters to this Court requesting the writ of assistance be issued, dated July 25, 2025, October 2, 2025, and November 13, 2025. See ECF Nos. 166, 168, and 170. This Court has no hesitation issuing a report and recommendation granting ESB's request. The All Writs Act authorizes "[t]he Supreme Court and all courts established by Act of Congress [to] issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651. Likewise, Rule 70 reads, in relevant part, a judgment requires a party to convey land, to deliver a deed or other document, or to perform any other specific act and the party fails to comply within the time specified, the court may order the act to be done[.]" Fed. R. Civ. P. 70. "Rule 70 provides for the enforcement of the specific terms of a judgment[.]" *Manway Const. Co. v. Hous. Auth. of City of Hartford*, 711 F.2d -2- 501, 505 (2d Cir. 1983). Moreover, where an underlying judgment affects title, possession, or judgement of a property, N.Y. Real Property Acts Law ("RPAPL") § 221 authorizes courts to "require the sheriff to put [judgment holders] into possession." Here, ESB holds a judgement from this Court stating the occupants are "forever barred and foreclosed of all right, title, claim, interest, lien and equity of redemption in said mortgaged premises and each and every part thereof," and "that the purchaser at such sale be let into possession on production of the referee's deed[.]" ECF No. 150. The occupants have, however, refused to vacate the subject property. Further, nothing about this foreclosure proceeding appears untoward. All parties have been repeatedly notified of all foreclosure proceedings and ESB's filings/motions. See generally *Aff. in Supp. of Mot. for Wnt.* At bottom, ESB holds a valid judgment granting it possession of the property. The occupants are in violation of that judgment. Accordingly, this Court finds it appropriate for the District Court to issue a Writ of Assistance removing the occupants from granting ESB access to the subject property.

CONCLUSION

This Court respectfully recommends the District Court issue a Write of Assistance in accordance with the above report and recommendation. -3-

OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b)(2) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report and Recommendation to file written objections. Failure to file timely objections shall constitute a waiver of those objections both in the District Court and on later appeal to the United States Court of Appeals. See *Marcella*

v. Cap. Dist. Physicians' Health Plan, Inc., 293 F.3d 42, 46 (2d Cir. 2002); Small v. Sec'y of Health & Human Servs., 892 F.2d 15, 16 (2d Cir. 1989); see also Thomas v. Arn, 474 U.S. 140 (1985). SO ORDERED. /s/ Steven Tiscione United States Magistrate Judge Eastern District of New York Dated: Central Islip, New York December 9, 2025 -4-

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