

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

U.S. Bank Trust, N.A., As Trustee For LSF9 Master Participation
Trust,

Index No.: 511223/2018

Plaintiff,

NOTICE OF ENTRY

-against-

Yuriy Temlyak, Rami Laor, National City Bank, New York City
Environmental Control Board, And John Doe #1 Through John Doe
#10, The Last 10 Names Being Fictitious And Unknown To The
Plaintiff, The Persons Or Parties Intended Being The Persons Or
Parties, If Any, Having Or Claiming An Interest In Or Lien Upon
The Mortgaged Premises described in the verified complaint,

Defendants.

PLEASE TAKE NOTICE that annexed hereto for service upon you is a copy of a
Decision and Order by the Honorable Noach Dear, J.S.C., dated May 1, 2019, and duly entered in
the Office of the Kings County Clerk on May 9, 2019.

Dated: Brooklyn, New York
May 12, 2019

/s/ Steven Amshen
PETROFF AMSHEN LLP
By: Steven Amshen, Esq.
Attorneys for Defendant
RAMI LAOR
1795 Coney Island Ave, Third Floor
Brooklyn, NY 11230
(718) 336-4200

To: COHN & ROTH
Attorneys for Plaintiff
100 East Old Country Road
Mineola, New York 11501

At an IAS Term, Part FRP-1, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 1st day of May 2019.

P R E S E N T:

HON. NOACH DEAR,

J.S.C.

Index No.: 511223/18

_____ x

MS 1 + 2

US BANK,

Plaintiff,

DECISION AND ORDER

-against-

YURIY TEMLYAK et al,

Defendant,

_____ x

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion:

Papers	Numbered
Motion (MS 1)	<u>1</u>
Opposition/Cross (MS 2)	<u>2</u>
Reply/Opp to Cross	<u>3</u>
Cross-Reply	<u>4</u>

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

Plaintiff moves for summary judgment and an order of reference. Defendant Laor opposes and cross-moves for dismissal alleging, among other things, that the instant action is untimely.

"The law is well settled that with respect to a mortgage payable in installments, there are 'separate causes of action for each installment accrued, and the Statute of Limitations [begins] to run, on the date each installment [becomes] due unless the mortgage debt is accelerated. Once the mortgage debt is accelerated, the entire amount is due and the Statute of Limitations begins to run on the entire mortgage debt" (*Loiacono v. Goldberg*, 240 A.D.2d 476, 477 [2d Dept. 1997]). A prior action was commenced on 3/11/09, accelerating the lien. The instant action was not filed until 5/31/18, more than nine years later. As such, Defendant met his initial burden of showing that the instant action is untimely. The burden then shifted to Plaintiff to demonstrate that the prior action

was not an acceleration or any other basis for the instant action to be timely (*U.S. Bank Nat. Ass'n v. Martin*, 144 A.D.3d 891 [2d Dept 2016]).

Plaintiff's arguments that the instant action is timely are unavailing. *MacPherson* has been explicitly rejected by the Appellate Division (see, *BNY Mellon v Dieudonne*, 2019 N.Y. Slip Op. 01732 [2d Dept 3/13/19]). The discontinuance of the 2015 action was after the expiration of the SOL and thus is not a valid de-acceleration. The 205[a] argument makes no sense – it would, at most, have allowed a suit within six months thereafter.

Motion denied. Cross-motion granted. Case dismissed.

ENTER:



Hon. Neach Dear, J.S.C.

2019 MAY -6 AM 8:28
KINGS COUNTY CLERK
FILED

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

U.S. Bank Trust, N.A., As Trustee For LSF9 Master Participation
Trust,

Index No.: 511223/2018

Plaintiff,

**AFFIRMATION OF
SERVICE**

-against-

Yuriy Temlyak, Rami Laor, National City Bank, New York City
Environmental Control Board, And John Doe #1 Through John Doe
#10, The Last 10 Names Being Fictitious And Unknown To The
Plaintiff, The Persons Or Parties Intended Being The Persons Or
Parties, If Any, Having Or Claiming An Interest In Or Lien Upon
The Mortgaged Premises described in the verified complaint,

Defendants.

STATE OF NEW YORK
COUNTY OF KINGS

STEVEN AMSHEN, an attorney duly admitted to practice law before the courts of the
State of New York, affirms under the penalties of perjury as follows:

I am an attorney at PETROFF AMSHEN LLP, am over 18 years of age and am not a party
to this action.

On May 12, 2019, I served the within **NOTICE OF ENTRY**, by operation of the New
York State Court Electronic Filing system:

COHN & ROTH
Attorneys for Plaintiff
100 East Old Country Road
Mineola, New York 11501

No other parties are entitled to notice.

/s/ Steven Amshen
STEVEN AMSHEN