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| Nationstar Mtge. LLC v Osikoya |
| 2026 NY Slip Op 31042(U) |
| February 26, 2026 |
| Supreme Court, Kings County |
| Docket Number: Index No. 511495/2015 |
| Judge: Cenceria P. Edwards |
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At an IAS Term, Part FRP1, 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 26th day of February, 2026.

P R E S E N T:

HON. CENCERIA P EDWARDS, Justice.

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NATIONSTAR MORTGAGE LLC,

Plaintiff,

-against-

Index No.: 511495/2015
Mot. Seq.: 5
Calendar Date: 6/28/23

MORENIKE OSIKOYA et al,

Defendant,

-----X

The following e-filed papers read herein:

NYSEF Nos.:

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| Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____ | _____ | 157-162 |
| Opposing Affidavits (Affirmations) _____ | _____ | 163-164 |
| Affidavits/ Affirmations in Reply _____ | _____ | 165-168 |

Upon the foregoing papers in this action to foreclose a mortgage encumbering the residential property located at 1382 Remsen Avenue Brooklyn (Block 8055, Lot 45), Plaintiff Nationstar Mortgage LLC moves for vacatur of this Court’s May 12, 2022 decision dismissing this action, renewal of its opposition to the motion leading to that decision, denial of that motion, and the entry of summary judgment in its favor pursuant to the Appellate Division Second Department’s decision dated May 25, 2022. Defendant opposes.

Background Facts and Procedural History

Plaintiff commenced the instant foreclosure action on September 18, 2015. All defendants failed to timely answer.

On March 29, 2016, Plaintiff filed a motion for default judgment and an order of reference. Defendant Morenike Osikoya opposed through counsel asserting that she was not served with the summons and complaint and lacked timely knowledge of this action. By order dated October 13, 2016, Plaintiff's motion was granted in its entirety.

On August 29, 2017, Defendant – now with new counsel – moved for reargument of the prior motion, asserting that the Court failed to properly consider her jurisdictional arguments. After Plaintiff opposed and Defendant replied, the Court granted the motion to the extent of setting the matter down for a traverse hearing. Counsel for both parties then stipulated to vacate the judgment and allow Defendant to answer. She did so.

On January 30, 2019, Plaintiff moved for summary judgment and an order of reference. Defendant opposed, asserting that Plaintiff failed to demonstrate that the RPAPL 1304 and default notices were properly mailed. Rehashing her argument that she was not served with the summons and complaint, she further argued non-compliance with RPAPL 1303 as that notice was allegedly delivered at the same time. Plaintiff replied. By decision and order dated May 23, 2019, the Court denied the motion, finding that “[i]ssues of fact exist as to at least whether Plaintiff properly complied with notice requirements.” Plaintiff appealed.

After a note of issue was filed by Plaintiff, Defendant moved for summary judgment in her favor. Citing to the Second Department's (then-)recent decision in *Bank of America v Kessler*, 202 AD3d 10 (2d Dept 2021), Defendant argued that the additional disclosures within the ninety-day notices proffered by Plaintiff demonstrated that it violated the single envelope rule and, thus, did not strictly comply with RPAPL 1304. This Court agreed, granting the motion over Plaintiff's opposition and dismissing the action by order uploaded May 12, 2022.

Nearly two weeks later, the Second Department ruled on Plaintiff's co-pending appeal. Considering the arguments that were before the Supreme Court (and not *Kessler*), the panel held that Plaintiff had complied with RPAPL 1304 and the default notice provisions of the mortgage and, thus, that summary judgment in favor of Plaintiff should have been granted. Though Plaintiff then settled an order of reference upon Defendant and the Court, it was not executed – likely as the case had been dismissed.

The Instant Motion

On March 15, 2023, Plaintiff filed the instant motion. Therein, it argues that the Second Department's determination that it complied with RPAPL 1304 and that summary judgment should have been granted in its favor mandates vacatur of the dismissal order and entry of judgment in its favor. Plaintiff further asserts that, as the Court of Appeals overruled *Kessler*, renewal of Defendant's granted motion for summary judgment and, thereupon, a contrary result are warranted.

In opposition, Defendant asserts that the RPAPL 1304 notices remain deficient. The statute requires inclusion of the phone number for the DFS helpline – and Plaintiff failed to provide the then-current information. Thus, Defendant argues, Plaintiff failed to strictly comply with RPAPL 1304 and renewal should be denied.

Plaintiff counters that it remains undisputed that the Second Department found that summary judgment should have been granted in its favor. It is also incontrovertible that the Court of Appeals reversed *Kessler* and, therefore, that the previous grounds for dismissal are no longer viable. Defendant's new argument – raised for the first time in opposition – that Plaintiff failed to provide the correct phone number for DFS is also, in Plaintiff's view, unavailing. The proffered number – which had previously been the number provided by DFS for use in notices – still is a DFS Helpline phone number and is listed on the City of New York's website for that purpose. Even were it erroneous, other trial courts have deemed such defects to be de minimis. As such, Plaintiff concludes that its motion should be granted.

Analysis

That the Second Department found that the arguments raised by Defendant in opposition to summary judgment were unavailing would not have prevented this Court from considering Defendant's *Kessler* arguments – albeit, on a motion to renew – and reaching the result that it did in dismissing the action. As such, the appellate decision alone is insufficient to warrant vacatur of the dismissal order.

Renewal is granted, however. On February 14, 2023, *Kessler* was reversed by the Court of Appeals (39 NY3d 317). It is undisputed that the alleged notices included all of the required language. The additional information included – the so-called “mini-Miranda”, etc – consists of

“accurate statements that further the underlying statutory purpose of providing information to borrowers that is or may become relevant to avoiding foreclosure” and, thus, does not violate the “separate envelope” requirement (see, *id* at 326; see also, *Deutsche Bank Nat’l Trust v Pirozzi*, 230 AD3d 736, 740 [2d Dept 2024]). As such, the dismissal order must be vacated.

Defendant’s argument that Plaintiff included an outdated DFS phone number in the notice was raised for the first time in response to the current motion. It could have – and should have – been raised in opposition to Plaintiff’s motion for summary judgment. It cannot be advanced for the first time once the Second Department held that Plaintiff had complied with RPAPL 1304. Even were that not so, it is uncontroverted that the provided phone number remains active and will allow the caller to reach the correct hotline. As such, Defendant’s argument fails.

Conclusion

Accordingly, it is

ORDERED that Plaintiff’s motion to vacate or renew (mot. seq, #5), is granted to the extent that renewal of Defendant’s motion for summary judgment (mot. seq, #4), is granted and, upon renewal, the order uploaded May 12, 2022 (NYSCEF #149) is vacated and Defendant’s motion denied; and it is further

ORDERED that in light of the foregoing and the Appellate Division Second Department’s decision dated May 25, 2022, summary judgment (mot. seq. #3), is granted in favor of Plaintiff (Settle Order on Notice).

This constitutes the decision and order of the Court.

ENTER:



Hon. Cenceria P Edwards, J.S.C., CPA