

U.S. Bank Trust N.A. v Murphy
2026 NY Slip Op 31085(U)
March 9, 2026
Supreme Court, Kings County
Docket Number: Index No. 516675/2024
Judge: Carolyn E. Wade
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At the Supreme Court of the State of New York in the County of Kings, located at 360 Adams Street, Part 84, Brooklyn, New York on the 9th day of March, 2026

PRESENT: Honorable Carolyn E. Wade

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS**

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U.S. BANK TRUST NATIONAL ASSOCIATION,
AS TRUSTEE OF THE LODGE SERIES III TRUST,

Plaintiff,

Index No. 516675/2024

Mot. Seq. No. 1

-against-

DECISION AND ORDER

QUENTIN D. MURPHY, LEE J. CARLIN,
KATHLEEN E. ANDREWS,
COLLEN QUINN A/K/A COLLEEN M. QUINN,
JONATHAN MURPHY A/K/A JONATHAN PAUL MURPHY,
JOHN DOE(S)*, AND JANE DOE(S)*,

Defendants.

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Plaintiff, U.S. BANK TRUST NATIONAL ASSOCIATION, AS TRUSTEE OF THE LODGE SERIES III TRUST (“Plaintiff”), seeks an Order, Motion Seq. No. 1, granting Summary Judgment, Judgment of Possession, Ejectment, and related monetary relief against Defendants, QUENTIN D. MURPHY, LEE J. CARLIN, KATHLEEN E. ANDREWS, COLLEN QUINN A/K/A COLLEEN M. QUINN, JONATHAN MURPHY A/K/A JONATHAN PAUL MURPHY, JOHN DOE(S)*, AND JANE DOE(S)* (“Defendants”). NYSCEF Doc. Nos. 14-88.

Upon the foregoing papers, and after oral argument, Motion Seq. No. 1 is decided as follows:

BACKGROUND

On February 29, 2024, Plaintiff became the lawful owner of the shares and proprietary lease for 125 Eastern Parkway, Apartment 4C, Brooklyn, NY 11238, (“Premises”), pursuant to a nonjudicial foreclosure sale. NYSCEF Doc. Nos. 20, 32. Following acquisition the property, Plaintiff became aware that Defendants, who are alleged former owners and occupants, remained in possession of the Premises.

NYSCEF Doc. No. 20 Para. ¶ 3-4. On April 10, 2024, Plaintiff served Defendants a Notice to Vacate the Premises. NYSCEF Doc. No. 33. Plaintiff asserts that Defendants failed to vacate the premises and still remain in possession of said premises, which gives rise to the present action.

DISCUSSION

Grounds for Ejectment

A Plaintiff establishes prima facie cause of action for ejectment when it demonstrates that it (1) is the owner of an estate in tangible real property (2) with a present or immediate right to possession and (3) Defendant is in present possession of the estate. *Esposito v. Larig*, 241 A.D.3d 782, 786, (2025) (citing *City of New York v. Anton*, 169 A.D.3d 999 [2d Dept 2019]), (quoting *RPAI Pelham Manor, LLC v. Two Twenty Four Enterprises, LLC*, 144 A.D.3d 1125 [2d Dept 2016]). When these elements are presented to the Court, Plaintiff is entitled to recover damages for the Defendants wrongful withholding of the property, which includes rents, profits, or the reasonable value of the use and occupancy. *Esposito*, 241 A.D.3d at 786 (quoting *1537 Assoc. v. Temlex Indus., Inc.*, 128 A.D.2d 384 [1st Dept 1987]). See also N.Y. Real Prop. Acts. Law § 601.

As stated, on February 29, 2024, Plaintiff, via a nonjudicial foreclosure, received lawful possession of the Premises. As consideration, Plaintiff paid \$768,368.12 for “356 shares of Capital Stock and the Proprietary Lease allocated for Eastern Owners Corp. (a Cooperative Housing Corporation) in the building known as and located at: 125 Eastern Parkway, Apartment 4C, Brooklyn, NY 11238.” NYSCEF Doc. No. 32. As such, Plaintiff provided sufficient documentation that Plaintiff is (1) the owner of an estate in tangible real property and (2) with a present or immediate right to possession thereof. *Esposito*, 241 A.D.3d at 786. It is also undisputed that Defendants are (3) in present possession of the Estate, evidenced by Plaintiff’s Notice to Vacate and Defendant’s Affirmation of Opposition. *Id.* NYSCEF Doc. No. 33 and 39 ¶33, respectively.

When Plaintiff does not show an approved transfer of title, via cooperative board, Plaintiff is still entitled to an Order of Ejectment. *Emigrant Bank v. Materre*, 50 Misc 3d 1207(A) [Sup Ct 2016]. In *Emigrant Bank*, Plaintiff sought declaratory and possessory judgment (i.e. ejectment) against Defendant to vacate the cooperative apartment unit, pursuant to a nonjudicial auction sale. *Id.* Although Plaintiff did not

establish cooperative board's approval of the sale, the Court granted Plaintiff's judgment of ejectment. *Id.* Here, the facts is analogous to *Emigrant Bank*. It is undisputed that Plaintiff has not provided documentation illustrating cooperative board approval regarding the sale of the Premises.

Defendants' Answer, and Opposition, fails to raise a triable issue of such fact that would negate ejectment. NYSCEF Doc. Nos. 36, 39. Moreover, the transfer of stock and the transfer of a proprietary lease are separate and should not be conflated. *Emigrant Bank v. Materre*, 50 Misc 3d 1207(A). Thus, Plaintiff, being the rightful owner of both the shares of stock in the Premises, is entitled to eject Defendants.

Admissibility of Evidence

Business records, not foundational affidavits pertaining to said records, satisfy hearsay exceptions so long as the affiant alleges personal knowledge of the record-keeping practices and procedures of the entity that created the record. *Bank of NY Mellon v. Gordon*, 171 A.D.3d 197 [2d Dept 2019] (citing *Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]). In *Bank of NY Mellon*, the Court held that the affiant's affidavit was insufficient to lay a proper foundation of the proffered document, under the business records exception, as the affiant failed to: (1) attest to her personal knowledge of the entity's record-keeping practices and (2) allege that the proffered document was incorporated into the entity's records itself and routinely relied upon by the entity in its business practice. *Bank of NY Mellon v. Gordon*, 171 A.D.3d 197.

Plaintiff has sufficiently satisfied the Business Records exception to hearsay. Affiant, William A. Fogleman, Corporate Counsel of SN Servicing Corporation, has attested to the following facts:

that he is "[r]esponsible for the maintenance and review of internal evictions documents maintained by SN Servicing Corporation"; "personally familiar with the type of records maintained by SN Servicing Corporation"; "the information contained is taken from SN Servicing Corporation's business records"; and has "personal knowledge of SN Servicing Corporation's procedures for creating and maintaining these records"

Additionally, affiant has also stated that,

"Such business records are: (a) made at or near the time of the occurrence of the matters set forth therein by persons with personal knowledge of the information in the business record, or from information transmitted by persons with personal knowledge; (b) are kept in the course of SN Servicing Corporation's regular conducted business activities; and (c) it is regular practice of SN Servicing Corporation's to make such records."¹

¹ NYSCEF Doc. No. 19 ¶ 1-2.

Thus, irrespective of whether the records were made by SN Servicing Corporation, Plaintiff's affiant has established both (1) personal knowledge of the record and (2) routine practice of the record keeping entity for incorporation. As such, the affidavit of Mr. Fogleman is admissible hearsay, under the business records exception.

CONCLUSION

It is hereby,


ORDERED that Plaintiff's Motion, Mot. Seq. No. 1, is **GRANTED** and Plaintiff is awarded final Judgment of Possession as against all Defendants, and it is further;

ORDERED that Plaintiff submit a Writ of Assistance to the Court, and it is further;

ORDERED that a copy of this Order, along with Notice of Entry, be served on all parties within thirty (30) days of entry.

This constitutes the Decision and Order of the Court.

ENTER:



HON. CAROLYN E. WADE, J.S.C.

Hon. Carolyn E. Wade
Supreme Court Justice