

Deutsche Bank Natl. Trust Co. v Frederick

2026 NY Slip Op 31087(U)

February 16, 2026

Supreme Court, Kings County

Docket Number: Index No. 520498/2021

Judge: Menachem M. Mirocznik

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At IAS Part FRP5 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, NY 11201, on the 16th of February 2026

PRESENT: HON. MENACHEM M. MIROCZNIK
JUSTICE OF THE SUPREME COURT

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE UNDER THE POOLING AND SERVICING AGREEMENT RELATING TO IMPAC SECURED ASSETS CORP., MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-1,

Plaintiff,

-against-

JAMES FREDERICK; NEW YORK CITY ENVIRONMENTAL CONTROL BOARD; NEW YORK CITY PARKING VIOLATIONS BUREAU; NEW YORK CITY TRANSIT ADJUDICATION BUREAU; "JOHN DOE" (REFUSED NAME); "JOHN DOE" (REFUSED NAME); "JOHN DOE" (REFUSED NAME); "JOHN DOE" (REFUSED NAME); SAMANTHA "DOE" (REFUSED LAST NAME); "JOHN DOE" (REFUSED NAME); "JOHN DOE" (REFUSED NAME); "JOHN DOE" (REFUSED NAME); "JOHN DOE" (REFUSED NAME); "JOHN" JENNINGS (REFUSED FIRST NAME),

Defendants.

Index No. 520498/2021

**Decision and Order
(Motion Seq. 6)**

Papers	Numbered
Notice of Motion	NYSCEF Doc. 166-193
Opposition Papers	NYSCEF Doc. 194
Reply Papers	NYSCEF Doc. 195

Upon the foregoing papers, the motion is determined in accordance with this Decision and Order as follows:

Relevant Procedural History

This action was commenced on August 12, 2021, seeking to foreclose a mortgage (the "mortgage") executed by defendant James Frederick (the "defendant") encumbering the property known as 639 Hendrix Street, Brooklyn, NY 11213 (the "property").

On November 23, 2021, defendant joined issue with the filing of an answer which asserted

various affirmative defenses.

On September 15, 2022, the Court granted plaintiff's motion for summary judgment, to strike defendant's answer, for a default judgment and for an order of reference.

On February 28, 2023, the Court denied defendant's motion for reargument of the September 15, 2022 order.

On March 30, 2023, the Court denied defendant's motion to dismiss pursuant to CPLR 3211[a][1] and RPAPL 1304.

On January 9, 2024, the Court denied plaintiff first motion to confirm the referee's report and fore judgment of foreclosure and sale and denied defendant's cross-motion to dismiss pursuant to CPLR 3211[a][5], CPLR 213[4] and CPLR 3217[e]. The Court found that defendant waived the right to seek dismissal based on the expiration of the statute of limitations. In denying the motion to confirm the referee's report the Court held: "Defendant is correct, however, that the referee's calculations do not appear to be supported by the evidence. The late fees appear to include one disproportionately large entry without explanation, the escrows appear to include entries that were waived as being beyond the statute of limitations, and a review of the documents suggests that some portions of the escrows are included both within the prior servicer and current servicer escrows."

Plaintiff now moves to confirm the referees report and for a judgment of foreclosure and sale. Plaintiff contends that the report is substantially supported by the record and therefore the Court should confirm same and issue a judgment of foreclosure and sale. The motion is supported by a new referee's report dated July 7, 2025 and primarily relies on the affirmation of Juliana Thurab ("Ms. Thurab" or Thurab Affirmation), Vice President of PHH Mortgage Corporation, the alleged servicer of plaintiff.

Defendant opposes the motion, arguing that the Court previously denied Plaintiff's first motion to confirm due to inflated, untimely and unsupported charges and that the second Referee's Report not only fails to correct those errors but increases disputed escrow figures and charges without adequate foundation. Defendant contends the computation lacks adequate documentary foundation the findings are unsupported by admissible evidence. Lastly, defendant argues that the referee failed to hold a hearing and the same is warranted and requests a live hearing where defendant can examine plaintiff's affiant.

In reply plaintiff argues that the Referee's findings are substantially supported by detailed business records annexed to the Thurab Affirmation, that defendant was served with a Notice of Computation and failed to submit timely objections before the Referee (thereby waiving challenges), that no hearing was required under the Order of Reference, and that Defendant has failed to present admissible evidence rebutting the escrow advances or late charges, thus requiring confirmation of the Referee's Report and entry of judgment.

Discussion

Pursuant to CPLR 4403, the Court has the express authority to act "on its own initiative" regardless of whether parties so move. See *Breland v Motor Veh. Acc. Indem. Corp.*, 24 AD2d 881

[2d Dept 1965][“Rule 4403 of the CPLR was specifically enacted, in part, to overrule the holding in *Rosenfield v. Rosenfield*, 272 App.Div. 547, 74 N.Y.S.2d 82, that the court must await a formal motion before confirming or rejecting a referee's report, and to reaffirm the court's power to act on its own initiative”]

“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...The referee's findings and recommendations are advisory only and have no binding effect on the court, which remains the ultimate arbiter of the dispute.” *Citimortgage, Inc. v Kidd*, 148 AD3d 767 [2d Dept 2017][citations omitted]

The Court notes that it may confirm the report *only* and *when*, the referees finding are substantially supported by the record. If the Court has the authority to reject a report “[u]pon the motion” or “on its own initiative”, the Court must also independently determine whether the referee’s report is substantially supported by the record even in the absence of a timely objection or motion of a party seeking to reject same. Otherwise, there would be no way for a Court to reject a referee’s report “on its own initiative” rendering the language in the statute superfluous. CPLR 4403 does not suggest that this Court has a ministerial duty to rubberstamp unsupported reports.

Plaintiff’s contention that the averments of defense counsel lack probative value is specious. Defense counsel asserts that the referee’s calculations are not supported by the evidence submitted *by plaintiff* and it is not the defendant’s burden to establish plaintiff’s damages and plaintiff’s attempt to shift its burden to defendant is without merit. See generally *Berley Industries, Inc. v City of New York*, 45 NY2d 683 [1978][“It is fundamental to the law of damages that one complaining of injury has the burden of proving the extent of the harm suffered.”]; *Lewin v Levine*, 146 AD3d 768 [2d Dept 2017][same]

Here, defendant is correct that the report is not substantially supported by the record, not sufficiently supported with admissible evidence or explanation and fails to remedy the deficiencies identified by the Court in its denial of plaintiff’s previous motion to confirm the previous report.

First, the previous report submitted by plaintiff included the following breakdown of escrow charges:

Escrow Balance:	\$47,543.54
Taxes: (2019 - 2021)	\$20,676.50
Insurance: (2019 - 2021)	\$4,900.00
Escrow Payments/Credits:	(\$26,580.85)
Prior Servicer Escrow Balance (if applicable):	\$48,547.89

While the new report contains the following breakdown of escrow charges:

Escrow Balance from September 2015 to April 21, 2025:	\$78,766.33
Taxes: 2022-2025	\$20,110.36
Insurance: 2022-2024	\$9,579.00
Escrow Payments/Credits	(\$0.00)
Prior Servicer Escrow Balance (if applicable):	\$49,076.97

Neither Ms. Thurab nor plaintiff's counsel provide an explanation for the substantial deviations between the two reports, most notably the absence of the (\$26,580.85) payment/credit. Nor is an explanation provided for how the prior servicer's escrow balance can increase between submission of the two reports.

Second, while Ms. Thurab attached hundreds of pages of documents, some of which are what appear to be loan records, Ms. Thurab does not identify which records support each of the line-item charges and which records are the present servicer's records as opposed to what appears to be prior servicers records. Nor does she identify which of the documents are actually business records as opposed to summaries prepared in anticipation of the submission to the referee.

Third, no explanation is provided as to how the new report remedied the deficiencies previously identified by the Court. In fact, it appears the amount charges has substantially increased and still apparently includes entries that were waived as being beyond the statute of limitations.

Lastly, while the referee's report provides that it was substantially based on the Thurab Affirmation, the list of documentary evidence does not reflect that the referee actually considered the records attached to the Thurab Affirmation.

Given that this is the second time plaintiff has submitted deficient documents to the referee and to this Court, and that defendant expressly seeks a hearing where defendant can examine plaintiff's witness, the Court directs a live inquest on the issue of plaintiff's damages.

Accordingly, it is hereby

ORDERED, that plaintiff's motion to confirm the referee's report and for judgment of foreclosure and sale is **DENIED**; and it further

ORDERED, that this matter is hereby referred to a judicial hearing officer to conduct a live inquest on the issue of plaintiff's alleged damages, whereat the plaintiff must not only demonstrate the amounts due based on non-hearsay testimony, but the plaintiff must also adequately address each of the issues specifically identified by the Court. The inquest shall be conducted on a hear and report basis. Any future motion to confirm the report of the judicial hearing officer must be accompanied by a transcript of the proceedings in accordance with CPL.R 4320[b] and a sufficient explanation addressing the issues identified by the Court.

This constitutes the decision and order of the Court.

ENTER:



Hon. Menachem M. Mirocchnik, JSC