

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D73205  
M/htr

\_\_\_\_ AD3d \_\_\_\_

Argued - May 9, 2023

MARK C. DILLON, J.P.  
VALERIE BRATHWAITE NELSON  
ROBERT J. MILLER  
JOSEPH J. MALTESE, JJ.

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2021-06271

DECISION & ORDER

Deutsche Bank National Trust Company, etc.,  
respondent, v Sheila Kavovit, etc., et al., defendants,  
Barbara R. Kavovit, etc., appellant.

(Index No. 611956/18)

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Charles Wallshein Esq. PLLC, Melville, NY, for appellant.

Robertson, Anschutz, Schneid, Crane & Partners, PLLC, Westbury, NY (Joseph F. Battista of counsel), for respondent.

In an action to foreclose a mortgage, the defendant Barbara R. Kavovit appeals from an order of the Supreme Court, Suffolk County (Thomas F. Whelan, J.), dated August 2, 2021. The order, insofar as appealed from, denied that defendant's motion to dismiss the amended complaint insofar as asserted against her for failure to comply with RPAPL 1304.

ORDERED that the order is affirmed insofar as appealed from, with costs.

In this mortgage foreclosure action, the Supreme Court granted those branches of the plaintiff's motion which were for summary judgment on the amended complaint insofar as asserted against the defendant Barbara R. Kavovit (hereinafter the defendant), to strike the affirmative defenses insofar as asserted by the defendant, and for an order of reference. Subsequently, the defendant moved to dismiss the amended complaint insofar as asserted against her for failure to comply with RPAPL 1304. In an order dated August 2, 2021, the court, inter alia, denied the defendant's motion. The defendant appeals.

The Supreme Court properly denied the defendant's motion. For reasons set forth in a related appeal (*see Deutsche Bank Natl. Trust Co. v Kavovit*, \_\_\_\_ AD3d \_\_\_\_ [Appellate Division

October 18, 2023

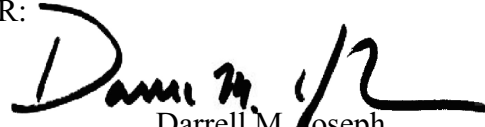
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Docket No. 2021-01921; decided herewith]), the defendant was not entitled to notice pursuant to RPAPL 1304 (*cf. Bank of N.Y. Mellon v Forman*, 176 AD3d 663, 665-666).

DILLON, J.P., BRATHWAITE NELSON, MILLER and MALTESE, JJ., concur.

ENTER:

  
Darrell M. Joseph  
Acting Clerk of the Court