

US Bank v Fraser
2022 NY Slip Op 35034(U)
January 22, 2026
Supreme Court, Kings County
Docket Number: Index No. 501076/15
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 5th day of July, 2022.

PRESENT:

HON. CENCERIA P EDWARDS,
Justice.

-----X

US BANK

Plaintiff,

-against-

Index No.: 501076/15
Mot. Seq. No.: 3
Calendar No.: 48

KWESI JAMAL FRASER et al,

Defendant,

-----X

The following e-filed papers read herein:

NYSCEF Nos.:

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and Affidavits (Affirmations)

Annexed _____

121-128

Opposing Affidavits (Affirmations) _____

129-131

Affidavits/ Affirmations in Reply _____

132-136

Upon the foregoing papers, Defendants Kwesi Fraser and Kinberly Davis move for summary judgment in their favor and dismissal of this action, alleging that Plaintiff failed to strictly comply with RPAPL 1304. Plaintiff US Bank opposes.

Background Facts and Procedural History

Plaintiff commenced the instant foreclosure action on January 30, 2015. Defendants jointly answered through counsel, asserting six affirmative defenses. Settlement conferences were then held and the matter released as “the borrower [did] not have sufficient income to modify this loan at this time.”

On January 22, 2016, Plaintiff moved for summary judgment and an order of reference. Fraser, having changed counsel,¹ opposed, asserting that Plaintiff lacked both capacity and standing to sue and failed to demonstrate that it mailed the notices required by RPAPL 1304. After Plaintiff replied, the motion was denied without prejudice by order dated August 16, 2017 – the Court finding that Plaintiff had not demonstrated that the notices were timely sent.

Fourteen months later, Plaintiff again moved for summary judgment and an order of reference. Fraser opposed, arguing that Plaintiff still had not demonstrated proper mailing of the RPAPL 1304 and mortgage default notices. He further asserted that Plaintiff failed to demonstrate its standing and compliance with RPAPL 1306. Again, the motion was denied for failure to demonstrate that the notices were mailed – this time with prejudice – and the parties were directed to complete discovery and proceed to trial.

Plaintiff filed a Note of Issue on July 9, 2020.

Defendants' Motion for Summary Judgment

On April 22, 2022, Defendants filed² the instant motion for summary judgment. Recognizing that the motion was filed more than sixty days following the Note of Issue, they argued that an intervening change in law constitutes “good cause” for the delay and necessitates dismissal of this action. More specifically, they assert that under the *Kessler*³ line of cases the RPAPL 1304 notices were improper as they contained additional material.

Plaintiff's Opposition

Plaintiff opposed on a variety of grounds. Noting that no CTCA to the firm that filed the motion had been filed, it argues that counsel lacked standing to seek relief on Defendants' behalf. Plaintiff further asserted that the instant motion was untimely – having been filed twenty-one months post-NoI and three years following the order directing the parties to proceed

¹ The incoming counsel, Vivia Joseph, subsequently filed a CTCA reflecting that she was representing both

² On December 28, 2020, a third firm filed a notice of appearance for Defendants but still has not filed a CTCA. It was this new counsel who filed the motion.

³ *Bank of America v Kessler*, 202 AD3d 10 (2d Dept 2021).

to trial. It also posited that there was no good cause for Defendants' delay of four months in moving post-*Kessler*. Plaintiff further argued that this matter does not involve a home loan as the 1-4 Family Rider to the Mortgage removed the requirement that the borrower reside at the mortgaged premises. Finally, Plaintiff asserted that *Kessler* could not be applied retroactively.

Defendants' Reply

Preliminarily, counsel asserted that his firm was retained as trial counsel for Defendants and did not replace their counsel of record. As such, he asserted, no CTCA was necessary. Noting that *Kessler* was a change in law that occurred significantly after the NoI was filed, Defendants argued that their motion should be considered. As both Defendants averred that they resided at the premises, Plaintiff failed to demonstrate that this action does not relate to a home loan. Finally, Defendants noted that *Kessler* was a binding precedent and stare decisis required its application herein.

Analysis

Kessler was reversed by the Court of Appeals (39 NY3d 317) and the additional information included 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, the notices herein do 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, Defendants' arguments fail.

Conclusion

Accordingly, it is

ORDERED that Defendants' motion (mot. seq. #3), is denied in its entirety.

This constitutes the decision and order of the Court.

ENTER:

DATED: January 22, 2026



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