

<b>DBI/ASG Mtge. Holdings, LLC v Schwartz</b>
2022 NY Slip Op 35035(U)
January 33, 2026
Supreme Court, Kings County
Docket Number: Index No. 515525/16
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 30th day of June, 2022.

**PRESENT:**

HON. CENCERIA P EDWARDS,  
Justice.

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DBI/ASG MORTGAGE HOLDINGS, LLC

Plaintiff,

-against-

JACOB SCHWARTZ et al,

Defendant,

-----X

**Index No.:** 515525/16  
**Mot. Seq.:** 4  
**Calendar No.:**

The following e-filed papers read herein:

NYSEF Nos.:

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

Annexed \_\_\_\_\_

134-136 144

Opposing Affidavits (Affirmations) \_\_\_\_\_

146-151

Affidavits/ Affirmations in Reply \_\_\_\_\_

Upon the foregoing papers, Defendants Jacob Schwartz and Channah Schwartz move for renewal pursuant to CPLR 2221[e][2] and, thereupon, for vacatur of the judgment of foreclosure and sale and dismissal of the complaint. Plaintiff DBI/ASG Mortgage Holdings opposes.

***Background Facts and Procedural History***

Plaintiff commenced the instant foreclosure action on September 2, 2016. Defendants jointly answered through counsel, asserting twelve affirmative defenses. Settlement conferences were then held.

On May 9, 2017, Plaintiff moved for summary judgment and an order of reference. Defendants opposed, asserting that Plaintiff failed to proffer evidence of their default, prove its standing, and demonstrate mailing of the mortgage default and RPAPL 1304 notices. By order dated January 16, 2018, the Court substantially rejected Defendants' arguments but found that Plaintiff had not demonstrated that it mailed a mortgage default notice.

Plaintiff moved for reargument and Defendants opposed. By order dated September 4, 2018, the Court agreed with Plaintiff that the mortgage did not have a default notice requirement and, thus, that it was entitled to summary judgment and an order of reference. As such, an order of reference was propounded. Notice of entry was served thereafter.

On October 16, 2019, Plaintiff moved for judgment of foreclosure and sale. Defendants failed to oppose and the relief was granted in March of 2022.

A foreclosure sale was scheduled for June 9, 2022. The instant order to show cause followed.

#### Defendants' Motion to Renew, Vacate, and Dismiss

On May 30, 2022, Defendants filed the instant motion seeking renewal – they do not specify of which motion/decision – and, thereupon, vacatur of the judgment of foreclosure and sale and dismissal of the action. More specifically, they assert that recent changes in law necessitate a finding that Plaintiff failed to strictly comply with RPAPL 1304. Citing the *Kessler*<sup>1</sup> line of cases, Defendants argue that the notices contained additional material rendering them improper. They further argue that *Yapkovitz*<sup>2</sup> and its progeny require that a separate notice must be sent to each borrower<sup>3</sup> – and claim that Plaintiff only appears to have sent to Jacob.

#### Plaintiff's Opposition

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<sup>1</sup> *Bank of America v Kessler*, 202 AD3d 10 (2d Dept 2021).

<sup>2</sup> *Wells Fargo Bank v Yapkovitz*, 199 AD3d 126 (2d Dept 2021).

<sup>3</sup> This is not a change in law. It has long been established that notices must be mailed to all borrowers – *Yapkovitz* merely clarified that sending a single set of notices addressed to multiple borrowers is insufficient.

Plaintiff counters that the instant motion is untimely. Summary judgment was granted over Defendants' arguments as to RPAPL 1304. Though notice of entry was served, Defendants failed to timely appeal. As such, Plaintiff contends, law of the case attached and the prior findings cannot be disturbed. It further posits that, as Defendants are not (explicitly) seeking vacatur of the order granting summary judgment, that order remains unchallenged. Further, Defendants are raising entirely new RPAPL 1304 notices post-judgment – they previously challenged Plaintiff's proof of mailing rather than the contents or number of notices sent.

Plaintiff also suggests that renewal is unavailable as Defendants failed to oppose the motion for judgment of foreclosure and sale and make no effort to vacate that default.

As to the merits of the motion, Plaintiff argues that its inclusion of additional language within the notices – while contrary to *Kessler* – was still legally correct. It further notes that it proffered evidence in support of its motion for summary judgment demonstrating that it sent a set of notices to Channah.

### *Analysis*

While it is unclear which motion Defendants are seeking to renew, this Court presumes that it is the final judgment which is final as to all issues that were or could have been raised previously. However, Defendants failed to oppose the motion for judgment of foreclosure and sale and, thus, renewal therefrom is unavailable (*US Bank NA v Fuller-Watson*, 197 A.D.3d 764, 767 [2d Dept 2021]).

Even were the Court to reach the merits of the motion, *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]). Plaintiff is also correct that it has proffered separate 90-day notices addressed to each Defendant.

*Conclusion*

Accordingly, it is

**ORDERED** that Defendants' motion (mot. seq. #4), is denied in its entirety.

This constitutes the decision and order of the Court.

**ENTER:**

DATED: January 23, 2026



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