

U.S. Bank N.A. v Kohen
2022 NY Slip Op 35036(U)
January 20, 2026
Supreme Court, Kings County
Docket Number: Index No. 518832/17
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 11th day of August, 2022.

PRESENT:

HON. CENCERIA P EDWARDS,

Justice.

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U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR
TERWIN MORTGAGE TRUST 2005-12ALT, ASSET-
BACKED CERTIFICATES, SERIES 2005-12ALT,

Plaintiff,

-against-

Index No.: 518832/17
Mot. Seq. No.: 4
Calendar No.: 61

RONEN KOHEN, SHERYLE KOHEN, NEW YORK CITY TRANSIT
ADJUDICATION BUREAU, NEW YORK CITY PARKING
VIOLATIONS BUREAU, AMERICAN EXPRESS CENTURION BANK,
NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, JOHN
DOES AND JANE DOES SAID NAMES BEING FICTITIOUS.
PARTIES INTENDED BEING POSSIBLE TENANTS OR
OCCUPANTS OF PREMISES, AND CORPORATIONS,
OTHER ENTITIES OR PERSONS WHO HAVE CLAIM,
OR MAY CLAIM, A LIEN AGAINST OR OTHER
INTEREST IN, THE PREMISES,

Defendant,

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The following e-filed papers read herein:

NYSEF Nos.:

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and Affidavits (Affirmations)
Annexed _____
Opposing Affidavits (Affirmations) _____
Affidavits/ Affirmations in Reply _____

67-85

95-103

104-105

Upon the foregoing papers in this action to foreclose a mortgage encumbering the residential property located at 1240 East 23rd Street in Brooklyn (Block 7640, Lot 64), Plaintiff US Bank National Association moves for summary judgment, default judgment, and to appoint a referee to compute the amount due to it. Defendants Ronen Kohen and Sheryle Kohen oppose.

Background Facts and Procedural History

Plaintiff commenced the instant foreclosure action on September 29, 2017. Defendants filed a pre-answer motion to dismiss, alleging that the instant action was filed beyond the applicable statute of limitations. Plaintiff opposes arguing, among other things, that the prior action was not an acceleration as it was dismissed upon a finding that the plaintiff therein lacked standing. Though Defendants contended that the prior dismissal was for lack of evidence of standing rather than an affirmative lack of standing, the Court agreed with Plaintiff's characterization and denied the motion by order dated June 25, 2018.

Shortly thereafter, Defendants both moved for reargument and filed an answer to the complaint. Reargument was denied by order dated January 3, 2019.

A status conference was held on July 9, 2019 and an order issued later that month directing Plaintiff to resume prosecution of the action within ninety days else interest tolling would be considered. Consequently, Plaintiff filed a Note of Issue on October 24, 2019. Defendants' motion to vacate the NoI was denied in February 2020.

Plaintiff's Motion for Summary Judgment

On February 5, 2020, Plaintiff filed the instant motion for summary judgment against Defendants. Therein, Plaintiff, arguing that it has met its prima facie burden and that Defendants' affirmative defenses lack merit, seeks to strike the answer. Plaintiff further seeks default judgment against the non-appearing defendants and to have a referee appointed to compute the amount due to it. Ancillary to the main relief, it seeks to substitute the individual served at the property in place of the "Doe" defendants.

In support of its motion, Plaintiff proffers an affidavit signed by Cynthia Wallace, a Second Assistant Vice President employed by Specialized Loan Servicing LLC, the attorney-in-fact and servicer for Plaintiff. Therein, she introduces, among other documents, copies of the note, mortgage, CEMA, and assignments of mortgage. Wallace further states that the loan has been in default since October 1, 2011. The affiant further asserts that Plaintiff was the holder of the consolidated note from a date prior to the commencement of this action. She also claims a personal familiarity with SLS' mailing practices and appends copies of the notices and the records upon which she bases her contention that they were sent.

Defendants' Opposition

Defendants assert that Plaintiff has not demonstrated its prima facie case through admissible evidence. Noting that Wallace's claim that they are in default is based upon unproduced business records, Defendants argue that Plaintiff has not demonstrated that required element of its cause of action.

Defendants also suggest that the record is insufficient to show that Plaintiff complied with RPAPL 1303. No copies of the notices were uploaded with the affidavits of service. Even now when Plaintiff has proffered copies along with the affidavits as an exhibit to this motion, it has not produced them in color such to demonstrate that they were on paper of a different hue than that of the summons and complaint. Defendants also question whether the newly produced notices are copies of the one's allegedly served – or just file versions produced for the sake of the motion.

Noting that Plaintiff offered no affidavit of service for the RPAPL 1304 notice, Defendants assert that the Wallace Affidavit also is insufficient to demonstrate proper mailing. While the affiant claims to have knowledge of SLS' mailing procedures, she does not adequately describe those policies and the basis upon which she claims they were followed here.

Finally, Defendants argue that Plaintiff has not demonstrated its standing. Wallace merely asserts that Plaintiff was in possession of the original note since an unspecified date prior to the commencement of the action – but offers no supporting evidence or basis for that statement.

Plaintiff's Reply

Plaintiff counters that Wallace proffers a copy of a notice of default which reflects a default and, thus, it has met its prima facie burden. It further avers that the affidavit of service – in which the server specifies that the RPAPL 1303 notice was on blue paper – is sufficient to demonstrate its compliance with that section especially where, as here, Defendants offer no contrary evidence. Plaintiff also notes that Wallace professes familiarity with SLS' mailing procedures and proffers the documentary evidence upon which she relies in stating that the RPAPL 1304 notices were sent. Finally, Plaintiff asserts that it has demonstrated its standing both via chain of assignments of the mortgage and note and via the Wallace Affidavit.

Analysis

“Generally, in a mortgage foreclosure action, a plaintiff demonstrates its prima facie entitlement to judgment as a matter of law by producing the mortgage, the unpaid note, and evidence

of default” (*BNY Mellon v Swift*, 213 AD3d 624, 625 [2d Dept 2023]). Plaintiff has not done so. Though it produced copies of the operative note and mortgage, it failed to demonstrate Defendants’ default through admissible evidence. Wallace fails to proffer the records upon which she allegedly relies in stating that the loan is due for the October 1, 2011 payment. Her assertions are, thus, inadmissible hearsay (*US Bank NA v Kahn Property Owner, LLC*, 206 AD3d 850, 851 [2d Dept 2022]).¹ The notice of default is, at most, evidence that Defendants were in default at one point – but not that they remained in default at the commencement of the action or to date.

The affidavits of service of the summons and complaint suffices to demonstrate compliance with RPAPL 1303 as to Defendants (*CitiMortgage v Goldberg*, 179 AD3d 1006 [2d Dept 2020]). The process server specified that he served an “RPAPL § 1303 notice on blue paper, colored paper different than that of the Summons and Complaint titled Help for Homeowners in Foreclosure” and Defendants offer no evidence to the contrary.

Defendants are correct that Plaintiff failed to demonstrate compliance with RPAPL 1304. While Wallace avers that she has knowledge of SLS’ mailing practices, she provides no details thereof – merely stating that it is SLS’ practice “to deposit items to be delivered by regular and certified mail in a postage-paid properly addressed envelope in an official depository under the exclusive care and custody of the United States Post Office.” That is insufficient (see, similarly, *Wilmington Sav Fund Socy, FSB v Calhoun*, 2025 NYSlipOp 06357 [2d Dept November 19, 2025]). Nor do the documents to which she refers demonstrate mailing. The MortgageServ Note History at most shows that a single copy was sent by Certified Mail on May 19, 2017.

Plaintiff also fails to demonstrate its standing. “A plaintiff establishes its standing in a mortgage foreclosure action by demonstrating that it is both the holder or assignee of the subject mortgage and the holder or assignee of the underlying note at the time the action is commenced” (*Bank of America, NA v Paulsen*, 125 AD3d 909, 910 [2d Dept 2015]). “Either a written assignment of the underlying note or the physical delivery of the note prior to the commencement of the foreclosure action is sufficient to transfer the obligation, and the mortgage passes with the debt as an inseparable incident” (*US Bank, NA v Collymore*, 68 AD3d 752, 754 [2d Dept 2009] [citations omitted]). While Plaintiff attached a copy of the note to the complaint, the allonge to the Consolidated Note is facially defective – listing the wrong borrower and note date. Nor are the assignments of mortgage sufficient to transfer ownership of the note to Plaintiff – the assignor was

¹ As Plaintiff has not demonstrated Defendants’ default by admissible evidence, default judgment against the non-appearing defendants also must be denied.

MERS to which this note² was never assigned. Finally, Wallace’s assertion that Plaintiff was in possession of the note prior to the commencement of the action is unsupported by any admissible evidence and (seemingly) was not based upon personal knowledge.

Defendants have abandoned their other affirmative defenses by failing to address them in opposition to Plaintiff’s motion (*114 Woodbury Realty, LLC v. 10 Bethpage Rd., LLC*, 178 AD3d 757, 761 [2d Dept 2019]).

The portion of Plaintiff’s motion seeking to amend the caption to substitute Sulman Kohen in place of the Doe defendants is granted. He appears to have been served at the property.

Conclusion

Accordingly, it is

ORDERED that Plaintiff’s motion for summary judgment (mot. seq. #4), is granted to the extent that Defendants’ first, third through ninth, eleventh, twelfth, and fourteenth affirmative defenses are stricken; and it is further

ORDERED that Sulman Kohen is substituted in place of the Doe defendants; and it is further

ORDERED that summary judgment on Plaintiff’s claims and Defendants’ second, tenth, and thirteenth affirmative defenses is denied; and it is further

ORDERED that the Clerk of the Court shall amend the caption to read as follows:

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U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR
TERWIN MORTGAGE TRUST 2005-12ALT, ASSET-
BACKED CERTIFICATES, SERIES 2005-12ALT,
Plaintiff,

-against-

² One of the prior notes appears to have been assigned to MERS by Approved Funding Corp. That does not appear to be the case for the superseding Consolidated Note.

RONEN KOHEN, SHERYLE KOHEN, NEW YORK CITY
TRANSIT ADJUDICATION BUREAU, NEW YORK CITY
PARKING VIOLATIONS BUREAU, AMERICAN EXPRESS
CENTURION BANK, NEW YORK CITY ENVIRONMENTAL
CONTROL BOARD, AND SULMAN KOHEN,

Defendant,

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This constitutes the decision and order of the Court.

ENTER:

DATED: January 20, 2026



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