

U.S. Bank N.A. v Speller
2024 NY Slip Op 34983(U)
September 20, 2024
Supreme Court, Putnam County
Docket Number: Index No. 500088/2022
Judge: Victor G. Grossman
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SUPREME COURT – STATE OF NEW YORK
Present: HON. VICTOR G. GROSSMAN, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

-----X
U.S. BANK NATIONAL ASSOCIATION not in its
Individual Capacity but Solely as Trustee for the
RMAC TRUST, SERIES 2016-CTT,

Plaintiff,

-against-

MICHAEL M. SPELLER, ELLEN M. FITZSIMMONS,
et al.,

Defendants.

To commence the statutory time
period for appeals as of right
(CPLR 5513[a]), you are advised
to serve a copy of this order, with
notice of entry, upon all parties.

Index No. 500088 / 2022
Mot. Seq. No. 7

-----X **THIRD SUPPLEMENTAL
DECISION AND ORDER**

The following papers numbered 1 to 2 were read on Defendants’ application for an award
of expenses pursuant to Real Property Law §282:

Defendants’ Affidavit of Expenses.....	1
Plaintiff’s Reply	2

Upon the foregoing papers it is ORDERED that the application is disposed of as follows:

This is a residential mortgage foreclosure action. By prior Decision and Order dated
August 14, 2024, the Court awarded the *pro se* Defendants herein summary judgment dismissing
the Complaint on the grounds that the Plaintiff had failed to establish standing to foreclose, and
authorized Defendants, as prevailing parties herein, to submit an affidavit of expenses pursuant
to Real Property Law §282(1).

Defendants seek an award in the amount of \$43,519.19, comprised of:

- the cost of printing 26,034 pages at the rate of \$0.24 per page;
- reimbursement for typing, editing and transcription of 702 pages of original work at the rate of \$10 per page;
- \$1,160.00 for court and filing fees;
- 132 notary fees at the statutory rate of \$2.50 each;
- \$569.60 for the cost of trial transcripts;
- \$145.00 for access to and printing of Putnam County land records;
- \$1,028.43 for mileage at IRC rates;
- \$100.00 in postage costs;
- \$26,918.00 for attorney's fees incurred in a *prior* action.

Real Property Law §282(1) provides in pertinent part:

Whenever a covenant in a mortgage on residential real property shall provide in any action or proceeding to foreclose the mortgage that the mortgagee may recover attorneys' fees and/or expenses incurred as the result of the failure of the mortgagor to perform any covenant or agreement contained in such mortgage, or that amounts paid by the mortgagee therefor shall be paid by the mortgagor as additional payment, there shall be implied in such mortgage a covenant by the mortgagee to pay to the mortgagor the reasonable attorney's fees and/or expenses incurred by the mortgagor...in the successful defense of any action or proceeding commenced by the mortgagee against the mortgagor arising out of the contract, and an agreement that such fees and expenses may be recovered...by way of counterclaim in any action or proceeding commenced by the mortgagee against the mortgagor...

“The stated purpose of this bill was to *impose reciprocity* and allow borrowers who defeat a foreclosure action to recover attorney fees in the same manner as that given tenants under RPL §234.” McKinney's Cons. Laws of N.Y., Vol. 49, RPL §282, Practice Commentaries, p. 226 (2018) (emphasis added; citing Introducer's Memorandum in Support, New York Bill Jacket, 2010 S.B. 2614, Ch. 550).

The mortgage in this case provides in pertinent part:

In any lawsuit for Foreclosure and Sale, Lender will have the right to collect **all costs and disbursements and additional allowances allowed by Applicable Law**¹ and will have the right to add all reasonable attorneys' fees to the amount I owe Lender, which fees shall become part of the Sums Secured.

Since the purpose of RPL §282 is to establish reciprocity between lenders and borrowers, and since the statute explicitly conditions the borrower's right to recover attorney's fees and/or expenses on a provision in the mortgage allowing the lender to recover such fees and/or expenses, the "expenses" recoverable by a prevailing borrower are limited to those which the mortgage would entitle a prevailing lender to recover.

Pursuant to the Mortgage at issue here, recoverable "expenses" are limited to "all costs and disbursements and additional allowances allowed by Applicable Law." Costs, disbursements and additional allowances are defined in Articles 82 and 83 of the Civil Practice Law and Rules. Applying those provisions to the discrete items in Defendants' application:

- The cost of printing 26,034 pages at the rate of \$0.24 per page.

CPLR §8301(a)(6) provides for the taxing of "the reasonable expenses of printing the papers for a hearing, when required." There is otherwise no provision of law allowing recovery for the expense of printing pages in a lawsuit (except in connection with an appeal). Defendants' submission upon the hearing in this case consisted of 189 pages. At the requested rate of \$0.24 per page, they are entitled to recover the sum of \$45.36.

- Reimbursement for typing, editing and transcription of 702 pages of original work at the rate of \$10 per page.

There is no provision of law allowing recovery for the expense of typing, editing and transcription of original work in a lawsuit.

¹ The Mortgage provides that "[a]ll controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable, judicial opinions will be called 'Applicable Law.'"

- \$1,160.00 for court and filing fees.

Court and filing fees are recoverable pursuant to CPLR §8301(a)(1), which provides for the taxing of “the legal fees of witnesses and of referees and other officers.” Defendants are accordingly entitled to recover the sum of \$1,160.00.

- 132 notary fees at the statutory rate of \$2.50 each.

A notary is not an “officer” whose fees are recoverable pursuant to CPLR §8301(a)(1).

- \$569.60 for the cost of trial transcripts.

The cost of trial transcripts is recoverable only if necessary for an appeal. *See, O'Brien v. Town of Huntington*, 131 AD3d 685 (2d Dept. 2015); *Maisto v. Maisto*, 85 AD2d 717 (2d Dept. 1981).

- \$145.00 for access to and printing of Putnam County land records.

There is no provision of law allowing recovery for the expense of access to and printing of Putnam County land records.

- \$1,028.43 for mileage at IRC rates.

There is no provision of law allowing a party to recover his or her own ordinary travel expenses in connection with a lawsuit. *See, In re Tucker's Claim*, 8 AD2d 910 (1959).

- \$100.00 in postage costs.

Although the cost of postage is sometimes taxable, this is an electronically filed case where mailing is not required, and Defendants have not proven this expense.

In view of the foregoing, the Defendants are entitled to an award of expenses in the amount of \$1,205.36. In addition, Defendants are entitled to statutory costs pursuant to CPLR §§8101 and 8201 in the amount of \$700.00.

Defendants also seek an award of \$26,918.00 for attorney’s fees allegedly incurred in a *prior* action. The Defendants proceeded *pro se* in this action and therefore are not entitled to an award of attorney’s fees herein. Fees incurred in connection with a prior action are not recoverable on Defendants’ RPL §282 counterclaim in this action.

In view of the foregoing, it is

ORDERED, that Defendants' application pursuant to Real Property Law §282 is granted to the extent that Defendants may enter judgment against Plaintiff in the amount of \$1,905.36, and the application is otherwise denied.

The foregoing constitutes the decision and order of the Court.

Dated: September 20, 2024
Carmel, New York

ENTER


HON. VICTOR G. GROSSMAN, J.S.C.