

**U.S. Bank Trust N.A. v Abrams**

2025 NY Slip Op 30375(U)

January 16, 2025

Supreme Court, Westchester County

Docket Number: Index No. 67879/2023

Judge: Paul I. Marx

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This opinion is uncorrected and not selected for official publication.

At the Supreme Court, held in and for the County of Westchester, located at 111 Dr. Martin Luther King, Jr. Blvd, White Plains, New York on the 16 day of January 2025.

PRESENT: HON. PAUL I. MARX, J.S.C.

U.S. BANK TRUST NATIONAL ASSOCIATION,  
NOT IN ITS INDIVIDUAL CAPACITY BUT  
SOLELY AS OWNER TRUSTEE FOR RCF 2  
ACQUISITION TRUST,

Plaintiff,

-against-

SUSAN LYNNE ABRAMS; THE TRUSTEES OF  
COLUMBIA UNIVERSITY IN THE CITY OF NEW  
YORK; DEPARTMENT OF ANESTHESIA, "JOHN  
DOE #1" through "JOHN DOE #12",

Defendants.

Index No.: 67879/2023

**ORDER GRANTING  
PLAINTIFF'S SUMMARY  
JUDGMENT, DISMISSING  
THE COUNTERCLAIM WITH  
PREJUDICE, ENTERING  
DEFAULT, APPOINTING A  
REFEREE TO COMPUTE,  
AND AMENDING THE  
CAPTION**

**Mortgaged Property:**  
212 Alphine Drive  
Tuckahoe, New York 10707

Section: 39  
Block: 4  
Lot: 12

**Servicer:** Selene Finance, LP

**Servicer Telephone Number:**  
877-768-3759

UPON the Summons, Complaint and Notice of Pendency, all duly filed herein, and due proof that all defendants have been duly served with said Summons and Complaint, or have voluntarily appeared in this action, and upon the Notice of Motion of plaintiff U.S. Bank Trust National Association, not in its individual capacity but solely as owner Trustee for RCF 2 Acquisition Trust ("Plaintiff"), seeking an Order: (i) granting summary judgment as against

defendant Susan Lynn Abrams (“Defendant”), pursuant to CPLR 3212, and striking her answer with prejudice; (ii) dismissing the counterclaim filed by Defendant with prejudice, (iii) granting default judgment as against the non-appearing defendant The Trustees of Columbia University in the City of New York Department of Anesthesia, (iv) appointing a referee, pursuant to RPAPL § 1321, to ascertain the amounts due on the note and mortgage and issue a report; (v) amending the caption to drop “John Doe #1” through “John Doe #12”, and (vi) granting such other and further relief in favor of Plaintiff as this Court deems just and proper (the “Motion”); and upon: (i) the Affirmation of Alexandria A. Kaminski, Esq., dated August 16, 2024, and the exhibits annexed thereto; (ii) the Affirmation of Amanda Harvey, Contested Default Case Manager of Selene Finance LP as attorney-in-fact for Plaintiff, affirmed on August 14, 2024, and the exhibits annexed thereto; (iii) Lost Note Affidavit executed by Brandy Thompson, dated August 14, 2024, and the exhibits annexed thereto; (iv) the Affirmation of Samantha Sandler, Esq., dated August 12, 2024, and the exhibits annexed thereto; (v) the Affirmation of Meagan Arpaio, dated August 13, 2024 (vi) Plaintiff’s memorandum of law; and upon all prior pleadings and proceedings heretofore had herein; and for other good cause appearing:

and opposition by Defendant Susan Lynne Abrams\*

**NOW**, on motion of Hinshaw & Culbertson LLP, attorneys of record for Plaintiff, it is

**ORDERED**, that Plaintiff’s Motion is granted in its entirety; and it is further;

**ORDERED**, that the answer of defendant Susan Lynne Abrams is hereby stricken and the defenses and counterclaim asserted therein dismissed, with prejudice; and it is further;

**ORDERED**, that a default judgment in favor of Plaintiff is granted as to the claims described in the Complaint against the non-answering defendant The Trustees of Columbia University in the City of New York Department of Anesthesia,; and it is further

**ORDERED**, that the caption is amended to drop “John Doe #1” through “John Doe

#12”, without prejudice to the proceedings had herein or to be had herein; and it is further

**ORDERED**, that the caption, as amended, is as follows:

U.S. BANK TRUST NATIONAL ASSOCIATION,  
NOT IN ITS INDIVIDUAL CAPACITY BUT  
SOLELY AS OWNER TRUSTEE FOR RCF 2  
ACQUISITION TRUST,

Plaintiff,

-against-

SUSAN LYNNE ABRAMS; THE TRUSTEES OF  
COLUMBIA UNIVERSITY IN THE CITY OF NEW  
YORK; DEPARTMENT OF ANESTHESIA  
Defendants.

And it is further

**ORDERED**, that Stuart I. Ball, Esq. having an office at  
2066 Central Park Ave, Yonkers, NY 10710; stuart@ballandferrari.com,

telephone number 914-779-2600, is hereby appointed Referee to  
ascertain and compute the amount due to Plaintiff herein for principal, interest, and other  
disbursements advanced as provided for by statute and in the Note and Mortgage upon which  
this action was brought, and to determine whether or not the mortgaged premises should be sold  
within 45 days of this Order.

in parcels and the Referee is to report to the court ~~with all convenient speed~~. No hearing shall be  
required as the Referee is appointed to hear and report, which is a purely administrative act.

Objections, if any, shall be the subject of applications made directly to the court; and it is further

**ORDERED**, that upon submission of the Referee's Report, Plaintiff shall pay ~~\$250.00~~  
<sup>\$350.00</sup> to

the Referee as compensation for his/her services, which sum may be recouped as a cost of

litigation; and it is further

**ORDERED**, that the Referee appointed herein is subject to the requirements of Rule 36.2 (c) of the Chief Judge, and if the Referee is disqualified from receiving an appointment pursuant to the provision of that Rule, the Referee shall notify the Appointing Judge forthwith; and it is further

**ORDERED**, that by accepting this appointment the Referee certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCCR Part 36), including but not limited to, Section 36.2(e) ("Disqualifications from appointment"), and Section 36.2(d) ("Limitations on appointments based upon compensation"); and it is further

**ORDERED**, that a copy of this Order with Notice of Entry shall be served upon the designated Referee, the owner of the equity of redemption and any other party entitled to notice; and it is further

**ORDERED** that plaintiff shall make application for Judgment of Foreclosure and Sale within one hundred eighty (180) days of the date of this Decision and Order, unless extension is granted by the Court for good cause shown, and it is further

**ORDERED** that this matter is scheduled for a conference with Principal Law Clerk Bridget Gauntlett, Esq. on July 22, 2025, at 9:30 a.m. via Teams. The purpose of this conference is to determine whether the Referee has completed the computation report and whether Plaintiff has filed an application for Judgment of Foreclosure and Sale. Appearances by the parties and appointed Referee are required unless: (1) the Referee has completed the computation report and (2) Plaintiff has filed an application for Judgment of Foreclosure and Sale. The Court will send a Teams link for the conference.

\* Defendant Susan Lynne Abrams raises several arguments in opposition to Plaintiff's motion for summary judgment, none of which raised a material issue of fact warranting denial of the motion, for the reasons stated below.

*Standing*

Defendant challenges Plaintiff's standing to foreclose by asserting that it has not established through the affirmation of Samantha Sandler, Esq. of Robertson, Anschutz, Schneid, Crane & Partners, PLLC ("RAS"), Plaintiff's former counsel, that Plaintiff had possession of the original note when the action was filed. Defendant asserts that Ms. Sandler's affirmation does not establish that RAS had possession of the original note because she does not claim to have seen it, rather, she asserts that it is the regular practice and procedure of RAS for one of its attorneys to review the original documents. Defendant argues that Ms. Sandler does not identify the reviewing attorney or the attorney who sent the documents to Selene Finance LP ("Selene"), servicing agent and attorney-in-fact for Plaintiff, whereupon the original note was later mislaid. Defendant also argues that there is conflicting information contained in the "bailee letter" and asserts that Ms. Sandler did not authenticate the documents she submits with her affirmation, filed as NYSCEF Doc ## 63 and 66.

Plaintiff asserts in its reply that Ms. Sandler properly authenticated the documents attached to her affirmation as business records of RAS and she attested to her personal knowledge of RAS's practices and procedures concerning review of loan documents.

Ms. Sandler's affirmation is sufficient to establish that Plaintiff was in possession of the original note when the action was commenced. Defendant failed to raise a material issue of fact concerning Plaintiff's standing.

*Authority of Loan Servicer*

Defendant challenges the admissibility of the affidavit of Amanda Harvey, Contested Default Case Manager of Selene, on the ground that Plaintiff has not established Selene's authority to act for Plaintiff. Specifically, Defendant asserts that Ms. Harvey did not submit the Trust Agreement referenced in Selene's Servicing Agreement with Plaintiff, which is required to establish Selene's authority.

Upon consideration of Plaintiff's arguments in reply and review of the Servicing Agreement between Plaintiff and Selene, Selene's authority to act on Plaintiff's behalf in this

action is clearly established by the Servicing Agreement. The reference in the Servicing Agreement to a Trust Agreement between RCF 2 Acquisition Trust, for which Plaintiff is Owner Trustee, and Pretium Residential Credit Management, LLC, the manager of the Trust, is inconsequential. It is clear from the Servicing Agreement that Selene's authority is fully set forth therein, without reference to any other agreement. Accordingly, Plaintiff has established Selene's authority to act on its behalf.

*Default Notices Required by Loan Documents and RPAPL § 1304*

Defendant attempts to raise a material issue of fact regarding Plaintiff's mailing of the requisite default notices which are conditions precedent to suit, again challenging Ms. Harvey's affidavit. Defendant contends that Ms. Harvey that does attest to knowledge of the mailing practices and procedures of the third-party vendor which Defendant purports performed the actual mailing. Defendant asks this Court to examine documents filed in other cases to conclude that the mailings in this case were performed by a third-party they seek to identify as Covius Document Services, LLC ("Covius"), and not by Selene. The basis for Defendant's assertion is the return address of Temecula, CA on the notices, which they contend was associated with Covius in the other actions.

Notably, unlike the cases cited by Defendant, Ms. Harvey does not assert that the actual mailing of the notices was performed by a third-party vendor, which would require an assertion by her of knowledge of the third-party vendor's mailing practices and procedures. The Court finds the method Defendant employs to attempt to establish that Ms. Harvey did not fully disclose the procedures used by Selene to effectuate proper mailing of the notices prepared by it too unreliable to raise a material issue of fact. Defendant does not submit an affidavit denying her receipt of the notices or of anyone with knowledge to establish the Selene used a third-party vendor in this case. RPAPL § 1303

Defendant contends that Plaintiff did not demonstrate compliance with RPAPL § 1303, challenging the affidavit of service without identifying any particular defect in the affidavit. Defendant relies upon a lengthy quote from *U.S. Bank National Association v 22-33 Brookhaven*, 219 AD3d 657, 663 [2<sup>nd</sup> Dept 2023], and then merely states "[t]he affidavit of service is equally deficient here." NYSCEF Doc # 89 at p 10, ¶ 28-29.

Defendant's unelaborated and unsubstantiated contention is not sufficient to raise a material issue of fact concerning service of the RPAPL § 1303 notice.

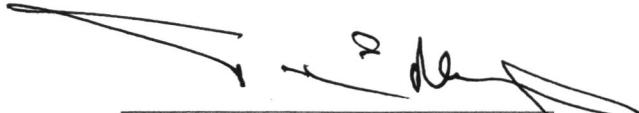
CONCLUSION

Defendant failed to raise any material issue of fact. Consequently, Plaintiff's motion for summary is granted.

This constitutes the Decision and Order of the Court.

Dated: January 16, 2025  
White Plains, New York

ENTER



HON. PAUL I. MARX, J.S.C.