PNC v Singer
2025 NY Slip Op 31870(U)
May 20, 2025
Supreme Court, Kings County
Docket Number: Index No. 503419/17
Judge: Carolyn Mazzu Genovesi

At an IAS Term, Part FRP-5, 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 20 May 2025

PRESENT: Hon. Cecily [illegible] Scarpulla

J.S.C.

Index No.: 503419/17

x

PNC,

Plaintiff,

DECISION AND ORDER

-against-

ABRAHAM SINGER et al,

Defendant,

x

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion:

Papers	**Numbered**
Motion (MS 4)	1
Opp/Cross (MS 5)	2
Reply/Opp to Cross	3
Cross-Reply	4

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

Plaintiff moves for summary judgment and an order of reference. Defendants oppose and cross-move for dismissal, alleging that the loan is no longer accelerated and that Plaintiff failed to comply with RPAPL 1304 and 1306. Plaintiff opposes.

I. Deacceleration

It is undisputed that, on June 17, 2022, Plaintiff filed a motion seeking to discontinue this action without prejudice and deaccelerate the loan. Referenced therein by its counsel and attached to his affirmation is a deacceleration letter ostensibly sent to Defendants several months earlier. Defendants opposed that motion, arguing that Plaintiff was attempting to evade an

adverse decision under the Second Department's decisions in *Yapkowitz*, *Kessler*, *and Gordon*. In February 2023, Plaintiff withdrew its motion to discontinue.

Defendants now argue that Plaintiff's statements within its motion and deacceleration letter that it was revoking its acceleration of the loan and restoring it to installment status are fatal to this action.[1] Plaintiff counters that it did not actually terminate this action and, thus, did not successfully revoke the acceleration. It further notes that Defendants opposed the motion to discontinue and, thus, argued in favor of the continuation of this action and the related acceleration of the loan – a position to which Plaintiff eventually acceded in withdrawing the motion. The Court agrees with Plaintiff. The loan was never actually deaccelerated. Though Plaintiff sought to do so, the action – seeking to collect the entire debt – remained active throughout. The motion to discontinue was withdrawn in the face of Defendants' insistence that the litigation continue to a final determination. Though a deacceleration letter may have been sent, there was an active foreclosure case at the time so the loan could not be restored to an installment contract.[2]

II. RPAPL 1304

Plaintiff proffers an "Affidavit of Mailing Procedures" executed by Kevin J Cummings, an attorney at Tucker Arensberg PC[3]. That firm, Plaintiff's prior counsel in this action, allegedly mailed the notices. In support of his contentions that it did so, Cummings attests to his department's mailing procedures[4] and appends its business records – including a document history showing the creation of the notices, an affidavit of service executed by a former paralegal at the firm (Amanda Petronchak) wherein she attests to having personally mailed the notices,

[1] If the Court is interpreting Defendants' position correctly, they appear to be arguing that this action cannot proceed due to Plaintiff's statements but that the loan was not actually deaccelerated such to reset the statute of limitations of the installments following the statements.
[2] Indeed, had the situation been one in which a plaintiff seeking to avoid the running of the statute of limitations sent a de-acceleration letter while there was an active foreclosure, any reasonable defense counsel (in a subsequent suit) would argue that the letter had no legal effect.
[3] Defendants are correct that Cummings joined the firm following the mailing of the notices. However, even assuming that he could only attest to the policies in effect during his tenure, he has also proffered documentary evidence supporting his conclusions – including an actual affidavit of service.
[4] Defendants take issue with the participation of a courier service to transport the envelopes from the firm to the post office. The Court does not share that concern – whether the firm's mail room did so or a vendor did so is irrelevant especially where, as here, there is documentary evidence of delivery to the post office.

post office stamped certified mail receipts, and copies of the envelopes from the certified mailings that were returned to sender as unclaimed.

Defendants raise several challenges to Plaintiff's compliance. Preliminarily, they question Tucker Arensberg's authority to send the letters. A law firm may send notices RPAPL 1304 notices (*Flagstar Bank, FSB v Mendoza*, 139 AD3d 898 [2d Dept 2016]). Here, Cummings attests that the firm was retained by Plaintiff to represent it in this matter – a conclusion supported by its filing of the action. Further, Plaintiff's affiant – William Hardwick – attests that the mailing was done on behalf of it. As such, it appears that Tucker Arensberg was authorized – both legally and actually – to send the notices.

Defendants also question whether the mailings actually occurred. While it is true that the affidavit of service was executed by Petronchak several months after the notices were allegedly mail, it is also supported by the other evidence that has been proffered by Cummings – the document creation, post office stamped certified mail receipts matching the date she swears to have sent the letters, and the envelopes from the returned certified mailings (which also are postmarked on that same date). Though Defendants are correct that Cummings appends only three copies of the notice to his affirmation[5], both the affidavit of service and the mailing procedures support the conclusion that first class mailings were completed as to each Defendant.

III. RPAPL 1306

Defendants argue that Plaintiff failed to timely make a Step 2 filing with DFS. However, as that memorializes events following the commencement of the action, it cannot be a precondition to suit as Step 1 is. As such, the admitted untimeliness does not mandate dismissal of this action.

IV. Plaintiff's case

It is well established that "[i]n a mortgage foreclosure action, a plaintiff establishes its prima facie entitlement to judgment as a matter of law by producing the mortgage and the unpaid

[5] All copies are identical – none is marked with a means of service and both Defendants are listed in the header of each. In light of the Petronchak Affidavit, the mailing procedures, and the evidence that certified mail copies were separately sent, the Court also concludes that separate mailings were made as to each Defendant – and there is no *Yapkowitz* issue here.

note, and evidence of the default" (*Loancare v. Firshing*, 130 A.D.3d 787 [2d Dept 2015]). Plaintiff has done so. Hardwick proffers the monthly statements spanning from 2004 until 2016, two years following Defendant's default. As noted by Plaintiff, in doing so it has demonstrated that funds were advanced pursuant to the HELOC, that Defendants made payments, and that Defendants defaulted while there was still an outstanding balance.

Plaintiff has also demonstrated its standing. It is the successor by merger to the original lender and appended an unendorsed copy of the note to the complaint (see, *Wilmington v Matamoro*, 200 AD3d 79, 90-91 [2d Dept 2021]); *Citimortgage v Pugliese*, 143 AD3d 659, 661 [2d Dept 2016]).

Defendants' remaining arguments have been considered and found unavailing.

Defendants have abandoned their remaining 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]).

Motion granted. The Order appointing a Referee is incorporated by reference herein.
Cross-motion denied.

This constitutes the decision and order of the Court.

ENTER:

Hon. Carolyn Marzu Genovesi