

**U.S. Bank N.A. v Sackaris**

2025 NY Slip Op 31955(U)

May 12, 2025

Supreme Court, Suffolk County

Docket Number: Index No. 607336/2022

Judge: Christopher Modelewski

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

Index No. 607336/2022

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 17 - SUFFOLK COUNTY

***P R E S E N T :***

HON. CHRISTOPHER MODELEWSKI  
Justice of the Supreme Court

MOTION DATE 12/09/2024 (003&004)  
ADJ. DATE 03/31/2025  
Mot. Seq. # 003-MD  
Mot. Seq. # 004-MG

-----X  
U.S. BANK NATIONAL ASSOCIATION, AS  
TRUSTEE FOR LEHMAN MORTGAGE  
TRUST MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2007-8,

Plaintiff,

- against -

GROSS POLOWY, LLC  
Attorneys for Plaintiff  
1775 Wehrle Drive, Suite 100  
Williamsville, NY 14221

JUSTIN F. PANE, P.C.  
Attorneys for Defendant Sackaris  
80 Orville Drive, Suite 100  
Bohemia, New York 11716

MICHAEL SACKARIS, JAMES KALIS, JUAN  
MARINE, PREMIUM TECHNICAL  
SERVICES CORP., TOOL RENTALS, INC.,  
ALL COUNTY BLOCK & SUPPLY CORP,  
NEW YORK STATE DEPARTMENT OF  
TAXATION AND FINANCE, CLERK OF THE  
SUFFOLK COUNTY TRAFFIC & PARKING  
VIOLATIONS AGENCY, UNITED STATES  
OF AMERICA ACTING THROUGH THE IRS,  
STATE OF NEW YORK C/O ASSISTANT  
ATTORNEY GENERAL, FREMONT  
INVESTMENT & LOAN, WELLS FARGO  
BANK, N.A., SUCCESSOR BY MERGER TO  
WELLS FARGO BANK MINNESOTA,  
NATIONAL ASSOCIATION, AS TRUSTEE  
FOR RENAISSANCE HEL TRUST 2002-3  
ADDRESS, PHYLLIS BURMAN  
JOHN DOE (Those unknown tenants, occupants,  
persons or corporations or their heirs,  
distributees, executors, administrators, trustees,  
guardians, assignees, creditors or successors  
claiming an interest in the mortgaged premises.),

Defendants.  
-----X

Upon the E-file document list numbered 81 to 107, 109 to 115, 119 to 121, and 123, read and considered on the motion of plaintiff for an order granting it summary judgment pursuant to CPLR 3212,

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dismissing the defenses and counterclaims asserted in the answer filed by defendant Michael Sackaris pursuant to CPLR 3211(b), permitting the answer to be treated as a limited notice of appearance, appointing a referee to compute the amount due to the plaintiff and to examine and report whether the mortgaged premises can be sold in parcels pursuant to RPAPL 1321, amending the caption to reflect the deletion of "John Doe" as a party defendant to this action and fixing the defaults of all non-answering defendants pursuant to CPLR 3215, and on the cross-motion of defendant Michael Sackaris for an order dismissing plaintiff's complaint for its failure to comply with and satisfy the statutory mandates set forth under RPAPL 1304 and RPAPL 1306; it is

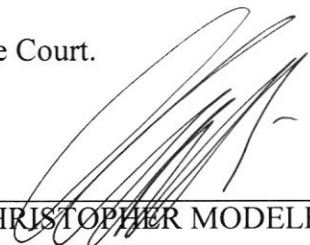
**ORDERED** that the cross-motion of defendant Michael Sackaris for an order dismissing plaintiff's complaint for its failure to comply with and satisfy the statutory mandates set forth under RPAPL 1304 and RPAPL 1306, is granted. The RPAPL 1306 proof of filing statement submitted by plaintiff, which is a mandatory condition precedent to the commencement of a foreclosure action (*see U.S. Bank Trust N.A. v Chiramannil*, 205 AD3d 966, 166 NYS3d 590 [2d Dept 2022]), does not contain the actual address for the borrower. Thus, the RPAPL 1306 notice is facially defective (*see RPAPL 1306* [2]; *see also Deutsche Bank Natl Trust Co. v Velasquez*, 226 NYS3d 522, 2025 NY Slip Op. 25002 [Sup Ct, Suffolk County 2025][foreclosure complaint dismissed where plaintiff failed to include the borrower's telephone number on the RPAPL 1306 filing]). Moreover, plaintiff concedes that the RPAPL 1306 filing statement dated March 25, 2022 is defective. The Court rejects plaintiff's argument that errors, mistakes, or defects in the mandatory requirements of RPAPL 1306 can be disregarded pursuant to CPLR 2001 (*see Deutsche Bank Natl Trust Co. v Velasquez, supra*). The Court also rejects plaintiff's argument that the RPAPL 1306 proof of filing statement from the 2015 action can be applied to this action commenced approximately seven years later; and it is further

**ORDERED** that plaintiff's complaint is dismissed, without prejudice (CPLR 205-a); and it is further

**ORDERED** that the motion of plaintiff for an order granting it summary judgment pursuant to CPLR 3212, dismissing the defenses and counterclaims asserted in the answer filed by defendant Michael Sackaris pursuant to CPLR 3211(b), permitting the answer to be treated as a limited notice of appearance, appointing a referee to compute the amount due to the plaintiff pursuant to RPAPL 1321, amending the caption to reflect the deletion of "John Doe" as a party defendant to this action and fixing the defaults of all non-answering defendants pursuant to CPLR 3215, is denied as academic. In any event, plaintiff failed to establish its compliance with RPAPL 1304, as the Gross Polowy law firm affidavit of service for the notice mailed to defendant Sackaris by certified mail and first-class mail on March 24, 2022 was deficient. The Gross Polowy law firm affidavit of service makes no reference to, and does not indicate that it had attached to it, the actual RPAPL 1304 notice containing "Mr. Cooper" letterhead with a return address located in Dallas, Texas. The Court rejects plaintiff's argument that the RPAPL 1304 notice from the 2015 foreclosure action demonstrates plaintiff's compliance with the statute in this action commenced approximately seven years later.

The foregoing constitutes the decision and Order of the Court.

Dated: May 1, 2025

  
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HON. CHRISTOPHER MODELEWSKI, J.S.C.

FINAL DISPOSITION       NON-FINAL DISPOSITION