

U.S. Bank Trust N.A. v MB Real Estate Holding, LLC

2025 NY Slip Op 32133(U)

June 9, 2025

Supreme Court, New York County

Docket Number: Index No. 850406/2023

Judge: Francis A. Kahn III

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. FRANCIS A. KAHN, III PART 32

Justice

INDEX NO. 850406/2023
MOTION DATE
MOTION SEQ. NO. 001

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

Plaintiff,

- v -

MB REAL ESTATE HOLDING, LLC, MARIANNA
BELCHANSKAIA, BOARD OF MANAGERS OF ONE
RIVERSIDE PARK CONDOMINIUM, JOHN DOE #1
THROUGH JOHN DOE #10

Defendant.

DECISION + ORDER ON
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 26, 27, 28, 29, 30,
31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, 50, 55, 60, 61, 63, 64, 66, 67, 68, 69,
70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, the motion and cross-motion are determined as follows:

This is an action to foreclose on a consolidated, modified and extended mortgage encumbering a
parcel of real property located at 50 Riverside Boulevard, Apt. 16-N, New York, New York. The
mortgage was given by Defendant MB Real Estate Holding, LLC ("MB") to non-party Mortgage
Electronic Registration Systems ("MERS") as nominee for HSBC Bank USA, N.A. ("HSBC"). The
mortgage secures a loan in an original principal amount of \$2,460,000.00 which is memorialized by a
consolidated note given by Defendant Marianna Belchanskaia ("Belchanskaia"). The note and
mortgage, both dated November 28, 2018, were executed Belchanskaia, individually and as authorized
signatory of MB, respectively. Plaintiff commenced this action, and pled Defendants defaulted in
repayment of the indebtedness beginning on or about July 1, 2020. Defendants MB and Belchanskaia
answered and pled ten affirmative defenses, including lack of standing. Now, Plaintiff moves for
summary judgment against the appearing Defendants, to strike their answers and affirmative defenses,
for a default judgment against the non-appearing Defendants, for an order of reference and to amend the
caption. Defendants oppose the motion and cross-move for summary judgment dismissing Plaintiff's
complaint pursuant to CPLR §3211[a][3] and [7]. Plaintiff opposes the cross-motion.

In moving for summary judgment, Plaintiff was required to establish prima facie entitlement to
judgment as a matter of law though proof of the mortgage, the note, and evidence of Defendants' default
in repayment (see U.S. Bank, N.A. v James, 180 AD3d 594 [1st Dept 2020]; Bank of NY v Knowles, 151
AD3d 596 [1st Dept 2017]; Fortress Credit Corp. v Hudson Yards, LLC, 78 AD3d 577 [1st Dept 2010]).
A mortgagor's default "is established by (1) an admission made in response to a notice to admit, (2) an

affidavit from a person having personal knowledge of the facts, or (3) other evidence in admissible form” (*Deutsche Bank Natl. Trust Co. v McGann*, 183 AD3d 700, 702 [2d Dept 2020]). Also, based on the affirmative defenses pled, Plaintiff was required to demonstrate, *prima facie*, its standing (*see eg Wells Fargo Bank, N.A. v Tricario*, 180 AD3d 848 [2nd Dept 2020]), its strict compliance with, or demonstrate the inapplicability of, RPAPL §§1303, 1304 and 1306 (*see U.S. Bank, NA v Nathan*, 173 AD3d 1112 [2d Dept 2019]; *HSBC Bank USA, N.A. v Bermudez*, 175 AD3d 667, 669 [2d Dept 2019]) as well as its substantial compliance with the requisites under paragraph 22 of the mortgage (*see eg Wells Fargo Bank, N.A. v McKenzie*, 186 AD3d 1582, 1584 [2d Dept 2020]).

Proof supporting a *prima facie* case on a motion for summary judgment a cause of action for foreclosure must be in admissible form (*see* CPLR §3212[b]; *Tri-State Loan Acquisitions III, LLC v Litkowski*, 172 AD3d 780 [1st Dept 2019]). A plaintiff may rely on evidence from persons with personal knowledge of the facts, documents in admissible form and/or persons with knowledge derived from produced admissible records (*see eg U.S. Bank N.A. v Moulton*, 179 AD3d 734, 738 [2d Dept 2020]). No precise set of business records must be proffered, so long as the admissibility requirements of CPLR 4518[a] are fulfilled and the records evince the facts for which they are relied upon (*see eg Citigroup v Kopelowitz*, 147 AD3d 1014, 1015 [2d Dept 2017]).

Plaintiff’s motion was supported by an affidavit from Corey McGovern (“McGovern”), a Document Execution for Selene Finance LP (“Selene”) the servicer and attorney-in-fact of Plaintiff. McGovern avers that her affidavit is based on personal review of Selene’s business records. McGovern’s affidavit is defective as she failed to demonstrate Selene’s authority to act for Plaintiff (*see Wells Fargo Bank v Mitselmakher*, 216 AD3d 1056, 1058 [2d Dept 2023]; *Ditech Fin., LLC v Cummings*, 208 AD3d 634, 636 [2d Dept 2022]; *Deutsche Bank Natl. Trust Co. v Adlerstein*, 171 AD3d 868, 870 [2d Dept 2019]). Although referenced in her affidavit, the power of attorney allegedly granted to Selene was not annexed to the motion or the reply papers in response to Defendants’ opposition (*see Deutsche Bank Natl. Trust Co. v Silverman*, 178 AD3d 898 [2d Dept 2019]; *Deutsche Bank Natl. Trust Co. v Rudman*, 170 AD3d 950 [2d Dept 2019]). Accordingly, since none of documents proffered are in admissible form, Plaintiff failed to establish any of the *prima facie* elements of the cause of action for foreclosure (*see Federal Natl. Mtge. Assn. v Allannah*, 200 AD3d 947 [2d Dept 2021]).

As to the branch of Defendants’ cross-motion to dismiss for lack of standing, when this issue is raised by a defendant in its answer to a mortgage foreclosure action, it is Plaintiff’s obligation to prove same to be entitled to foreclose (*see eg Wells Fargo Bank, N.A. v Tricario*, 180 AD3d 848 [2d Dept 2020]). However, Defendants have raised the defense in a motion to dismiss, so it is Movant’s obligation to demonstrate *prima facie* Plaintiff lacked standing as a matter of law (*see Wilmington Sav. Fund Socy., FSB v Matamoro*, 200 AD3d 79 [2d Dept 2021]; *DLJ Mtge. Capital v Mahadeo*, 166 AD3d 512 [1st Dept 2018]). Standing in a foreclosure action is established in three ways: [1] direct privity between mortgagor and mortgagee, [2] physical possession of the note with an allonge or indorsement in blank before the action is filed, and [3] assignment of the note to Plaintiff prior to commencement of the action (*see eg Wells Fargo Bank, N.A. v Tricario*, 180 AD3d 848 [2d Dept 2020]; *Wells Fargo Bank, NA v Ostiguy*, 127 AD3d 1375 [3d Dept 2015]). “Thus, the defendants here, in moving to dismiss the complaint under CPLR 3211(a)(1) and (3), needed to affirmatively prove that the plaintiff was not in direct privity with them, was not in physical possession of the note indorsed to it or in blank at the time of the commencement of the action, and that the assignment of the note . . . to the plaintiff was invalid.” (*Wilmington Sav. Fund Socy., FSB v Matamoro*, *supra*). “To defeat a defendant’s motion, the plaintiff has no burden of establishing its standing as a matter of law; rather, the motion will be defeated if the

plaintiff’s submissions raise a question of fact as to its standing” (*Deutsche Bank Trust Co. Ams. v Vitellas*, 131 AD3d 52, 60 [2d Dept 2015]; *DLJ Mtge. Capital v Mahadeo*, supra).

It is unquestionable that Plaintiff did not originate the loan and is not in direct privity with the Mortgagor. However, Defendants failed to establish, as a matter of law, that Plaintiff lacked standing when the action was commenced since they neglected to address whether written assignments of the notes and mortgages exist (*see generally Broome Lender LLC v Empire Broome LLC*, 220 AD3d 611 [1st Dept 2023]) or establish *prima facie* with admissible evidence Plaintiff was not a holder of the consolidated note when the action was commenced (*see (Wilmington Sav. Fund Socy., FSB v Matamoro*, supra at 92 [a plaintiff “*need not allege standing . . . to state a cause of action to foreclose upon a mortgage*”][emphasis added]). Defendants’ argument that Plaintiff’s foreclosure action fails for lack of proof of Defendants’ default similarly fails. As a movant seeking dismissal, Defendants were required, but failed, to show they did not default as a matter of law (*see generally Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]).

The branch of Plaintiff’s motion for a default judgment against the non-appearing parties is granted without opposition (*see CPLR §3215; SRMOF II 2012-I Trust v Tella*, 139 AD3d 599, 600 [1st Dept 2016]).

The branch of Plaintiff’s motion to amend the caption is granted without opposition (*see generally CPLR §3025; JP Morgan Chase Bank, N.A. v Laszio*, 169 AD3d 885, 887 [2d Dept 2019]).

Accordingly, it is

ORDERED that Plaintiff’s motion is denied except to the limited extent provided; and it is

ORDERED that Defendants’ cross-motion is denied in its entirety, and it is

ORDERED that the DOE defendants are stricken from the caption as the New York County Clerk will not accept any judgment with a “Doe” Defendant in the caption; and it is further

ORDERED the caption is amended as follows:

SUPREME COURT STATE OF NEW YORK
COUNTY OF NEW YORK

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

Plaintiff,

-against-

MB REAL ESTATE HOLDING, LLC; MARIANNA
GENNADYEVAN BELCHANSKAIA A/K/A
MARIANNA BELCHNASKAIA A/K/A MARIANNA
BELCHANSKAIA; BOARD OF MANAGERS OF ONE
RIVERSIDE PARK CONDOMINIUM,

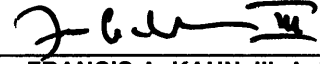
Defendants.

-----X
and it is

ORDERED that the parties shall e-file a discovery stipulation outlining all discovery to be conducted in this matter within five days of e-filing of this order, and it is

ORDERED that this matter is set down for a status conference on **August 14, 2025 @ 10:20 am** via Microsoft Teams.

6/9/2025
DATE



FRANCIS A. KAHN, III, A.J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE