

Wells Fargo Bank, N.A. v Williams

2025 NY Slip Op 33211(U)

July 9, 2025

Supreme Court, Kings County

Docket Number: Index No. 523325/2024

Judge: Derefim B. Neckles

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At an IAS Term, Part FSMP 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, 11201 on the 9th day of July, 2025.

P R E S E N T:

HON. DEREKIM B. NECKLES,
Acting Justice.

WELLS FARGO BANK, NATIONAL ASSOCIATION
AS TRUSTEE FOR OPTION ONE MORTGAGE LOAN
TRUST 2006-3, ASSET-BACKED CERTIFICATES,
SERIES 2006-3,

Plaintiff,

- against -

VIRLYN WILLIAMS A/K/A VIRLYN L. WILLIAMS;
CAPITAL ONE BANK; NEW YORK STATE
DEPARTMENT OF TAXATION AND FINANCE; NEW
YORK CITY PARKING VIOLATIONS BUREAU; NEW
YORK CITY ENVIRONMENTAL CONTROL BOARD;
NEW YORK CITY TRANSIT ADJUDICATION
BUREAU, "JOHN DOE #1" through "JOHN DOE #12,"
the last twelve names being fictitious and unknown to
plaintiff, the persons or parties intended being the tenants,
occupants, persons or corporations, if any, having or
claiming an interest in or lien upon the premises, described
in the complaint,

Defendants.

ms#1

Index No. 523325/2024

The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Affidavits (Affirmations) Annexed
Opposition Affirmation to Motion
Affirmation in Reply

28, 30, 31
55, 56, 57
79

Upon the foregoing papers in this action to foreclose on a mortgage encumbering the subject property at 815 Logan Street in Brooklyn, WELLS FARGO BANK, NATIONAL ASSOCIATION AS TRUSTEE FOR OPTION ONE MORTGAGE LOAN

TRUST 2006-3, ASSET-BACKED CERTIFICATES, SERIES 2006-3 ("Plaintiff"), moves (under mot. seq. 1) for an order, (1) Awarding plaintiff summary judgment against answering defendant VIRLYN WILLIAMS A/K/A VIRLYN L. WILLIAMS; (2) Appointing a referee to compute the amount due to plaintiff, examine whether the mortgaged property known as 815 LOGAN STREET, BROOKLYN, NY 11208 may be sold in parcels, and make his/her computation and report with all convenient speed pursuant to RPAPL §1321; (3) Declaring that all non-appearing and non-answering defendants are in default pursuant to CPLR §3215; and (4) Such additional relief as the court may deem just and proper.

Background

Virlyn Williams ("defendant") executed a note and a mortgage in favor of OPTION ONE MORTGAGE CORPORATION, A CALIFORNIA CORPORATION on June 15, 2006, in the amount of \$460,000.00. Plaintiff commenced its first action to foreclose on defendant's home on August 21, 2009, and was discontinued by plaintiff on October 20, 2010. Plaintiff commenced its second action on October 22, 2010, which was then dismissed on April 3, 2024, for plaintiff's failure to comply with RPAPL §1306. Plaintiff commenced the instant action on August 29, 2024, upon defendant's default on July 1, 2007.

In opposition to plaintiff's motion, defendant argues that the court should deny summary judgement as this action should be barred under the doctrine of laches given plaintiff extending the foreclosure process for over a decade. Defendant additionally contends that the statutory limitations period has expired as plaintiff accelerated

defendant's mortgage debit in 2009. Defendant further argues that plaintiff's affiant, Juliana Thurab, affirmation is insufficient as she does not specifically state that she had personal knowledge of defendant's default, nor does Ms. Thurab identify what record she relied on in finding that defendant defaulted on her loan. Finally, defendant avers that plaintiff has not strictly complied either RPAPL 1304 or RPAPL 1306 as it was defective as the filing omitted vital information about how many days delinquent defendant's loan was.

In reply, plaintiff argues that in opposition to plaintiff's motion for summary judgment, defendant submits only the affirmation of her attorney, which is not claimed to be made based upon knowledge of the facts and is thus insufficient as a matter of law to defeat Plaintiff's motion. Plaintiff further alleges that as this action was commenced on August 29, 2024, and service was completed within the six-month statutory period under CPLR 205-a, the instant action is timely. Additionally, plaintiff provides that since defendant failed to raise laches as an affirmative defense in her answer, it is therefore waived pursuant to CPLR 3211(e). Plaintiff, in respect to their affiant's affirmation, claims that Ms. Thurab's testimony is sufficient and supported by copies of business records, including the payment history for the subject loan, which reflect that the loan is due and owing for the July 1, 2007, payment. Plaintiff then argues that they strictly complied with RPAPL 1304 as Ms. Thurab specifically testifies as to her familiarity with PHH's record keeping practices and testifies that the records annexed to her affidavit are kept and maintained in PHH's ordinary course of business, and that the records are made contemporaneously with the events they describe, by someone with personal knowledge.

Finally, plaintiff argues that despite defendant's argument, under the plain text of RPAPL 1306, the total number of days in default is not required to be reported so there can be no reasonable dispute that plaintiff has complied with the requirements of RPAPL 1306.

Discussion

I. RPAPL 1304

A plaintiff must demonstrate "strict compliance" with RPAPL § 1304 as a "condition precedent to the commencement of a foreclosure action." (MTGLQ Invs., L.P. v. Daleo, 228 A.D.3d 929, 931 (2d Dep't 2024)). In order to show strict compliance with RPAPL 1304, a plaintiff may submit domestic return receipts, proof of a standard office procedure designed to ensure that items are properly addressed and mailed, or an affidavit from someone with personal knowledge that the mailing of the RPAPL 1304 notice actually happened (U.S. Bank, N.A. v. Maiorino, 219 A.D.3d 538, 540, 194 N.Y.S.3d 130 (2023)).

Defendant contends that none of the documents attached to the Thurab affidavit amount to a "domestic return receipt" under the *Maiorino* standard. In *Maiorino*, the court found that the plaintiff's affiant did not attest that the tracking information documents were incorporated into the plaintiff's records and relied upon by the plaintiff in its own businesses. This is contrary to what was provided in the Thurab affidavit. Exhibit F provides a return receipt from PHH Mortgage Services that shows that the notice was mailed by First-Class mail to defendant at the subject property on April 29, 2024. Further, Thurab attests that she has personal knowledge of PHH's standard business practice for generating and mailing notices of default, and of PHH's standard

business practice for generating and mailing 90-day pre-foreclosure notices pursuant to RPAPL § 1304. Defendant incorrectly contends that under *Maiorino*, it is a requirement that the affiant testify to personal knowledge that a 90 day notice was sent specifically to the defendant. The court in *Maiorino* in fact only held that an affiant must aver that it had personal knowledge with the record-keeping practices and standard office mailing procedures of the entity that sent the RPAPL 1304 notice, and provide evidence as to when this notice was mailed. Here, Thurab attests that she has personal knowledge of PHH's mailing procedures and provided a return receipt showing when the notice was mailed. As such, plaintiff has shown strict compliance with RPAPL 1304.

II. RPAPL 1306

RPAPL § 1306(1) requires that a lender file certain information with the Superintendent of Financial Services within three business days after mailing the 90-day notice required by RPAPL § 1304. This includes “the name, address, last known telephone number of the borrower, and the amount claimed as due and owing on the mortgage loan, and any other information prescribed in regulations by the superintendent.”

Defendant argues that Plaintiff's § 1306 filing is defective because it omits the number of days that defendant's loan was delinquent. However, RPAPL § 1306 does not require disclosure of the number of days delinquent. Plaintiff has provided proof that the filing was timely and made in accordance with statutory requirements. As the absence of non-required data in the filing does not invalidate compliance, plaintiff has demonstrated strict compliance with RPAPL § 1306.

III. Thurab Affirmation

Defendant challenges the sufficiency of the affidavit submitted by Juliana Thurab, contending that it lacks specific assertions of personal knowledge of the default and fails to identify the business records relied upon. However, a review of the affirmation shows that Ms. Thurab attests to her role as a document control officer at PHH Mortgage Corporation, Plaintiff's loan servicer, and affirms familiarity with PHH's recordkeeping and mailing practices.

Thurab states that the records she reviewed are maintained in the ordinary course of business and that the payment history attached to her affirmation reflects a default on the July 1, 2007 payment. The Appellate Division has held that a servicer's employee with access to and familiarity with business records may testify to the records' content and admissibility (see *U.S. Bank N.A. v. Kropp-Somoza*, 191 A.D.3d 918, 920 [2d Dep't 2021]). Thus, the Court finds the Thurab affirmation sufficient to establish Defendant's default and compliance with the business records exception to the hearsay rule.

IV. Doctrine of Laches

Defendant argues that this action is barred by laches due to plaintiff's delay in prosecuting the foreclosure over an extended period. However, laches is an equitable defense that must be pled as an affirmative defense in the answer (see CPLR 3211(e)). As defendant failed to include laches in her answer, it is therefore deemed to have been waived.

V. Summary Judgment

To obtain summary judgment in a mortgage foreclosure action, a plaintiff must

establish the existence of the note and mortgage, defendant's default, and compliance with any conditions precedent to foreclosure (*Bank of N.Y. Mellon v. Gordon*, 171 A.D.3d 197, 203 [2d Dep't 2019]). Here, Plaintiff has submitted the mortgage, note, evidence of default, and proof of compliance with RPAPL §§ 1304 and 1306. The Thurab affirmation, supported by admissible business records, sufficiently establishes default.

Here, defendant fails to raise a triable issue of fact. Her opposition consists solely of an attorney affirmation without personal knowledge of the facts, which is insufficient to defeat summary judgment (see *Sutton*, 174 A.D.3d at 1468, 105 N.Y.S.3d 753; *DeFedericis v. Vince's Pizza Plus, Inc.*, 229 A.D.3d 1210, 1211, 214 N.Y.S.3d 589, 590 (2024)). Thus, this court finds that plaintiff is entitled to summary judgment.

Accordingly, it is

ORDERED that plaintiff's motion (mot. seq. one) is granted in its entirety.

This constitutes the decision and order of the court.

E N T E R,



HON. DEREKIM B. NECKLES
A. J. S. C.