

Wilmington Sav. Fund Socy., FSB v Wright

2025 NY Slip Op 33930(U)

October 3, 2025

Supreme Court, Kings County

Docket Number: Index No. 680/13

Judge: Derefim B. Neckles

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FRP-2 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 3rd day of October, 2025.

P R E S E N T:

HON. DEREKIM B. NECKLES,
Acting Justice.

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WILMINGTON SAVING FUND SOCIETY, FSB, AS
TRUSTEE OF STANWICH MORTGAGE LOAN TRUST A,

Plaintiff,

- against -

Index No. 680/13

CALVIN WRIGHT, NINA WYNN-WRIGHT, UNITED STATES OF AMERICA, ACTING THROUGH THE INTERNAL REVENUE SERVICE, NYC PARKING VIOLATIONS BUREAU, CREDIT BASED ASSET SERVICING & SECURITIZATION LLC, BEDFORD STUYVESANT DIVISION OF NEIGHBORHOOD HOUSING SERVICES, INC., HOME HEATING OIL, INC., ASSET ACCEPTANCE LLC, AS ASSIGNEE OF PROVIDIAN BANK, NEW YORK DEPARTMENT OF TAXATION AND FINANCE, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, TRANSIT ADJUDICATION BUREAU AND JOHN DOE (unknown tenants/occupants of the subject Property, being set forth to represent any and all occupants of the subject Property, and any parties, entities of any kind, if any, having or claiming an interest or lien upon the mortgaged property),

Defendants.

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The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/

Petition/Cross Motion and

Affidavits (Affirmations) _____

55-61

Opposing Affidavits (Affirmations) _____

62

Reply Affidavits (Affirmations) _____

63-66

Upon the foregoing papers in this action to foreclose a mortgage encumbering the real property at 85 Quincy Street in Brooklyn (Block 1970, Lot 52) (Property), plaintiff Wilmington Saving Fund Society, FSB, as Trustee of Stanwich Mortgage Loan Trust A (Wilmington or Plaintiff) moves (in motion sequence [mot. seq.] eight) for an order, pursuant to CPLR 2221, granting it leave to reargue “Defendant’s motion to ‘renew/reargue’ Defendant’s motion to dismiss” (NYSCEF Doc No. 55).

Background

On January 11, 2013, Household Finance Realty Corporation of New York (HFC), Wilmington’s predecessor and the original lender, commenced this foreclosure action by filing a summons, an unverified complaint and a notice of pendency against the Property. The complaint alleges that on May 16, 2006, defendants Calvin Wright and Nina Wynn-Wright (the Wright Defendants) executed and delivered a \$641,349.38 note to HFC, which was secured by a mortgage encumbering the Property (Complaint at ¶¶ 3-4). The complaint alleges that the Wright Defendants “failed to comply with the terms and conditions of the note and mortgage by failing to pay amounts due, specifically, \$4,221.79 due on February 22, 2011, and any subsequent payment that has come due . . .” (*id.* at ¶ 6).

The complaint further alleges that “Plaintiff sent a demand prior to instituting this action (to the extent the matter is subject to RPAPL 1304, then in accordance with such law) on 03/23/2012” (*id.* at ¶ 13) and annexes, as Exhibit F, copies of the March 23, 2012, 90-day foreclosure notices allegedly mailed by HFC to the Wright Defendants at 433

Lafayette Avenue, Apt. 5A, in Brooklyn (*id.* at 37-43). Notably, the complaint does not annex any documentary proof that the RPAPL § 1304 notices were actually mailed.

On February 27, 2015, the Wright Defendants collectively answered the complaint, denied the material allegations therein and asserted affirmative defenses, including that “the Plaintiff failed to comply with all notice requirements pursuant to applicable law” (NYSCEF Doc No. 26).

On or about February 27, 2024, Defendant Nina Wynn-Wright moved (in mot. seq. four) for an order dismissing the complaint based on HFC’s failure to comply with RPAPL §1304. Plaintiff’s counsel, in opposition, asserted that “[a]lthough Plaintiff complied with 1304 the Premises was not Ms. Wynn-Wright’s primary residence prior to the commencement of this action[,]” and thus, “RPAPL 1304 notice was not required” (NYSCEF Doc No. 5, ¶¶ 13-14).

By an October 3, 2024, decision and order,¹ this court denied Defendant’s dismissal motion and held that a 90-day notice was not required because Nina Wynn-Wright admittedly did not reside at the Property when the 90-day notices were sent:

“Here, defendant alleges that plaintiff failed to comply with RPAPL § 1304 and § 1306, as defendant was not living at the residence at that time and did not receive the 90-day notice, nor did plaintiff provide evidentiary proof of compliance with its complaint. Contrary to defendant’s allegations, plaintiff did attach to its complaint, exhibit F, which contained copies of the 90-day notices sent to defendant’s two mailing addresses . . . Additionally, defendant Nina Wynn, states in her supporting

¹ The court also granted Plaintiff’s cross-motion (in mot. seq. five) for an order substituting Wilmington as Plaintiff in place and instead of HFC.

affidavit that *she was not residing in the subject property at the time the notices were sent, therefore notice was not required because the property was not the borrower's primary residence*. Here, plaintiff has established that it complied with RPAPL § 1304 and § 1306” (NYSCEF Doc No. 17 at 3-4 [emphasis added]).

On October 24, 2024, Wilmington moved (in mot. seq. six) for summary judgment and an order of reference (NYSCEF Doc No. 20). Wilmington submitted an affirmation from Kranthi Vallabhaneni, its authorized signatory, reiterating the allegations in the complaint regarding the note and mortgage and merely affirming that “[a]ll predicated notices have been sent out” without providing any evidence of the statutory mailings (NYSCEF Doc No. 28 at ¶ 8).

On November 8, 2024, Defendant Nina Wynn-Wright moved for leave to reargue this court’s October 3, 2024, decision and order “based on matters of fact and/or law that was previously overlooked and or misapprehended by the Court” (NYSCEF Doc No. 32). Defense counsel argued that “submitting only a copy of the notice without an affidavit of mailing, or any documentation that it was sent by certified, registered, and first-class mail, fails to meet RPAPL § 1304’s statutory requirements” and Plaintiff “failed to supply any ‘legal proof of mailing,’ such as a receipt of payment or USPS routing documentation, which would serve as evidence of compliance” (NYSCEF Doc No. 33, ¶¶ 34-35). Defense counsel also argued that this court erred when it “wrongly interpreted an affidavit from Defendant Wynn, stating she did not reside at the subject property at the time the notices

were sent, as definitive proof that the mortgage was not a ‘home loan,’ and, on this basis, concluded that RPAPL § 1304 did not apply” (*id.* at ¶ 38).

By a February 11, 2025, decision and order, this court granted Defendant’s motion for leave to reargue and, upon reargument, vacated the October 3, 2024 decision and order and granted Defendant’s motion to dismiss the complaint based on Plaintiff’s failure to establish HFC’s strict compliance with RPAPL § 1304 (NYSCEF Doc No. 51). Specifically, this court held that:

“Upon oral arguments, defendant’s motion (mot. seq. 7) to reargue the court’s October 3, 2024 decision, which denied defendant’s motion to dismiss, is granted, and upon reargument, the court’s October 3, 2024 decision is hereby vacated and defendant’s motion to dismiss (mot. seq. 4) is granted in all respects. Defendant contends that the court overlooked the proof required in establishing strict compliance with RPAPL § 1304 (CPLR 2221 [d]). Here, plaintiff failed to attach any exhibits to prove that the 1304 mailing actually happened (*Citibank N.A. v Conti-Scheurer*, 172 AD3d 17 [2019]). Accordingly, plaintiff’s motion (mot. seq. 6) for summary judgment is denied in all respects” (*id.*).

Wilmington’s Instant Motion to Renew/Reargue

On March 12, 2025, Wilmington moved for leave to reargue Defendant’s prior motion to reargue the denial of her dismissal motion (in mot. seq. seven). Wilmington’s counsel asserts that “Plaintiff makes this application to correct an error” because the court “made a factual determination and dismissed the entire case without providing Plaintiff any notice or opportunity to evidence that the RPAPL 1304 notice had been sent” (NYSCEF Doc No. 56, ¶¶ 2, 7). Wilmington’s counsel argues that this court applied the

“wrong standard” when it made a factual determination on Defendant’s CPLR 3211 motion regarding HFC’s lack of compliance with RPAPL § 1304. Wilmington’s counsel further argues that if the court converted Defendant’s 3211 motion into a motion for summary judgment, Wilmington was entitled to notice (*id.* at ¶ 30). Finally, Wilmington’s counsel contends that this court improperly made a “highly factual determination” regarding Defendant Nina Wynn’s residence at the Property based on her own self-serving statements submitted in support of her dismissal motion (*id.* at ¶¶ 32-35).

Defendant’s Opposition

Defendant, in opposition, submitted an attorney affirmation asserting that “Plaintiff’s motion to reargue should be denied in its entirety” because it “does not point to any fact or legal principle the Court overlooked or misapprehended in its February 11, 2025 Decision and Order” (NYSCEF Doc No. 62, ¶ 5). Defense counsel asserts that the court “properly declined to accept Plaintiff’s conclusory claim of compliance in the Complaint, where no evidence supported that assertion” and “Plaintiff was fully aware that RPAPL § 1304 compliance was in dispute and had every opportunity to submit supporting evidence” (*id.* at ¶ 7). Defense counsel contends that “Plaintiff is merely repackaging old arguments without citing any new legal authority or evidence that would justify reconsideration” (*id.* at ¶ 36).

Discussion

“A motion for leave to reargue shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion” (CPLR 2221[d] [2]).

Here, the court correctly determined that RPAPL § 1304 is applicable in this case, since Wilmington failed to submit evidence demonstrating that the Wright Defendants did not use the Property as their principal dwelling at the time that they executed the mortgage (*Bank of Am., N.A. v Reed*, 239 AD3d 800, 804 [2d Dept 2025] [holding that “plaintiff failed to establish, prima facie, that the subject loan was not a ‘home loan’ and, thus, was not subject to the notice requirements of RPAPL 1304” because plaintiff “failed to submit evidence (in support of its summary judgment motion) demonstrating that Reed did not use the premises as his principal dwelling at the time Reed signed the HELOC agreement or thereafter”]). Indeed, the mortgage annexed to the complaint specifically indicates that the Wright Defendants resided at the Property when they executed it on May 18, 2006 (NYSCEF Doc No. 57 at 22).

However, the court erred by granting Defendant’s dismissal motion based on Plaintiff’s failure to attach any exhibits to the complaint to prove HFC’s compliance with the RPAPL § 1304’s mailing requirements, since the burden of proof was on the moving Defendant. The Second Department has held that on a motion to dismiss a foreclosure complaint, pursuant to CPLR 3211 (a), based on the mortgagee’s failure to comply with RPAPL § 1304 regarding service of 90-day notices, it is the moving defendant’s burden to

affirmatively demonstrate that plaintiff failed to comply with the statute (*Ditech Servicing, LLC v McFadden*, 217 AD3d 923, 927 [2d Dept 2023] [holding that “the Supreme Court properly denied (defendant’s) cross-motion to dismiss the complaint insofar as asserted against him, as he failed to affirmatively demonstrate that the plaintiff did not comply with RPAPL 1304 or 1306”]; *HSBC Bank USA, Nat’l Ass’n v Viverito*, 189 AD3d 800, 801 [2d Dept 2020] [holding that defendant’s cross-motion to dismiss, pursuant to CPLR 3211 (a), for failure to comply with RPAPL §§ 1304 and 1306 was properly denied because defendant did not affirmatively demonstrate that the plaintiff failed to strictly comply with those statutory provisions]).

While the complaint alleges that HFC sent 90-day notices, pursuant to RPAPL § 1304 on March 23, 2012, and annexes copies of the notices allegedly mailed by HFC to the Wright Defendants at 433 Lafayette Avenue, Apt. 5A, in Brooklyn, the complaint does not annex proof of mailing and Wilmington failed to submit any evidence proving the mailing by HFC in compliance with RPAPL § 1304 in its summary judgment motion. Defendant’s dismissal motion, which disputed receipt of the 90-day notices, failed to affirmatively prove that HFC failed to strictly comply with RPAPL § 1304. Consequently, the existence of triable issues of fact regarding HFC’s compliance with RPAPL § 1304 precludes both dismissal of the complaint under CPLR 3211 (a) and the granting of summary judgment in favor of Wilmington. Accordingly, it is

ORDERED that Wilmington’s motion to reargue (mot. seq. eight) is granted and, upon reargument, the court’s February 11, 2025 decision and order is vacated only to the

extent that Defendant's motion to dismiss the complaint (mot. seq. four) based on HFC's failure to establish compliance with RPAPL § 1304 is denied.

This constitutes the decision and order of the court.

E N T E R,



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

KINGS COUNTY CLERK
FILED
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