

**US Bank v Mastrapasqua**

2025 NY Slip Op 34008(U)

September 22, 2025

Supreme Court, Kings County

Docket Number: Index No. 503474/18

Judge: Cenceria P. Edwards

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FRP1, 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 the 22<sup>nd</sup> day of September, 2025.

P R E S E N T:

HON. CENCERIA P EDWARDS,  
Justice.

-----X

US BANK,

Plaintiff,

-against-

Index No.: 503474/18  
MS 2

CATHERINE MASTRAPASQUA et al,

Defendant,

-----X

The following e-filed papers read herein:

NYSEF Nos.:

Notice of Motion/Order to Show Cause/  
Petition/Cross Motion and Affidavits (Affirmations)

Annexed \_\_\_\_\_

39-59

Opposing Affidavits (Affirmations) \_\_\_\_\_

62-66

Affidavits/ Affirmations in Reply \_\_\_\_\_

70-73

Upon the foregoing papers in this action to foreclose a mortgage encumbering the residential property located at 2140 72<sup>nd</sup> Street in Brooklyn (Block 6197, Lot 21), Plaintiff US Bank moves for summary judgment in its favor on its claims and dismissal of the affirmative defenses raised by Defendants Catherine Mastrapasqua and Mathew J Mastrapasqua. Defendants oppose.

***Background Facts and Procedural History***

Plaintiff commenced the instant foreclosure action on February 20, 2018. All defendants were allegedly served with the summons and complaint. The following month, Defendants – through counsel – filed a pre-answer motion to dismiss, alleging that the instant action was not

timely filed and that the mortgage should be discharged. Therein, they argued that the alleged default predated this action by more than six years and that the default letter sent in 2017 accelerated the debt. In opposition, Plaintiff noted that each installment has a separate statute of limitations and that, even were Defendants correct that the letter was an acceleration, it was sent less than one year before this action. Accordingly, Plaintiff alleged that this action is timely. By order dated August 8, 2018, the Court agreed with Plaintiff finding that Defendant “has not shown any acceleration more than six years prior to the commencement of this action and, as such, (at least part of) the debt is collectible.”

Following entry of the Court’s decision, Defendants answered – solely asserting a “General Denial” and advancing no affirmative defenses or counterclaims.

On October 17, 2019, Plaintiff filed the instant motion for summary judgment and other relief. Therein, Plaintiff, arguing that it has met its prima facie burden, seeks to strike Defendants’ answer. Thereafter, Plaintiff requests that a referee be appointed to compute the amounts due to it. Plaintiff further seeks default judgment against the non-appearing defendants and to amend the caption to remove the Doe defendants.

In support of its motion, Plaintiff proffers an affidavit signed by Roberto Montoya, an Assistance [stet] Secretary of Rushmore Loan Management Services LLC which is alleged to be the attorney-in-fact for Plaintiff. Therein, he references, among other documents, copies of the note, mortgage, and a payment history. The affiant also claims that required notices were timely sent to Defendants, that Plaintiff was in possession of the original note at the relevant time, and that the note was already endorsed to blank. Unfortunately, neither copy of the Montoya Affidavit in the record [NYSCEF Docs 43, 72] includes the exhibits that he references.

Accurately asserting their right to do so pursuant to RAPPL 1302-a, Defendants argue that Plaintiff has not demonstrated its standing to bring this action. In support, they argue that summary judgment was twice denied in another action<sup>1</sup> relating to the same premises.

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<sup>1</sup> 7400/14. Therein, Plaintiff sought to compel the City Register to record the unrecorded mortgages and related assignments relating thereto.

In reply, Plaintiff argues that a copy of the note including an endorsement to blank was appended to the complaint, thereby demonstrating its standing. In further argues that Montoya attests to Plaintiff's possession of the original note at the commencement of this action.

### *Analysis*

#### Summary Judgment

“Generally, in a mortgage foreclosure action, a plaintiff demonstrates its prima facie entitlement to judgment as a matter of law by producing the mortgage, the unpaid note, and evidence of default” (*BNY Mellon v Swift*, 213 AD3d 624, 625 [2d Dept 2023]). It is undisputed that Plaintiff has done so here. Though the exhibits to the Montoya Affidavit were not uploaded, the note and mortgage are in the record and Defendants do not contest that they are in default.

"A plaintiff establishes its standing in a mortgage foreclosure action by demonstrating that it is both the holder or assignee of the subject mortgage and the holder or assignee of the underlying note at the time the action is commenced" (*Bank of America, NA v Paulsen*, 125 AD3d 909, 910 [2d Dept 2015]). "Either a written assignment of the underlying note or the physical delivery of the note prior to the commencement of the foreclosure action is sufficient to transfer the obligation, and the mortgage passes with the debt as an inseparable incident" (*US Bank, NA v Collymore*, 68 AD3d 752, 754 [2d Dept 2009] [citations omitted]). Plaintiff attached a copy of the note (endorsed to blank) to the complaint demonstrating that it has standing (*Deutsche Bank v Logan*, 146 AD3d 861, 862-863 [2d Dept 2017]; *Nationstar Mtge., LLC v. Catizone*, 127 AD3d 1151, 1152 [2d Dept 2015]).

In light of the foregoing, summary judgment in favor of Plaintiff and against Defendants is granted.

#### Default Judgment Against the Non-Appearing Defendants

Plaintiff has not demonstrated its entitlement to default judgment against the non-appearing defendants. “On a motion pursuant to CPLR 3215 for leave to enter a default judgment, a plaintiff is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defendant's default in answering or

appearing” (*US Bank v Deblinger*, 235 AD3d 1025, 1027 [2d Dept 2025]). In the absence of admissible proof of Defendants’ default, Plaintiff has failed to do so.

Amendment of the Caption

The portion of Plaintiff’s motion seeking to amend the caption by dropping the Doe defendants is unopposed and the requested relief is granted.

**Conclusion**

Accordingly, it is

**ORDERED** that Plaintiff’s motion for summary judgment and other relief is granted to the extent that summary judgment is granted against the answering Defendants; and it is further

**ORDERED** that default judgment against the non-answering defendants is denied without prejudice; and it is further

**ORDERED** that the caption is amended to drop the Doe defendants and shall now read:

-----X  
U.S. BANK, N.A. AS TRUSTEE RELATING  
TO THE MASTR ADJUSTABLE RATE MORTGAGES  
TRUST 2007-3 MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2007-3,  
Plaintiff(s),

vs.  
CATHERINE MASTRAPASQUA, MATTHEW J.  
MASTRAPASQUA, CITY OF NEW YORK, DEPARTMENT  
OF HOUSING PRESERVATION & DEVELOPMENT,  
TRINCHESE CONSTRUCTION, NYC BUREAU OF  
HIGHWAYS OPERATIONS  
Defendant(s).  
-----X

This constitutes the decision and order of the Court.

ENTER:



\_\_\_\_\_  
Hon. Cenceria P Edwards, J.S.C., CPA