

Wells Fargo Bank, N.A. v Desiderio

2025 NY Slip Op 34203(U)

November 6, 2025

Supreme Court, Nassau County

Docket Number: Index No. 610338/2024

Judge: Carolyn Mazzu Genovesi

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At IAS Part 35A of the Supreme Court of the State of New York, held in and for the County of Nassau, at the Courthouse, 100 Supreme Court Drive, Mineola, New York, on the 6 day of Nov. 2025.

Present: Hon. Carolyn Mazzu Genovesi

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WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR ABFC 2004 OPT4 TRUST, ABFC ASSETS BACKED CERTIFICATES, SERIES 2004-OPT 4

DECISION AND ORDER

Plaintiff,

Index No.: 610338/2024

-against-

Mot. Seq. 1

ASSUNTA DESIDERIO et al,

Defendants,

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The following papers were read on this motion pursuant to CPLR 2219(a):

Papers	NYSCEF Numbered
Motion (MS # 1), Affirmation in Support, Memorandum of Law, Exhibits	<u>35, 37-45</u>
Affirmation in Opposition, Memorandum of Law in Opposition, Exhibits	<u>47-56</u>

In an action to foreclose a mortgage, plaintiff moves to strike the verified answer; for summary judgment; for default judgment against the non-appearing defendants; to amend the caption; and to appoint a referee (MS #1). Defendant Dominic Piscitelli (“defendant”) opposes the motion.

“In moving for summary judgment in an action to foreclose a mortgage, a plaintiff establishes its prima facie case through the production of the mortgage, the unpaid note, and evidence of default.” *U.S. Bank, N.A. v. Zientek*, 192 A.D.3d 1189, 1190 (2d Dep’t 2021) quoting *Deutsche Bank Natl. Trust Co. v. Bowens*, 181 A.D.3d 871, 873 (2d Dep’t 2020). Additionally,

plaintiff demonstrated its standing “through proof that it was in possession of... the subject note and a firmly affixed allonge endorsed in blank, at the time of commencement of the action.” *Wells Fargo Bank, N.A. v. Mitselmakher*, 216 A.D.3d 1056, 1057, (2d Dep’t 2023) quoting *US Bank Trust, N.A. v. Loring*, 193 A.D.3d 1101, 1103 (2d Dep’t 2021). Moreover, plaintiff submitted affidavits of service from a process server, indicating proper service of the summons and complaint upon all required defendants. Furthermore, the loan servicer’s Contract Management Coordinator, Juliana Thurab affirmed that she had personal knowledge of the loan servicer’s record keeping practices; that the records in question were created and maintained in the regular course of business; and that records were manually entered at or near the time of transactions by persons with personal knowledge. Accordingly, the Court finds that the mortgage, note, and business records are all admissible under the business records exception to hearsay. *See Bank of New York Mellon v. Gordon*, 171 A.D.3d 197 (2d Dep’t 2019).

In opposition to this motion, defendant claims there is a question as to whether the allonges were firmly affixed to the note. In the Affirmation in Support, Thurab attested that “plaintiff was physically delivered the original Note, with Allonge attached thereto as to become one document, on or before March 18, 2004...” Additionally, the copy of the note and allonges submitted into evidence all have markings from a prong fastener. However, in the Affirmation in Support, Thurab does not indicate that there are two allonges, or attest that both allonges are firmly affixed to the note. Accordingly, plaintiff failed to demonstrate its standing to commence this action. For the foregoing reasons, it is hereby

ORDERED that plaintiff's motion (MS # 1) is DENIED.

This constitutes the Decision and Order of the Court.

ENTER



Hon. Carolyn Mazza Genovesi

ENTERED

Nov 13 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE