

Bank of N.Y. Mellon v Edme

2025 NY Slip Op 34342(U)

October 27, 2025

Supreme Court, Kings County

Docket Number: Index No. 509379/2019

Judge: Menachem M. Mirocznik

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At IAS Part FRP5 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, NY 11201, on the 27th of October 2025

PRESENT: HON. MENACHEM M. MIROCZNIK
JUSTICE OF THE SUPREME COURT

THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE CWABS, INC., ASSET-BACKED CERTIFICATES, SERIES 2006-15

Plaintiff,

-against-

JACQUES F. EDME A/K/A JACQUES EDME; MARGARET D. EDME A/K/A MARGARET EDME; PALISADES COLLECTION, LLC; NEW YORK CITY PARKING VIOLATIONS BUREAU; NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE; NEW YORK CITY ENVIRONMENTAL CONTROL BOARD; UNITED STATES OF AMERICA - INTERNAL REVENUE SERVICE, "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.

Index No. 509379/2019

Decision, Order and Judgment (Motion Seq. 3 and 4)

Papers	Numbered
Notice of Motion	NYSCEF Doc. 89-121
Notice of Cross-Motion	NYSCEF Doc. 122-127
Opposition to Cross-Motion and Reply	NYSCEF Doc 131
Reply to Cross-Motion	NYSCEF Doc. 132

Upon the foregoing papers, the motion and cross-motion are determined in accordance with this Decision and Order and Judgment as follows:

Procedural History

This action was commenced on April 26, 2019 seeking to foreclose a mortgage encumbering the property known as 641 East 3 pt Steet, Brooklyn, NY 11210 (the "property"). Defendant Margaret D. Edme A/K/A Margaret Edme ("defendant") initially filed a pro se answer which plaintiff rejected as untimely. Thereafter, plaintiff moved for a default judgment and order of reference and defendant, through counsel cross-moved to vacate her default and to submit a late answer. By order dated July 18, 2023, the Court denied the motion and granted the cross-motion and specifically found that defendant asserted potentially meritorious defense of non-compliance with RPAPL 1304. Defendant then served an answer asserting various affirmative defenses including lack of standing and non-compliance with RPAPL 1304.

Plaintiff now moves for summary judgment and related relief. Defendant also cross-moves for summary judgment dismissing the action due to non-compliance with RPAPL 1304 in as much as the notice allegedly served on defendant did not contain a list of housing counselors serving the region, i.e. Kings County. Defendant also argues that in any case summary judgment should be denied because plaintiff failed to establish entitlement to judgment as a matter of law because plaintiff failed to establish prima facie it had standing to commence this action and compliance with RPAPL 1304.

Plaintiff opposes the cross-motion contending that RPAPL 1304 was waived because the defense was not asserted with particularity in defendants rejected answer, RPAPL 1304 does not apply, relying on the Appellate Division, Second Departments holding in *MLB Sub 1, LLC v. Mathew*, 202 AD3d 1078 [2d Dept. 2022] because the mortgage in question contains a rider that removes the occupancy requirement and therefore the loan is not a home loan within the meaning of RPAPL 1304 and failed to establish with sufficient evidence that that the housing agencies attached to the notice do not also serve Kings County. Plaintiff further contends that it established prima facie that it served the RPAPL 1304 notice, defendant's mere denial of receipt is insufficient to raise an issue of fact and that it established its standing by attaching the note with an endorsement in blank to the complaint.

Defendant filed reply contending that the subject loan is in fact a home loan in as much as defendant is a natural person, the loan was procured for personal and household purposes and defendant has occupied the subject property at all relevant times. Defendant further contends that plaintiff's contention that non-compliance with RPAPL 1304 was in fact asserted in her answer (NYSCEF Doc. 86) and defense counsel's office contacted the housing agencies and confirmed the same do not serve Kings County.

Discussion

"Generally, 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" *Deutsche Bank Nat. Tr. Co. v Brewton*, 142 AD3d 683 [2d Dept 2016]

However, "[w]here, as here, the plaintiffs standing has been placed in issue by the defendant's answer, the plaintiff must prove its standing as part of its prima facie showing on a

motion for summary judgment" *US. Bank NA. v Moulton*, 179 AD3d 734, 736 [2d Dept 2020]; See also *Deutsche Bank Nat. Tr. Co. v Brewton*, 142 AD3d 683, 684 [2d Dept 2016] ["Where, as here, standing is put into issue by a defendant, the plaintiff must prove its standing in order to be entitled to relief"]

"A plaintiff has standing to commence a foreclosure action where it is the holder or assignee of the underlying note, either by physical delivery or execution of a written assignment prior to the commencement of the action with the filing of the complaint... Thus, a plaintiff may demonstrate its standing in a foreclosure action through proof that it was in possession of the subject note endorsed in blank, or the subject note and a firmly affixed allonge endorsed in blank, at the time of commencement of the action" *US Bank Tr., NA. v Loring*, 193 AD3d 1101 [2d Dept 2021][internal citations omitted]

Additionally, a plaintiff can establish prima facie that it had standing to commence the action by annexing a copy of the subject note endorsed in blank to the complaint. *US. Bank NA. v Auguste*, 173 AD3d 930 [2d Dept 2019]; *Bank of New York Mellon v Swift*, 213 AD3d 624 [2d Dept 2023]; *Selene Fin., L.P v Coleman*, 187 AD3d 1082 [2d Dept 2020]; *US. Bank NA. v Rozo-Castellanos*, 201 AD3d 995 [2d Dept 2022]

Here, plaintiff established prima facie it had standing to commence the action by annexing the subject note to the complaint and defendant failed to raise an issue of fact.

"Proper service of RPAPL 1304 notice on the borrower or borrowers is a condition precedent to the commencement of a foreclosure action, and the plaintiff has the burden of establishing satisfaction of this condition... Alternatively, the plaintiff bears the burden of establishing, prima facie, that RPAPL 1304 is inapplicable" and, therefore, that "the loan is not subject to the notice requirements set forth in [the statute]"... "Home loan" is defined as a loan, inter alia, that is secured by a mortgage on real estate "which is or will be occupied by the borrower as the borrower's principal dwelling" *Bank of Am., NA. v Reed*, 239 AD3d 800 [2d Dept 2025] [internal citations and quotations omitted]; See also *Wells Fargo Bank, NA. v Rodriguez*, 210 AD3d 728, 730 [2d Dept 2022]

First, Plaintiff's contention that defendant failed to assert the RPAPL 1304 defense with sufficient particularity in the rejected answer is specious. The Court granted defendant's motion to submit a late answer and the answer submitted after most definitely alleges the defense with particularity. In any case, the law is well settled that non-compliance with RPAPL 1304 can be raised at any time and even if not asserted in defendant's answer. See *Bank of New York Mellon v Weber*, 169 AD3d 981 [2d Dept 2019] ["Contrary to the plaintiffs contention, noncompliance with RPAPL 1304 may be raised at any time during the action"]; *Wells Fargo Bank, NA. v Morales*, 178 AD3d 881 [2d Dept 2019] ["A defense based on noncompliance with RPAPL 1304 may be raised at any time during the action."]

Second, plaintiff asserts that it was not required to serve a RPAPL 1304 notice because the subject mortgage is not a home loan solely because the mortgage contains a 1-4 Family Rider' which deleted the occupancy-by-borrower requirement relying on *MLB Sub I, LLC v. Mathew*, 202 AD3d 1078 [2d Dept. 2022]. However, unlike in *Mathew*, defendant submits an affidavit attesting that defendant resided at the subject property her entire life. Additionally, the loan modification plaintiff alleges defendant executed lists the property as defendant's address and

defendant was served at the subject property. Plaintiff offers no other evidence that subject property is not defendant principal dwelling relying solely on the a 1-4 Family Rider. This Court is not persuaded by plaintiff's contention that *Mathew* stands for the sweeping bright line rule that the subject rider removes the subject loan from the ambit of RPAPL 1304.

Nor has the same persuaded other Justices of the Supreme Court. See *Deutsche Bank Nat. Tr. Co. v Pinkney*, 2024 N.Y. Slip Op. 30852[U], 3 [N.Y. Sup Ct, Kings County 2024][Hon. Cenceria P. Edwards, JSC][The Court also finds that Plaintiff misreads the *Mathew* decision by relying on only a portion of the Second Department's reasoning. Although the *Mathew* Court found that Plaintiff made a *prima facie* showing that the subject property was not the borrower's principal dwelling by submitting the "1 to 4 Family Rider," it then stated that "[i]n opposition, the defendant failed to raise a triable issue of fact" (*see Mathew*, 202 AD3d at 1080). Hence, rather than stand for the rigid, bright-line rule seemingly urged by Plaintiff on this motion, *Mathew* appears to merely hold that, in certain circumstances, a plaintiff's submission of such riders can establish, *prima facie*, that the subject premises is not a borrower's principal dwelling"; *Wells Fargo v Weisz*, 2022 N.Y. Slip Op. 34526[U], 4 [N.Y. Sup Ct, Kings County 2022][Hon. Larry D. Martin, JSC][Upon a review of the record in that case, however, it is clear that there were additional factors leading to the conclusion that it was not a home loan (the defendant did not claim to have resided there, she had a multitude of other properties, etc.). As such, this Court is not prepared to conclude that the (somewhat common) rider removing the residency requirement is alone sufficient to place a loan outside the ambit of RPAPL 1304 especially where, as here, Defendant claims to have resided in the property subsequent to the mortgage.]; *BNY v Small* [N.Y. Sup Ct, Kings County 2024][same]¹

Here, defendant submits an affidavit attesting to living at the subject property her entire life. Additionally, the loan modification plaintiff alleges defendant executed lists the property as defendant's address defendant was served at the subject property. Therefore, defendant established *prima facie* that the subject loan is a home loan within the meaning of RPAPL 1304 and plaintiff was required to serve a compliant RPAPL 1304 notice prior to commencement of this. See *Bank of Am., NA. v Reed*, 239 AD3d 800 [2d Dept 2025][cross-appellants established their *prima facie* entitlement to judgment as a matter of law on this ground, among other things, by submitting the HELOC agreement and an affidavit from Reed wherein he averred that "the [p]remises [were his] home and primary residence from 1971 until 2021"]

¹ See also *Bank of Am. v Sands*, 2022 N.Y. Slip Op. 32875[U], 3-4 [N.Y. Sup Ct, New York County 2022][Hon. Francis A. Kahn III][Based solely on this document, Plaintiff asserts it establishes, as a matter of law, that Unit 7-8 was not "borrower's principal dwelling" and, therefore, not within the definition of a "home loan" in RPAPL § 1304. An identical rider has been determined to be *prima facie* proof that a mortgaged premises does not qualify as a home loan pursuant to RPAPL 1304 (*see U.S. Bank N.A. v Shereshvsky*, 198 AD3d 1000, 1001 [2d Dept 2021]; *see also MIB Sub I, LLC v Mathew*, 202 AD3d 1078, 1081 [2d Dept 2022]). However, in *Shereshvsky* and *Mathew* the mortgagors failed to proffer any evidence that upon executing the rider they "thereafter used the property as their principal dwelling" **4 (*id.*; *Nationstar Mtge., LLC v Jong Sim*, 197 AD3d 1178, 1181 [2d Dept 2021][Mortgage qualified as "home loan" despite that Mortgagor no longer occupied the mortgaged property as his principal dwelling when the action was commenced]; *cf Nationstar Mtge., LLC v Gayle*, 191 AD3d 1003, 1006 [2d Dept 2021][the mortgage loan was not a 'home loan' for purposes of RPAPL 1304 because the subject property was not the defendant's principal dwelling prior to the commencement of the action" [emphasis added]). In this case, there is unchallenged proof that Sands used Unit 7-8 as his primary residence before this action was commenced. The modification agreement itself stated the "Borrower's address is 50 East 76th Street, #78"; See also New York State Senate Sponsors Memorandum, Senate Bill S5829B, 2023-2024 Legislative Session.

Third, "RPAPL 1304 (2) requires that the RPAPL 1304 notice, "contain a current list of at least five housing counseling agencies serving the county where the property is located from the most recent listing available from department of financial services." *Hudson Val. Fed. Credit Union v Tavares*, 206 AD3d 891 [2d Dept 2022]; See also *CV XXVIII, LLC v Trippiedi*, 187 AD3d 847 [2d Dept 2020]; *US Bank NA. v Haliotis*, 185 AD3d 756 [2d Dept 2020]

Here, the subject RPAPL 1304 notice contains a list of the following agencies: (i) *Bellport, Hagerman, East Patchogue Alliance, Inc.* located at 1492 Montauk Highway, Bellport NY 11713 (ii) *Long Island Housing Services Inc.* located at 640 Johnson Avenue, Bohemia, NY 11716; (iii) *Economic Opportunity Council of Suffolk, Inc.* located at 320 Carleton Avenue, Central Islip, NY 11722; (iv) Central Islip Civic Council located at 68 Wheeler Road, Central Islip, NY 11722 and (v) Wyandanch Community Development located at 59 Cumberbatch Street, Wyandanch, NY 11798 and which also provides it "[o]nly serves part of western Suffolk"

In support of the cross-motion for summary judgment defendant avers that none of the subject agencies serve Kings County and the list is defective on its face in as much the notice itself provides that Wyandanch Community Development "[o]nly serves part of western Suffolk". Defendant also submits a screenshot of New York State Homes and Community Renewal website for *Bellport, Hagerman, East Patchogue Alliance, Inc.* only provides that it serves Suffolk county and provides a link to *Long Island Housing Services, Inc.* website that provides they are "the only dedicated fair housing agency serving all of Nassau and Suffolk Counties." Defense counsel also avers that his office contacted the subject agencies and confirmed that none of the agencies serve Kings County. Therefore, defendant established prima facie that plaintiff failed to strictly comply with RPAPL 1304 in as much as plaintiff failed to provide a list of five housing agencies that serve Kings County. Plaintiff offers no proof that the subject agencies serve Kings County merely claiming that the agencies "may" also serve Kings County but offers zero evidence or testimony to substantiate this assertion. Plaintiff's speculative assertions fail to raise an issue of fact. Therefore, plaintiff's motion is denied and defendant's cross-motion is granted and the action is dismissed. See e.g. *Bank of New York Mellon v Weber*, 169 AD3d 981 [2d Dept 2019]

Lastly, given the dismissal of the complaint, the notices of pendency filed herein must also be cancelled. See CPLR 6514; See also generally, *Nationstar Mtge., LLC v Davis*, 240 AD3d 790 [2d Dept 2025]; *Bayview Loan Servicing, LLC v Starr-Klein*, 193 AD3d 807 [2d Dept 2021]

The parties' remaining contentions need not be reached in light of the Court's determination.

Accordingly, it is hereby

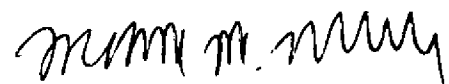
ORDERED AND ADJUDGED, that plaintiff's motion is DENIED; and it is further

ORDERED AND ADJUDGED, that defendant's cross-motion is GRANTED and this action is dismissed; and it further

ORDERED, that the Clerk is directed to cancel Notices of Pendency filed on April 26, 2019, February 16, 2022 and January 9, 2025.

This constitutes the decision, order and judgment of the Court.

ENTER:



Hon. Menachem M. Mirocznik, J.S.C