

**Nationstar Mtge. LLC v Unknown Heirs of Estelle  
Burrowes**

2025 NY Slip Op 34377(U)

November 7, 2025

Supreme Court, Kings County

Docket Number: Index No. 505842/2019

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 7th of November 2025

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

NATIONSTAR MORTGAGE LLC CHAMPION MORTGAGE COMPANY	D/B/A
	Plaintiff,
	-against-
UNKNOWN HEIRS OF ESTELLE BURROWES; ET AL	
	Defendants.

Index No. 505842/2019

Decision and Order  
(Motion Seq. 5)

KINGS COUNTY CLERK  
FILED  
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Papers	Numbered
Notice of Motion	NYSCEF Doc. 90-120
Opposition	NYSCEF Doc. 122-123
Reply	NYSCEF Doc. 124

Upon the foregoing papers, the motion is determined in accordance with this Decision and Order as follows:

**Relevant Factual and Procedural History**

This action was commenced on March 18, 2019, seeking to foreclose a mortgage executed by Dorothy B. King FKA Dorothy B. Edwards ("Dorthy") encumbering the property known as 42 Martense Street, Brooklyn, NY 11226 (the "property"). Title to the property was originally held by Dorothy and Estelle Burrowes ("Estelle") and was transferred after the death of Estelle to Dorthy. However, the deed was signed solely by Dorthy who later transferred the property to defendant Keith C. Edwards ("Keith") with the retention of a life estate.

Subsequent to commencement of this action, defendant Dorthy died and by order dated April 24, 2023, the Court granted plaintiffs motion to amend the complaint to drop defendant Dorthy, add her spouse Lionel King, as heir to Estelle and the unknown heirs of Estelle as party defendants, due to a defect in title to Dorthy as Estelle did not sign the deed. The order also granted plaintiff's request to extend the time to serve, appoint a guardian ad litem and to serve unknown heirs by publication.

On July 12, 2023, plaintiff filed the supplemental summons and amended complaint and served same by publication in accordance with the April 24, 2023, order but the appointed guardian declined the appointment. Accordingly, by order dated October 30, 2023, the Court granted

plaintiff request to substitute Dana Jenkins, Esq. as guardian and served her oath and notice of appearance. Defendant Keith served an answer which was amended asserting various affirmative defenses and a counterclaim.

Plaintiff's alleged assignee Mortgage Assets Management, LLC ("assignee") now moves for the following relief. (1) summary judgment; (2) dismissal of the defenses and counterclaims asserted by defendant Keith; (3) an order deeming his answer a limited notice of appearance; (4) default judgment against all non-appearing and non-answering defendants; (5) appointment of a referee to compute; (6) removal of "John Doe" defendants and amendment of the caption; (7) discontinuance as to Lionel King and corresponding amendment of the caption; (8) substitution of Mortgage Assets Management, LLC as plaintiff; (9) reformation of the mortgage recorded December 8, 2008, to correct the legal description under CPLR §2001; (10) extinguishment and barring of all rights and interests of The Bank of New York Mellon FKA The Bank of New York in the subject property under RPAPL Article 15; and (11) extinguishment and barring of all rights and interests of the Unknown Heirs of Estelle Burrowes, along with such other and further relief as the Court deems just and proper. The motion is supported by the affidavit of Tayla Lopez of PHH Mortgage Corporation ("PHH") the alleged servicer for the alleged assignee of plaintiff, the affidavit of Melanie Harris of Nationstar Mortgage LLC D/B/A Champion Mortgage Company ("Nationstar") and the affirmation of mailing of Sherry Sumerauer of Nationstar.

Defendant Keith opposes the motion pro se, arguing that plaintiff failed to establish a prima facie case or compliance with foreclosure conditions precedent. Specifically, defendant Keith contends that the affidavits submitted by Talya Lopez and Melanie Harris are inadmissible hearsay, as neither affiant demonstrated personal knowledge or the foundation required under CPLR §4518 to admit business records. Defendant Keith also argues plaintiff failed to prove strict compliance with RPAPL 1304 and 1306 because no competent evidence shows the 90-day pre-foreclosure notices were properly mailed or filed. Additionally, he asserts that plaintiff did not comply with the mortgage's contractual notice provisions and has not proven standing, since the alleged note was unauthenticated and no admissible proof shows it was held at the time of commencement.

In reply, Plaintiff argues that defendant Keith raises no triable issues and that summary judgment should be granted. Plaintiff contends that the affidavits of Talya Lopez, Melanie Harris, and Sherry Sumerauer are admissible under the business-records exception (CPLR 4518), as each affiant established personal knowledge of the servicers' recordkeeping practices and attached loan documents, notices, and mailing records created in the regular course of business. Plaintiff asserts that it has proven its standing by annexing the note endorsed in blank to the complaint and demonstrating continuous possession, and that its compliance with RPAPL §§1304, 1306, and the mortgage's notice provision is established through certified records and affidavits of mailing.

### **Discussion**

"As we have stated frequently, the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact...Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers... Once this showing has been made, however, the burden shifts to the party opposing the

motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." *Alvarez v Prospect Hos.*, 68 NY2d 320 [1986] [citations omitted]; See also *Zuckerman v. New York*, 49 NY2d 557 [1980]; *Nomura Asset Capital Corp. v. Cadwalader, Wickersham & Taft, LLP*, 26 NY3d 40 [2015].

"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" *Hudson City Sav. Bank v Genuth*, 148 AD3d 687 [2<sup>nd</sup> Dept. 2017]. This showing shifts the burden to the non-movant to present evidence in admissible form sufficient to raise a material issue of fact requiring a trial. See *Gesuale v. Campanelli & Assocs., PC.*, 126 AD3d 936 [2d Dept 2015]; See also *First Intern. Bank of Israel, Ltd. v L. Blankstein & Son, Inc.*, 59 NY2d 436 [1983] ["Where, as here, plaintiff moves for summary judgment on a debt instrument, the non-movant can only defeat the motion by raising material issues of fact which are "genuine and based on proof, not shadowy and conclusory statements."]

"RPAPL 1304(1) provides that, "at least ninety days before a lender, an assignee or a mortgage loan servicer commences legal action against the borrower, ... including mortgage foreclosure, such lender, assignee or mortgage loan servicer shall give notice to the borrower ... RPAPL 1304 requires that the notice be sent by registered or certified mail, and also by first-class mail to the last known address of the... Strict compliance with RPAPL 1304 notice to the borrower is a condition precedent to the commencement of a foreclosure action, and the plaintiff has the burden of establishing satisfaction of the condition precedent. .. Proof of the requisite mailings of the RPAPL 1304 notices may be established with proof of the actual mailings, such as affidavits of mailing or domestic return receipts with attendant signatures, or proof of a standard office mailing procedure designed to ensure that items are properly addressed and mailed, sworn to by someone with personal knowledge of the procedure" *Deutsche Bank Natl. Tr. Co. v Bucicchia*, 193 AD3d 682 [2d Dept 2021][internal citations and quotation marks omitted]

Here, the affidavits of Talya Lopez and Melanie Harris contain only conclusory assertions that the RPAPL 1304 notices were actually sent and are insufficient to demonstrate prima facie entitlement to judgment as a matter of law. Specifically, the affidavit of Tayla Lopes of PHH claims that her review of undisclosed records demonstrates the notices were sent. Ms. Lopez does not allege she is employed by Nationstar, the entity that allegedly sent the subject notices, does not contend she personally sent the notices and does not annex any independent proof they were sent. Therefore, her contentions are insufficient to establish compliance with RPAPL 1304.

The affidavit of Melanie Harris suffers from similar deficiencies. She contends in a conclusory fashion that the notices were sent, does not contend she personally sent the notices but additionally contends that the subject notices with "affiliated certified mailing receipts" are attached to the affidavit. However, no such evidence is annexed to her affidavit. Nor does Ms. Harris allege familiarity with Nationstar's standard office mailing procedure designed to ensure that items are properly addressed and mailed. The only evidence annexed to her affidavit as evidence of the alleged mailings are what appears to be records from a different entity named "LenderLive" that apparently shows that the certified mailings were mailed by a "LenderLive Facility." Ms. Harris does not explain how she can attest to the records of another entity or if she is familiar with that entity's business practices and procedures. Nor do the records demonstrate the

notices were additionally sent by first class mail as required by RPAPL 1304. Therefore, her contentions are insufficient to establish compliance with RPAPL 1304.

Lastly, the affirmation of Sherry Sumerauer also fails to demonstrate strict compliance with RPAPL 1304. While her affirmation is entitled "affirmation of mailing" she does not contend she personally sent the subject notices and appears to rely on the purported business records of Nationstar. Like the affidavit of Ms. Harris, Ms. Sumerauer alleges that "records from the United States Postal Service" demonstrating mailing is attached to her affirmation, a review of same demonstrates no such records are attached. While Ms. Sumerauer also attaches what appears to be the same records of "LenderLive" that apparently shows that the certified mailings were sent by a "LenderLive Facility," she does not explain how she can attest to the records of another entity or that she is familiar with that entity's business practices and procedures and again do not demonstrate the notices were sent by first class mail.

Therefore, plaintiff's alleged assignee failed to establish prima facie that plaintiff strictly complied with RPAPL 1304. See *US Bank NA. v Okoye-Oyibo*, 213 AD3d 718 [2d Dept 2023][*"Contrary to the plaintiffs contention, [the] affidavit was insufficient to establish that notice was sent to the defendant in the manner required by RPAPL 1304. While [the affiant] averred that she had personal knowledge of Fay's standard office mailing procedures, she did not attest that she was familiar with the standard office mailing procedures of LenderLive, LLC (hereinafter LenderLive), the third-party vendor that apparently sent the RPAPL 1304 notices on behalf of the plaintiff. Thus, Johnson's affidavit did not establish proof of a standard office mailing procedure designed to ensure that items are properly addressed and mailed"*]; See also *Wells Fargo Bank, NA. v Fregosi*, 222 AD3d 811 [2d Dept 2023][*"Here, in support of its motion for summary judgment, the plaintiff submitted the affidavit of ... an employee of Nationstar Mortgage LLC (hereinafter Nationstar), the plaintiffs loan servicer. [She] described Nationstar's standard office mailing practices for the mailing of RPAPL 1304 notices, and stated that RPAPL 1304 notices were sent to each of the defendants by both certified and first-class mail... Significantly, the tracking information documents, or tracking logs, contain a notation in the upper left corner stating, "Mailed by: LenderLive Facility," and a notation within the tracking history stating, "LenderLive Event-Mailed." Although Simmons averred that she had personal knowledge of Nationstar's standard office mailing procedure, she did not attest that she was familiar with the standard office mailing procedures of LenderLive, the third-party vendor that apparently sent the RPAPL 1304 notices on behalf of the plaintiff. Thus, her affidavit did not establish proof of a standard office mailing procedure designed to ensure that items are properly addressed and mailed."*]

Additionally, plaintiff's alleged assignee failed to establish it has standing to even make this motion or continue this action.

"CPLR 1018 provides that"[u]pon any transfer of interest, the action may be continued by or against the original parties unless the court directs the person to whom the interest is transferred to be substituted or joined in the action. The determination to substitute or join a party pursuant to CPLR 1018 is within the discretion of the trial court." *Citicorp Mortg. v Adams*, 153 AD3d 779 [2d Dept 2017] [*"Here, the plaintiff failed to demonstrate that it transferred its interest in the action to FNMA and, therefore, the Supreme Court improvidently exercised its discretion in granting the plaintiffs motion pursuant to CPLR 1018"*]

Here, in support of the contention that plaintiff's assignee is in possession of the note, Ms. Lopez of PHH alleges that the assignee "is in possession of the original Note and is either the original payee of the Note or the Note has been duly endorsed" and "Plaintiff received physical delivery of the original Note on July 19, 2023 and is currently in possession of the Note." Ms. Lopez does not explain how she knows the note was delivered to the assignee or when and does not attach any records demonstrating same. While an assignment of mortgage is annexed to the motion, the same does not assign the underlying note and is therefore a nullity.

"In a mortgage foreclosure action, a plaintiff has standing where it is both the holder or assignee of the subject mortgage and the holder or assignee of the underlying note... Moreover, while assignment of a promissory note also effectuates assignment of the mortgage ... the converse is not true: since a mortgage is merely security for a debt, it cannot exist independently of the debt, and thus, a transfer or assignment of only the mortgage without the debt is a nullity and no interest is acquired by it." *US. Bank Nat. Ass'n v Dellarmo*, 94 AD3d 746 [2d Dept 2012]; See also *Citimortgage, Inc. v Stosel*, 89 AD3d 887 [2d Dept 2011] ["Moreover, an assignment of the mortgage without assignment of the underlying note or bond is a nullity"]

Therefore, plaintiff's assignee failed to establish it has standing to make this motion or to maintain this action. See *Citicorp Mortg. v Adams*, 153 AD3d 779 [2d Dept 2017] ["Here, the plaintiff failed to demonstrate that it transferred its interest in the action to FNMA and, therefore, the Supreme Court improvidently exercised its discretion in granting the plaintiff's motion pursuant to CPLR 1018"]

Therefore, plaintiff's motion must be denied without regard to the sufficiency of the opposition papers. See *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985] ["Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers"]; *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986] ["Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers"]

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

Accordingly, it is hereby

**ORDERED**, that plaintiff's motion is DENIED with prejudice; and it is further

**ORDERED**, that the parties are directed to complete discovery and proceed to trial. This constitutes the decision, order and judgment of the Court.

ENTER:



Hon. Menachem M. Mirocchnik, JSC

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