

Wells Fargo Bank, N.A. v Barry

2025 NY Slip Op 34436(U)

November 13, 2025

Supreme Court, Kings County

Docket Number: Index No. 537535/2022

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 13th of November 2025

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

<p>WELLS FARGO BANK, N.A.,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">-against-</p> <p>CAROL BARRY; LEILA BARRY; SEAN PILGRIM; NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE; NEW YORK CITY PARKING VIOLATIONS BUREAU; CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR STERLING NATIONAL MORTGAGE COMPANY, INC.; "JOHN DOE # 1" through and including JOHN DOE # 25, the defendants last named in quotation marks being intended to designate tenants or occupants in possession of the herein described premises or portions thereof, if any there be, said names being fictitious, their true name being unknown to plaintiff, *</p> <p style="text-align: center;">Defendants.</p>
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Index No. 537535/2022

**Decision and Order
(Motion Seq. 3)**

Papers	Numbered
Notice of Motion	NYSCEF Doc. 105-107
Opposition Papers	NYSCEF Doc. 112
Reply Papers	NYSCEF Doc. 113

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

Procedural History

This action was commenced on December 23, 2022, seeking to foreclose a mortgage ("mortgage") executed by defendants Carol Barry, Leila Barry and Sean Pilgrim ("defendants") encumbering the property known as 670 East 79th Street, Brooklyn, NY 11236 ("property"). On March 17, 2023, defendants joined issue with the filing of an answer which asserted various affirmative defenses.

Settlement conferences were held on April 18, 2023, and May 9, 2023, after which the matter was released from the settlement conference part.

By order dated September 30, 2024, the Court granted plaintiff's motion for summary judgment and appointed a referee to compute

On February 3, 2023, plaintiff moved to confirm the referees report and for a judgment of foreclosure and sale.

Defendants opposed the motion contending that the referee failed to comply with the requirement of Article 43 of the CPLR to provide notice of or conduct a hearing. Defendant further contended that the referees report is based on inadmissible evidence in as much as the affidavit allegedly did not provide any or provided incomplete records substantiating the affiants claims.

Plaintiff filed reply contending the affidavit was supported by business records substantiating its claims, that defendant waived objection to computation by not submitting objections to the referee, that a hearing is not required, that defendants were not prejudiced because they had opportunity to oppose the computation to the Court and the evidence submitted to the referee were admissible.

By order dated May 14, 2025, the Coml denied the motion finding that "Plaintiff's Motion for Judgment and Sale is denied with prejudice as documents supporting the amount owed on the loan were not submitted by plaintiff"

Plaintiff now moves for reargument contending the Court erred in denying the motion "with prejudice" and because plaintiff did in fact submit the documents supporting the amount owed to the referee and the Court. Specifically, plaintiff points to the referees report submitted in connection with the motion to confirm same and for judgment of foreclosure and sale. Attached to the report was the (i) Affirmation of Sherri W. McManus, the Vice President Loan Documentation of Wells Fargo Bank, N.A. at NYSCEF Doc. 90 at Pg 12-16; (ii) the Account history, filed at NYSCEF Doc. 90 at Pg 42-49; and (iii) the Loan History, filed at NYSCEF Doc. 90 at Pg 50-56. Plaintiff further contends that defendants waived objection to the computation by not submitting objections to the referee despite being afforded an opportunity to do so and there was no reason for the Court to deny the motion with prejudice.

In opposition, defendants contend the Coml "found that Plaintiff's submissions to this Court and the Referee are accompanied only by partial business records and what the Court found to be summary of those records included in the Affidavit of Merit. Under these circumstances, this Court found that the Plaintiff's submissions consisted of incomplete records and an inadmissible "summary", neither of which amounted to evidence in admissible form sufficient to meet the Plaintiff's burden at inquest." Defendants argue at trial, plaintiff must prove the line-item charges paid through a live witness that will lay a proper foundation for business records and the Court was well in its discretion to order same. Lastly, defendants contend again that the referee did not comply with the notice and hearing requirements of Article 43 of the CPLR.

In reply, plaintiff argues the records were indeed submitted to the Court and the referee, and reiterates its previous arguments.

Discussion

"Motions for reargument are addressed to the sound discretion of the court which decided the prior motion and may be granted upon a showing that the court overlooked or misapprehended the facts or law or for some reason mistakenly arrived at its earlier decision" *Carrillo v PA[Realty Group*, 16 AD3d 611,611 [2d Dept 2005]; See also *HSBC Bank USA, :VA. v Halls*, 98 AD3d 718 [2d Dept 2012] ¹

"While the determination to grant leave to reargue lies within the sound discretion of the court ... a motion for leave to reargue is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented" *Emigrant Bank v Kaufman*, 223 AD3d 650, 651-52 [2d Dept 2024] [internal citations and quotation marks omitted]

Here, defendant appears to be correct that the records submitted to the Court and referee appear to be incomplete and unexplained. Plaintiff's omnibus submission of alleged business records without a detailed explanation as to how those records support the computation and the specific line-items was insufficient. While plaintiff submitted an account history that allegedly showed certain escrow advances, plaintiff did not explain why plaintiff was entitled to collect the various charges including a line item for "PMI/MIP." It is also not clear from plaintiff's records including the "Loan History" when the "Late Charges" were incurred.

Lastly, plaintiff's contentions as to an alleged waiver of objections is without merit. The referee did not schedule a hearing or direct any objections be submitted. The fact that plaintiff purported to provide an arbitrary time frame for defendants to oppose a computation is irrelevant. This Court takes the opportunity to note that the plaintiff does not set schedules, and it is the obligation of the referee appointed by the Court to meet his/her's obligations under the Article 43 of the CPLR. See e.g. CPLR 4320, CPLR 4313.

The argument is also disingenuous because plaintiff also argued that defendants did not suffer prejudice from the referee's apparent non-compliance with Article 43 because they were afforded an opportunity to object to the Court in opposing the motion to confirm. See *e.g.*, *Flagstar Bank, FSB v Davis*, 215 AD3d 920 [2d Dept 2023]; *Shultis v Woodstock Land Dev. Assoc.*, 195 AD2d 677 [3d Dept 1993] and its progeny.

Accordingly, it is hereby

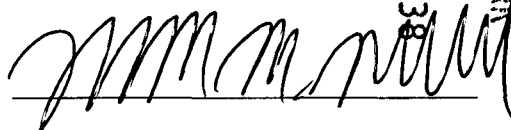
ORDERED, that plaintiffs motion to reargue is

DENIED

This constitutes the Decision and Order of the Court.

¹The instant motion was referred to this Court after the Hon. Carolyn Mazzu Genovesi transferred to the Supreme Court Nassau County. For purposes of CPLR 2221 (a) the underlying issue of forum shopping is thus not present herein.

ENTER:



Hon. Menachem M. Mirocznik, JSC

KINGS COUNTY CLERK
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