

US Bank v Barber

2025 NY Slip Op 34554(U)

October 21, 2025

Supreme Court, Kings County

Docket Number: Index No. 503726/15

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 21st day of October, 2025.

PRESENT:

HON. CENCERIA P. EDWARDS,
Justice.

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US BANK,

Plaintiff,

-against-

Index No.: 503726/15
MS: 4
Calendar No.: 19
Motion Calendar: 5/25/22

ELI BARBER 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 _____
Opposing Affidavits (Affirmations) _____
Affidavits/ Affirmations in Reply _____

98-106
108-110
116

Upon the foregoing papers in this action to foreclose a mortgage encumbering the residential property located at 672 Crown Street in Brooklyn (Block 1418, Lot 24), Plaintiff US Bank moves for summary judgment and an order of reference. It further seeks to substitute Chanie Barber, Chiam "Doe", Faigy "Doe", Freida "Doe", Ita Barber, Jackie "Doe", Joseph "Doe", Mr. Zweigenhaft, Mrs. Zweigenhaft and Yitzchok Barber in place of the Doe defendants. Defendants oppose.

Background Facts and Procedural History

Plaintiff commenced the instant foreclosure action on March 31, 2015. Defendants Eli Barber and Sarah Barber answered, raising thirty affirmative defenses.

Shortly thereafter, Defendants and their daughter Ita Barber Prus¹ filed a motion to dismiss this action asserting that they were not served with the summons and complaint and, thus, the Court lacked personal jurisdiction over them. Following release from the Foreclosure Settlement Conference Part, the Honorable Noach Dear granted their motion by order dated August 11, 2016 to the extent of setting the matter down for a traverse hearing before a Special Referee. As the parties did not consent to Special Referee Derefim B Neckles determining the issue, she issued a report dated March 27, 2018 recommending that the Court find that service upon Defendants and Prus was properly effectuated.

On August 6, 2018, Plaintiff filed a motion for summary judgment, default judgment, and an order of reference. It also sought to substitute the individuals allegedly served at the property in place of the Does in the caption. Defendants opposed, asserting that Plaintiff had not established its standing and did not comply with the mailing requirements of RPAPL 1304. Plaintiff countered that it attached an attorney-certified copy of the note (which was endorsed to blank) to the complaint and that it had submitted an affidavit of mailing of the RPAPL 1304 notices which attested to its compliance with that section.

While that motion was pending,² Plaintiff filed a motion to confirm Special Referee Neckles' recommendation and, thereupon, deny Defendants' motion to dismiss (which had been held in abeyance pending the traverse hearing). Neither Defendants nor Prus filed opposition.

By order dated September 23, 2019, Judge Dear decided all three motions. He summarily accepted the Special Referee's findings, granting Plaintiff's motion to confirm her report and denying Defendants' motion to dismiss for lack of personal jurisdiction. Judge Dear further held that Plaintiff had "met its burden to establish that it had standing to commence this action" but had not demonstrated via admissible evidence that it mailed the RPAPL 1304

¹ "Ita Barber" purportedly was served on behalf of herself and her parents at the property address. The process server termed her "Jane Doe No. 1."

² In fact, prior to Defendants filing their opposition to the motion for summary judgment.

notices. The decision concludes that “Plaintiff’s motion for summary judgment (MS #2) is DENIED w/out prejudice for supplemental information regarding RPAPL 1304.”

Plaintiff filed the instant motion for summary judgment and an order of reference on February 14, 2020. Noting that it had already been found to have demonstrated its standing and that the only issue adjudged to remain open was its compliance with RPAPL 1304, Plaintiff submits a new affidavit of mailing. The affiant (Jeremiah Herberg) attests that he is employed by Wells Fargo which serviced the loan at the relevant time, that Wells Fargo utilized the services of a vendor (LenderLive) to generate and mail ninety-day notices, that LenderLive’s records were incorporated into Wells Fargo’s business records and relied upon by it, and that he has personal knowledge of the mailing and record-keeping practices of both entities. Herberg further explains that the notices are created using a template automatically populated with data from Wells Fargo’s systems and that LenderLive utilizes a “TrackRight” system which records what was mailed, to where, and by what means. The system also utilizes the unique ten or twenty-two digit tracking number assigned by the US Postal Service to each piece of mail and updates the delivery status based upon information from the USPS. Herberg, proffering the relevant Trackright reports and certified mail envelope and receipt³, concludes that the mailing procedures were followed here and the notices actually sent.

In opposition, Defendants also limit their arguments to RPAPL 1304. They argue that Herberg does not “establish the actual procedures that insure mailing on behalf of Plaintiff.” They further assert that “the allegations by Plaintiff are insufficient to demonstrate compliance with the service requirements of RPAPL 1304, where the mailing itself was allegedly completed by LenderLive, LLC, an entity other than the plaintiff, via its ‘Track Right’ system.” Defendants elaborate that there is nothing in the record substantiating LenderLive’s mailing procedures and that they were followed here.

Plaintiff counters that Herberg attests to a familiarity with the mailing and record keeping procedures of both Wells Fargo and LenderLive and proffers the relevant business records which demonstrate that the RPAPL 1304 notices were properly sent. It further argues that pursuant to

³ It appears that the certified mail copy was unclaimed and was returned to LenderLive.

the Second Department's decision in *MLB Sub I v Mathew*, 202 AD3d 1078, 1080 [2d Dept 2022]⁴, no notices were required here as the "1-4 Family Rider" to the mortgage deletes the requirement for the borrowers to occupy the premises. As such, it argues that summary judgment should be granted.

Analysis

Preliminarily, this Court notes that the denial of Plaintiff's prior motion for summary judgment was without prejudice and explicitly authorized Plaintiff to proffer additional evidence of its compliance with RPAPL 1304. It also appears undisputed that the Court already found in favor of Plaintiff on all other issues.

"A plaintiff demonstrates compliance with RPAPL 1304 through evidence of actual mailing (e.g., an affidavit of mailing or service) or ... by proof of a sender's routine business practice with respect to the creation, addressing, and mailing of documents of that nature" (*US Bank NA v Romano*, 231 AD3d 1079, 1080 [2d Dept 2024]). The Herberg affidavit is sufficient to meet that burden. He evinces a familiarity with the procedure used by Wells Fargo and LenderLive and states that the resulting business records are integrated into Wells Fargo's records and relied upon by it in its regular course of business (see, similarly, *Romano*; *US Bank v Maher*, 219 AD3d 1372, 1374 [2d Dept 2023]; *US Bank v Jean-Charles*, 198 AD3d 998, 999-1000 [2d Dept 2021]). In light of the foregoing, Plaintiff has met its burden.

The portion of the motion seeking to substitute Chanie Barber, Chiam "Doe", Faigy "Doe", Freida "Doe", Ita Barber, Jackie "Doe", Joseph "Doe", Mr. Zweigenhaft, Mrs. Zweigenhaft and Yitzchok Barber in place of the Doe defendants is unopposed. That relief is also granted.

Conclusion

Accordingly, it is

⁴ That case has proven to be an outlier. There were many other factors at play there leading to the Panel's determination that the loan in question was not a home loan – Mathew did not claim to reside there, had several other properties, etc. It does not appear that subsequent decisions have likewise held that the existence of a 1-4 family rider exempts the plaintiff from sending RPAPL 1304 notices.

ORDERED that Plaintiff's motion for summary judgment and an order of reference is granted (see accompanying order); and it is further

ORDERED that default judgment is granted against the non-answering defendants; and it is further

ORDERED that Chanie Barber, Chiam "Doe", Faigy "Doe", Freida "Doe", Ita Barber, Jackie "Doe", Joseph "Doe", Mr. Zweigenhaft, Mrs. Zweigenhaft and Yitzchok Barber are substituted in place of the Doe defendants, without prejudice to any of the proceedings herein, and that the Clerk of the Court shall amend the caption to read as follows:

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U.S. BANK NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE FOR

CITIGROUP MORTGAGE LOAN TRUST 2006-AR1, MORTGAGE-BACKED

NOTES, SERIES 2006-AR1,

Plaintiff(s),

- against -

ELI BARBER; SARA BARBER; NEW YORK CITY PARKING VIOLATIONS
BUREAU; NEW YORK CITY TRANSIT ADJUDICATION BUREAU; NEW
YORK CITY ENVIRONMENTAL CONTROL BOARD, CHANIE BARBER,
CHIAM "DOE", FAIGY "DOE", FREIDA "DOE", ITA BARBER, JACKIE "DOE",
JOSEPH "DOE", MR. ZWEIGENHAFT, MRS. ZWEIGENHAFT AND YITZCHOK
BARBER

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This constitutes the decision and order of the Court.

ENTER:



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