

**CIT Bank, N.A. v 1604 President St., Inc.**

2025 NY Slip Op 34785(U)

December 8, 2025

Supreme Court, Kings County

Docket Number: Index No. 506168/2016

Judge: Menachem M. Mirocznik

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At IAS Part ~~FRP~~<sup>5</sup> 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 ~~8<sup>th</sup>~~<sup>9<sup>th</sup></sup> of December 2025

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

CIT BANK, N.A.,

Plaintiff,

-against-

1604 PRESIDENT STREET, INC.; VANISE B. LINDSEY AS ADMINISTRATOR, HEIR AND DISTRIBUTE OF THE ESTATE OF RUBY ROBERTS; BENJAMIN LINDSEY; ELSIE COHEN, if living, and if she be dead, any and all persons unknown to plaintiff, claiming, or who may claim to have an interest in, or general or specific lien upon the real property described in this action; such unknown persons being herein generally described and intended to be included in the following designation, namely: the wife, widow, husband, widower, heirs at law, next of kin, descendants, executors, administrators, devisees, legatees, creditors, trustees, committee, lienors, and assignees of such deceased, any and all persons deriving interest in or lien upon, or title to said real property by, through or under them, or either of them, and their respective wives, widows, husbands, widowers, heirs at law, next of kin, descendants, executors, administrators, devisees, legatees, creditors, trustees, committees, lienors and assigns, all of whom and whose names, except as stated, are unknown to plaintiff; BLUE DIAMOND FUEL OIL; NEW YORK CITY ENVIRONMENTAL CONTROL BOARD; NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE; UNITED STATES OF AMERICA, "JOHN DOE #2" through "JOHN DOE #12," the last eleven 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,

Defendant.

**Index No. 506168/2016**

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

Papers	Numbered
Notice of Motion	NYSCEF Doc. 66-88

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

### **Relevant Procedural and Factual History**

This action was commenced on April 18, 2016, seeking to foreclose a mortgage (the “mortgage”) executed by non-party decedent Ruby Roberts (the “decedent”) which encumbers the property known as 1604 President Street, Brooklyn, NY 11210 (the “property”). The property was purportedly transferred to defendant 1604 President Street, Inc. (“1604 Inc.”) prior to commencement of the instant action.

Decedent died intestate on October 18, 2015, and on February 22, 2017, defendant Vanise B. Lindsey (“Vanise”) was appointed administrator of the estate of decedent upon being issued Letters of Administration.

On July 1, 2016, defendant 1604 Inc., joined issue upon filing of an answer asserting various affirmative defenses, including lack of standing, and several counterclaims.

On September 27, 2017, defendant Vanise, as administrator of the estate of decedent, and Benjamine Lindsey, Charles Lindsey, Earnestine Brookins, Gloria Thompson, Henry Lindsey, Jr., Corinet Deas, as heirs and distributees of the estate of decedent appeared by counsel and filed a notice of appearance and demand for service of papers in the action.

On February 14, 2019, the Court granted plaintiff’s motion to leave to serve a supplemental summons and amended complaint, to amend the caption, to appoint a guardian ad litem and to serve defendant Elsie Cohen by publication.

Plaintiff now moves for summary judgment, to strike defendant 1604 Inc.’s answer, to dismiss its affirmative defenses and counterclaims, a default judgment against the remaining parties, to appoint a referee and to amend the caption.

### **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 Hosp.*, 68 NY2d 320, 324 [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 [2d 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., P.C.*, 126 AD3d 936 [2d Dept 2015]

However, “[w]here, as here, the plaintiff’s 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.” *U.S. Bank N.A. 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”]

“In a mortgage foreclosure action, a [party] has standing where it is both the holder or assignee of the subject mortgage and the holder or assignee of the underlying note at the time the action is commenced...” *U.S. Bank Nat. Ass’n v Dellarmo*, 94 AD3d 746 [2d Dept 2012][internal citations and quotation marks omitted]; See also *Citimortgage, Inc. v Stosel*, 89 AD3d 887 [2d Dept 2011]

Additionally, in general, 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. *U.S. Bank N.A. 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]; *U.S. Bank N.A. v Rozo-Castellanos*, 201 AD3d 995 [2d Dept 2022]

Here, plaintiff argues that it demonstrated standing by virtue of being in possession of the note endorsed in blank which was annexed to the complaint. However, the analysis does not conclude there.

“A “holder” is ‘the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession...Pursuant to article 3 of the Uniform Commercial Code, a note can be endorsed, or signed over, to a new owner. A note can also be endorsed in blank, naming no specific payee, which makes it a bearer instrument under article 3 of the Uniform Commercial Code, so that any party that possesses the note has the legal authority to enforce it.” *U.S. Bank N.A. v Moulton*, 179 AD3d 734 [2d Dept 2020][internal citations and quotation marks omitted]; NY UCC 1-201(21); See also *U.S. Bank N.A. for Citigroup Mtge. Loan Tr., Inc., 2006-NC2 v Brody*, 156 AD3d 839 [2d Dept 2017][“A “holder” is ‘the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession”]

“[T]o qualify as a negotiable instrument under the UCC, a document must “(a) be signed by the maker or drawer; and (b) contain an unconditional promise or order to pay *a sum certain in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by this Article*; and (c) be payable on demand or at a definite time; and (d) be payable

to order or to bearer” *OneWest Bank, N.A. v FMCDH Realty, Inc.*, 165 AD3d 128 [2d Dept 2018][emphasis added] citing NY UCC 3-104[1]

Here, the subject note is denominated as a “Loan Agreement and Note”, is not for a sum certain and contains other provisions and promises. Specifically, note apparently provides for an open-ended line of credit with potential on demand future advances. The note further provides for, the lender to purchaser a life annuity in the borrower’s name, for the payment of “contingent interest” based on the future appraised value of the property, provides for methods for appraising the value of the property and provides for arbitration. The note is therefore not for a “sum certain” as it is based on future conduct of the borrower and post-closing events such as appraised values and contains other promises.

Therefore, the note is not a negotiable instrument and may not be transferred by delivery alone even if allegedly payable to the bearer. See full discussion *NS194, LLC, v Rodriguez et al*; 2025 NY Slip Op. 34235[U] [Sup Ct Kings County Nov. 7, 2025] [Hon. Menachem M. Mirocznik, J.S.C.); See also *OneWest Bank, N.A. v FMCDH Realty, Inc.*, 165 AD3d 128 [2d Dept 2018]; *W. Coast 2014-7, LLC v Moses*, 20CV04101NGGJRC, 2022 WL 20703851 [EDNY Oct. 27, 2022]; *Windward Bora, LLC v Weiss*, 717 F Supp 3d 247, 263 [EDNY 2024]

Therefore, plaintiff failed to demonstrate prima facie entitlement to judgment as a matter of law and the 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”]; *Gregg v Key Food Supermarket*, 50 AD3d 1093 [2d Dept 2008][“Moreover, when the defendant fails to meets its burden, the motion must be denied without regard to the sufficiency of the plaintiff’s opposition papers”]

The parties’ remaining contentions need not be reached in light of the Court’s determinations.

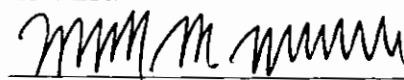
Accordingly, it is hereby

**ORDERED**, that plaintiff’s motion is DENIED with PREJUDICE; and it is further

**ORDERED**, the parties are directed to complete discovery and proceed to trial.

This constitutes the Decision and Order of the Court.

ENTER:

  
Hon. Menachem M. Mirocznik, JSC

KINGS COUNTY CLERK'S OFFICE

DEC 11 2025

FILED