

**JPMorgan Chase Bank, N.A. v Darpoh**

2025 NY Slip Op 34884(U)

December 8, 2025

Supreme Court, Kings County

Docket Number: Index No. 512778/2018

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 8<sup>th</sup> of December 2025

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

JPMorgan Chase Bank, National Association

Plaintiff,

-against-

Kenneth Darpoh a/k/a Kenneth T. Darpoh a/k/a Kenneth J. Darpoh; Renee Tirado a/k/a Renee E. Tirado; Ray Shields; Venturevest Realty Partners, LLC; New York City Environmental Control Board; John Doe #1 through #6, and Jane Doe #1 through #6, the last twelve names being fictitious, it being the intention of Plaintiff to designate any and all occupants, tenants, persons or corporations, if any, having or claiming an interest in or lien upon the premises being foreclosed herein.,

Defendant.

**Index No. 512778/2018**

**Decision and Order  
(Motion Seq. 2)**

Papers	Numbered
Notice of Motion	NYSCEF Doc. 64-81

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 June 21, 2018, seeking to foreclose a credit line mortgage (the "mortgage") executed by defendants Kenneth Darpoh a/k/a Kenneth T. Darpoh a/k/a Kenneth J. Darpoh and Renee Tirado a/k/a Renee E. Tirado (the "borrower defendants") which encumbers the property known as 279 Clermont Avenue, Brooklyn, NY 11205 (the "property").

On August 5, 2018, defendants Ray Shields and Venturevest Realty Partners LLC (the "non-borrower defendants") joined issue with filing of answer with several affirmative defenses including plaintiff's lack of standing.

On December 5, 2018, borrower defendants joined issue with filing of answer with several affirmative defenses including plaintiff's lack of standing.

Settlement conferences were held on October 9, 2018, and November 7, 2018, after which

the matter was released from the settlement conference part.

On May 20, 2019, the Court denied the borrower defendants' motion seeking dismissal for lack of personal jurisdiction.

On May 17, 2021, the Court granted the borrower defendants counsel's motion to be relieved as counsel.

Plaintiff now moves for summary judgment, to strike the borrower defendants and non-borrower defendants' answers, for a default judgment against the non-appearing defendants, for an order of reference, to substitute party defendants and to amend the caption. The motion is supported by, inter alia, the affidavit of Alicia Hernandez, a purported "Vice President" of plaintiff, a WaMu Mortgage Plus Agreement and Disclosure (the "Credit Agreement") with endorsement in blank, a WaMu Mortgage Plus Credit Line Mortgage and assignment of mortgage from JPMorgan Chase Bank, National Association, successor in interest by purchase from the FDIC as Receiver of Washington Mutual Bank f/k/a Washington Mutual Bank, FA, to plaintiff.

### 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]; *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 Credit Agreement is denominated as a “WaMu Mortgage Plus Agreement and Disclosure”, is not for a sum certain and contains other provisions and promises. Specifically, Credit Agreement apparently provides for an open-ended line of credit with potential on demand future advances and appears to contain other agreements and promises. The note is therefore not for a “sum certain” as it is based on future conduct of the borrower.

Therefore, the Credit Agreement 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]

Additionally, while plaintiff also annexes an assignment of mortgage, the same does not assign the credit agreement or debt obligation. However, “[w]hile 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.” *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][“an assignment of the mortgage without assignment of the underlying note or bond is a nullity”]

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”]

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

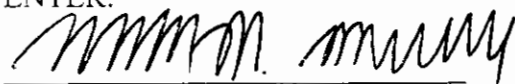
Accordingly, it is hereby

**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

**FILED**  
DEC 11 2025  
KINGS COUNTY CLERK'S OFFICE