

**Federal Natl. Mtge. Assn. ("Fannie Mae") v Devash**

2025 NY Slip Op 35018(U)

December 23, 2025

Supreme Court, Kings County

Docket Number: Index No. 513377/2018

Judge: Cenceria P. Edwards

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FRP-1 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 23<sup>rd</sup> day of December, 2025.

P R E S E N T:

HON. CENCERIA P. EDWARDS,  
Justice.

-----X  
FEDERAL NATIONAL MORTGAGE ASSOCIATION  
("FANNIE MAE"), A CORPORATION ORGANIZED AND  
EXISTING UNDER THE LAWS OF THE UNITED STATES  
OF AMERICA,

Plaintiff,

- against -

Index No. 513377/2018

GALIT DEVASH, NEW YORK CITY ENVIRONMENTAL  
CONTROL BOARD, JOHN DOE,

Defendants.

-----X  
The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/Cross	
Motion and Affidavits (Affirmations) _____	<u>109-116</u>
Opposing Affidavits (Affirmations) _____	<u>117-127</u>
Reply Affidavits (Affirmations) _____	<u>129</u>

Upon the foregoing papers in this action to foreclose a mortgage encumbering the residential property at 1248 East 68<sup>th</sup> Street in Brooklyn (Block 8353, Lot 27) (Property), defendant Galit Devash (Devash or Defendant) moves (in mot. seq. three) for an order granting him summary judgment dismissing the complaint, pursuant to CPLR 3212 (NYSCEF Doc No. 109).

### Background

On June 28, 2018, plaintiff Federal National Mortgage Association (“Fannie Mae”), a Corporation organized and existing under the laws of the United States of America, commenced this action to foreclose a May 8, 2007, mortgage in the principal amount of \$531,240.00 encumbering the Property, which was allegedly executed by Devash (Complaint at ¶¶ 2-3). The complaint alleges that Devash “failed to comply with the conditions of the note and mortgage by not making the payment that was due on July 1, 2012 and subsequent payments” (*id.* at ¶ 5).

On September 7, 2018, Devash answered the complaint, denied the material allegations therein and asserted affirmative defenses, including that “Plaintiff failed to comply with the notice provisions required pursuant to NYRPAPL §§ 1303 and 1304” (NYSCEF Doc No. 31 at ¶ 13).

On July 5, 2019, Fannie Mae moved for summary judgment, an order of reference and a default judgment against the non-answering defendants (NYSCEF Doc No. 35). After Devash filed opposition (NYSCEF Doc No. 60-63), Fannie Mae withdrew the motion (NYSCEF Doc No. 64). On November 6, 2019, Fannie Mae filed a second motion for summary judgment, an order of reference and a default judgment (NYSCEF Doc No. 66). Once again, after Devash filed opposition (NYSCEF Doc No. 92-99), Fannie Mae withdrew the motion. By a February 26, 2020, order, the court (Dear, J.) held that:

“Plaintiff has filed two successive motions for summary judgment and have w/drawn both motions after opposition was filed. As such, the parties are hereby ordered to proceed to trial.

A preliminary conference is set down for April 22, 2020 in FRP-1 Room 756 at 10:00 a.m. Motion Sequence #2 is w/drawn by movant” (NYSCEF Doc No. 100).

However, this action did not proceed to trial due to the onset of the Covid-19 pandemic.

### ***Defendant Devash’s Summary Judgment Motion***

On May 25, 2022, Devash moved for summary judgment seeking to dismiss the complaint for failure to strictly comply with RPAPL § 1304 (NYSCEF Doc No. 109). Defense counsel submitted an attorney affirmation asserting that “[t]he Motion is based upon the landmark Opinion in *Bank of Am., N.A. v Kessler*, 202 AD3d 10 (2d Dept 2021), a case of first impression, which clarified that any additional language included in a RPAPL §1304 notice renders it defective” (NYSCEF Doc No. 110 at ¶ 2). Under the Second Department’s decision in *Kessler* and its progeny,<sup>1</sup> defense counsel argues that “Plaintiff’s 90-Day notice is facially defective, as it contains additional notices included in the same envelope” (*id.* at ¶¶ 14-17).

### ***Fannie Mae’s Opposition***

Fannie Mae, in opposition, submitted an attorney affirmation conceding that Plaintiff’s 90-day notices “included additional information regarding the Fair Debt Collection Practices Act (‘FDCPA’), 15 U.S.C. § 1692 et seq., Title 11 of the United States

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<sup>1</sup> Defense counsel asserts that “[f]urther basis for this Motion arises out of *Wells Fargo Bank, N.A. v Davidson*, 202 AD3d 880 (2d Dept 2022) and *Deutsche Bank Natl. Trust Co. v Bancic*, 2022 NY Slip Op 02112 (2d Dept, March 30, 2022), holding that the failure to comply with the separate mailing requirement is a **matter of law**, obvious from the face of the record, which cannot be ignored by the court” (*id.* at ¶ 2).

Code (‘the Bankruptcy Code’), and contact information the borrower could utilize to contact the servicer to discuss possible foreclosure alternatives” (NYSCEF Doc No. 117 at ¶ 13). Counsel asserted that “the argument that the 90 day notices sent by the Plaintiff are improper based upon the inclusion of language required under the Fair Debt Collections Practices Act should be rejected in accordance with the Supremacy Clause” which “nullifies the state law to the extent that it conflicts with the federal law” (*id.* at ¶ 15). Plaintiff’s counsel also argued that “[g]iven that compliance with RPAPL § 1304 (2) and the Bankruptcy Code was physically impossible under *Kessler*, impossibility preemption applied . . . and the Plaintiff was authorized to include narrow bankruptcy-related disclosure with the RPAPL § 1304 notice” (*id.* at ¶ 22). Alternatively, Plaintiff’s counsel requests that “the matter be stayed pending a decision by the Court of Appeals surrounding the *Kessler* decision” (*id.* at ¶ 25).

### Discussion

Defendant Devash’s summary judgment motion seeking to dismiss the complaint based on Fannie Mae’s failure to strictly comply with RPAPL § 1304 (2) is denied. Devash’s reliance on the Second Department’s “landmark” holding in *Kessler* and its progeny is misplaced because that holding was specifically reversed by the Court of Appeals’ subsequent decision in *Kessler*, which was issued on February 14, 2023, after Defendant Devash’s summary judgment motion was *sub judice*.

In *Bank of Am. v Kessler*, the Court of Appeals specifically rejected the bright-line rule imposed by the Second Department, and held that statements that further the

underlying statutory purpose of providing information to borrowers that is or may become relevant to avoiding foreclosure do not constitute “other notices” that must be sent in a separate envelope from the RPAPL § 1304 notice and “application of a bright-line rule would contravene the legislative purpose” of RPAPL § 1304 (*Bank of Am., N.A. v Kessler*, 39 NY3d 317, 326 [2023]). Accordingly, it is hereby

**ORDERED** that Defendant Devash’s summary judgment motion (mot. seq. three) is denied.

This constitutes the decision and order of the court.

E N T E R,



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