

**Ridgewood Sav. Bank v Harel**

2025 NY Slip Op 35021(U)

November 13, 2025

Supreme Court, Kings County

Docket Number: Index No. 520351/18

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 13th day of November, 2025.

**P R E S E N T:**

HON. CENCERIA P EDWARDS,  
Justice.

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RIDGEWOOD SAVINGS BANK,

Plaintiff,

-against-

BEZALEL HAREL; LILACH MIKHLI; KEYBANK NATIONAL ASSOCIATION; RIDGEWOOD SAVINGS BANK; JOHN DOE (SAID NAME BEING FICTITIOUS TO REPRESENT UNKNOWN TENANTS/OCCUPANTS OF THE SUBJECT PROPERTY AND ANY OTHER PARTY OR ENTITY OF ANY KIND, IF ANY, HAVING OR CLAIMING AN INTEREST OR LIEN UPON THE MORTGAGED PROPERTY),

Defendant,

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**Index No.:** 520351/18  
**MS 2**  
**Calendar Date:**  
6/29/22  
**Calendar No.(s):** 22

The following e-filed papers read herein:

NYSEF Nos.:

Notice of Motion/Order to Show Cause/  
Petition/Cross Motion and Affidavits (Affirmations)

Annexed \_\_\_\_\_

43-62

Opposing Affidavits (Affirmations) \_\_\_\_\_

70-74

Affidavits/ Affirmations in Reply \_\_\_\_\_

75-77

Upon the foregoing papers in this action to foreclose a mortgage encumbering the residential property located at 1533 East 31<sup>st</sup> Street in Brooklyn (Block 7693, Lot 29), Plaintiff

Ridgewood Savings Bank moves for summary judgment against Defendants Betzael Harel and Lilach Mikhli, default judgment against the non-appearing defendants, substitution of Israel Mikhli in place of the “Doe” defendant, and the appointment of a referee to calculate the amount due. Defendants oppose.

### ***Background Facts and Procedural History***

Plaintiff commenced the instant foreclosure action on October 10, 2018. Defendants jointly answered through counsel, asserting seven affirmative defenses. Two pre-settlement conferences were scheduled but the matter was released.

On July 18, 2019, Plaintiff filed its first motion for summary judgment and an order of reference. The motion was subsequently marked off upon Plaintiff’s failure to appear.

The matter was restored to the Foreclosure Settlement Conference Part by order dated September 11, 2019 to be addressed on the same date as another foreclosure action pertaining to the same property. It was released from conference a few months later as no loss mitigation application had been submitted.

### **Plaintiff’s Instant Motion for Summary Judgment and an Order of Reference (MS 2)**

On March 10, 2020, Plaintiff filed the instant motion for summary judgment. Therein, Plaintiff, arguing that it has met its prima facie burden and that Defendants’ affirmative defenses lack merit, seeks to strike the answer. Plaintiff further seeks default judgment against the non-appearing defendants and to have a referee appointed to compute the amount due to it. Ancillary to the main relief, it seeks to substitute the individual served at the property in place of the “Doe” defendant.

In support of its motion, Plaintiff proffers an affidavit signed by Diana McCormick, a Vice President Document Execution employed by Plaintiff. Therein, she introduces, among other documents, copies of the note, mortgage, and a payment history. McCormick further states that the loan has been in default since March 1, 2018. The affiant further asserts that Plaintiff

which originated the loan has been in possession of the note throughout. She also claims a personal familiarity with Plaintiff's mailing practices and appends copies of the notices and the records upon which she bases her contention that they were sent.

### Defendant Harel's Opposition

Defendant Harel, now with new counsel, filed opposition on May 26, 2022.<sup>1</sup> Therein, he argues that Plaintiff failed to demonstrate that the RPAPL 1304 notices were mailed to him. He denies that he received it and notes that the USPS website reflects that the tracking number provided by Plaintiff was created but has no data regarding the mailing.

Harel further argues that he has been engaged in loss mitigation negotiations with Plaintiff and, thus, the filing of the instant motion violates Part 1024.41[g] of 12 CFR Chapter X. While offering no proof that there is a complete application under review, he asserts that Plaintiff should not have sought to advance the litigation while settlement efforts are ongoing.

### Plaintiff's Reply

Plaintiff argues that the McCormack Affidavit and the exhibits thereto demonstrate its compliance with RPAPL 1304. The affiant is an employee of Plaintiff and attests to its mailing practices and proffers documentary evidence reflecting that those policies were followed herein. Among the proffered records are correspondence from the US Postal Service reflecting that the copies of the notice sent by certified mail return receipt requested were subsequently returned to the sender.

Asserting correctly that a mortgagee has no obligation to modify a loan, Plaintiff further notes that loss mitigation discussions did not preclude it from seeking summary judgment.

### *Analysis*

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<sup>1</sup> Defendant Mikhli does not appear to have changed counsel and/or filed opposition.

### Summary Judgment as to Defendant

“Generally, in a mortgage foreclosure action, a plaintiff demonstrates its prima facie entitlement to judgment as a matter of law by producing the mortgage, the unpaid note, and evidence of default” (*BNY Mellon v Swift*, 213 AD3d 624, 625 [2d Dept 2023]). It is undisputed that Plaintiff has done so here.

“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]). McCormack notes that she has “received training on, and have knowledge of, how Ridgewood Savings Bank drafts, generates, triggers, prints, addresses, sends and stores letters in the servicing process and the electronic business records that are simultaneously created ... Ridgewood Savings Bank also has a standard office practice and procedure designed to ensure that items are properly addressed and mailed in connection with its mortgage servicing” (McCormack Aff, ¶5). Citing to the business records proffered as Exhibit E, she states that “Ridgewood Savings Bank sent 90-Day Notices to BEZALEL HAREL and LILACH MIKHLI via regular and certified mail at the property address of the real estate subject to the Mortgage and to the last known address of Borrowers, if different, separate from any other mailing, advising Borrowers the loan was in default, the total amount needed to cure the default, loss mitigation options, and advised that a foreclosure action would be commenced if the default was not cured within 90 days” (*id.*, ¶14). As she proffers copies of the notices, a letter log, and USPS proof that copies were sent by certified mail, Plaintiff has demonstrated compliance with RPAPL 1304.

Defendant offers no evidence of ongoing loss mitigation, let alone that a complete application was submitted but unreviewed at the time that the instant motion was filed. Nor has he offered any precedent that would preclude the consideration of the motion.

In light of the foregoing, summary judgment in favor of Plaintiff and against Defendants is granted.

### Default Judgment Against the Non-Appearing Defendants

Plaintiff has demonstrated its entitlement to default judgment against the non-appearing defendants “On a motion pursuant to CPLR 3215 for leave to enter a default judgment, a plaintiff is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defendant's default in answering or appearing” (*US Bank v Deblinger*, 235 AD3d 1025, 1027 [2d Dept 2025]). Plaintiff has done so.

#### Other Relief

The portion of Plaintiff’s motion seeking to amend the caption to substitute Israel Mikhli in place of “John Doe” is granted. He appears to have been served at the property.

#### *Conclusion*

Accordingly, it is

**ORDERED** that Plaintiff’s motion for summary judgment and other relief (mot. seq. #2), is granted in its entirety (see accompanying order); and it is further

**ORDERED** that Israel Mikhli, is substituted in place of the John Doe defendant, 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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RIDGEWOOD SAVINGS BANK,

PLAINTIFF(s),

- against -

BEZALEL HAREL; LILACH MIKHLI; KEYBANK NATIONAL ASSOCIATION;

RIDGEWOOD SAVINGS BANK; [ISRAEL MIKHLI](#),

DEFENDANT(s),

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This constitutes the decision and order of the Court.

**ENTER:**



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