

Apex Bank v Burns

2025 NY Slip Op 35050(U)

December 17, 2025

Supreme Court, Kings County

Docket Number: Index No. 503816/2019

Judge: Derefim B. Neckles

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 an IAS Term, Part FRP-2 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, 11201 on the 17th day of December, 2025.

P R E S E N T:

HON. DEREKIM B. NECKLES,
Acting Justice.

-----X
APEX BANK,

Plaintiff,

- against -

Index No. 503816/2019

STEPHANIE BURNS, ET AL,

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Affidavits (Affirmations) Annexed
Opposition to Motion
Reply Affirmation to Opposition

289-318
321-324
325

Upon the foregoing papers in this proceeding, plaintiff moves (under mot. seq. 15) for an order (1) confirming the referee’s report; (2) granting a judgment of foreclosure and sale; (3) directing the distribution of the sale proceeds; and (4) deeming the refiled notice of pendency timely filed, *nunc pro tunc*.

Background

Plaintiff commenced this action on February 21, 2019 to foreclose on the mortgage encumbering the subject property located at 256 Decatur Street, Brooklyn, New York. By order dated March 9, 2022, summary judgment was granted in favor of plaintiff as defendant failed to raise a triable issue of fact. Thereafter, plaintiff was granted a judgment

of foreclosure and sale, on default, by order dated April 23, 2024. Defendant then moved by order to show cause, on August 29, 2024, to vacate the judgment of foreclosure and sale because plaintiff served the motion upon defendant's former attorney, and not defendant. By order dated January 28, 2025, the court granted defendant's order to show cause and vacated the judgment of foreclosure and sale.

Plaintiff now files the instant motion for a new judgment of foreclosure and sale. In opposition, defendant asserts that plaintiff has not proven it is the holder of the note, plaintiff has not proven that Apex Bank is the servicer for the subject loan,

Discussion

I. Plaintiff's Standing, Defendant's Default, and RPAPL 1304

"The doctrine of the 'law of the case' is a rule of practice, an articulation of sound policy that, when an issue is once judicially determined, that should be the end of the matter as far as Judges and courts of co-ordinate jurisdiction are concerned" (*Martin v. City of Cohoes*, 37 N.Y.2d 162, 165 [1975]). The doctrine "applies only to legal determinations that were necessarily resolved on the merits in [a] prior decision" (*Baldasano v. Bank of N.Y.*, 199 A.D.2d 184, 185; *see Gay v. Farella*, 5 A.D.3d 540, 541; *D'Amato v. Access Mfg.*, 305 A.D.2d 447, 448; *Flatbush Two, LLC v. Morales*, 190 A.D.3d 826 [2d Dept 2021]).

Here, defendant previously raised the arguments regarding plaintiff's standing, plaintiff's evidence of defendant's default, and plaintiff's compliance with RPAPL 1304, in opposition to plaintiff's motion for summary judgment. Pursuant to order dated March 9, 2022, the court found that plaintiff met its burden for standing by attaching a properly

endorsed note to the summons and complaint when the action was commenced, and established defendant's default by submission of the affidavit of Melanie Mills, and the annexed business records. The court further found that "plaintiff established prima facie, its compliance with RPAPL 1304." Accordingly, the doctrine of law of the case precludes this court from reconsidering these issues now in opposition to plaintiff's motion for a judgment of foreclosure and sale.

II. Business Records

In opposition to plaintiff's motion, defendant asserts that the affidavit of Ben Parker, the vice president of Apex Bank, relied upon by the referee, fails to lay a foundation for the electronic records, under the requirements of CPLR §4518(a). A business record is admissible if "it was made in the regular course of any business and ... it was the regular course of such business to make it, at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter" (CPLR 4518[a]; *Palisades Collection, LLC v. Kedik*, 67 A.D.3d 1329, 1330 [4th Dept 2009]). "A proper foundation for the admission of a business record must be provided by someone with personal knowledge of the maker's business practices and procedures" (*see Aurora Loan Servs., LLC v. Mercius*, 138 A.D.3d 650, 652 [2d Dept 2016]; *Citibank, N.A. v. Cabrera*, 130 A.D.3d 861, 861[2d Dept 2015]; *Palisades Collection*, 67 A.D.3d at 1331).

Here, plaintiff's affiant, Parker, attests that he has personal knowledge of how Apex Bank's business records are kept and maintained, and testifies that the business records for the subject loan were created and maintained by Apex Bank in the course of its regularly conducted business activities and made at or near the time of the event, by a person with

knowledge, or from information transmitted by a person with personal knowledge. Parker further attests that the business records of this loan that were created by the prior servicer are integrated and boarded onto Apex’s systems. Accordingly, the Parker affidavit complies with CPLR §4518 and lays a foundation for business records.

III. RPAPL 1306

RPAPL 1306(1) provides that in an action to foreclose a mortgage, lenders “shall file with the superintendent of financial services ... within three business days of the mailing of the notice required by [RPAPL 1304]” a form containing certain information regarding the borrower and mortgage (*see* RPAPL 1306[2]). A proof of filing statement from the New York State Department of Financial Services is sufficient to establish, prima facie, that the plaintiff complied with RPAPL 1306 (*Wells Fargo Fin. Credit Servs. New York, Inc. v. Mammen*, 141 N.Y.S.3d 119, 121 [2d Dept 2021]).

Here, plaintiff previously established its compliance with RPAPL 1306 in support of its motion for summary judgment through Melanie Mills’s affidavit, and its attached exhibit of the copy of the proof of filing statement from the New York State Department of Financial Services.

ORDERED that plaintiff’s motion (mot. seq. 15) is granted in all respects. Long form order to follow.

This constitutes the decision and order of the court.

E N T E R,



HON. DEREKIM B. NECKLES
A. J. S. C.

FILED

DEC 29 2025

KINGS COUNTY CLERK'S OFFICE