Federal Natl. Mtge. Assn. ("Fannie Mae") v Kostoff
2025 NY Slip Op 35115(U)
December 29, 2025
Supreme Court, Kings County
Docket Number: Index No. 518839/2018
Judge: Menachem M. Mirocznik

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 29th of December 2025

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

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

Plaintiff,

-against-

FLORI KOSTOFF, STEPHEN KOSTOFF, ET AL

Defendant.

Index No. 518839/2018

Decision and Order
(Motion Seq. 1)

Papers	**Numbered**
Notice of Motion	NYSCEF Doc. 29-48
Opposition Papers	NYSCEF Doc. 57-58
Reply Papers	NYSCEF Doc. 59

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 September 18, 2018, seeking to foreclose a mortgage (the "mortgage") executed by defendant Flori Kostoff and Stephen Kostoff' (the "defendants") which encumbers the property known as 1315 Oriental Blvd, Brooklyn, NY 11235 (the "property").

On February 5, 2019, defendants joined issue by filing an answer asserting various affirmative defenses including lack of standing, non-compliance with RPAPL 1304, RPAPL 1306 and notice of default requirement of the mortgage.

Settlement conferences were held on December 4, 2018, January 30, 2019, and May 10, 2019, after which the matter was released from the settlement part.

Non-party U.S. Bank Trust, N.A., As Trustee For LSF11 Master Participation Trust ("Non-Party US Bank"), as alleged successor in interest to plaintiff now moves for summary judgment, to strike defendants' answer and affirmative defenses, to treat defendants' answer as a limited notice of appearance, for an order of reference to amend the caption to substitute party defendants and Non-Party US Bank as party plaintiff, and for other relief. The motion is supported, inter alia,

by (1) the affidavit of Kolette Modlin ("Ms. Modlin" or "Modlin Affidavit"), a purported "Authorized Officer" of Caliber Home Loans, Inc. ("Caliber"), the alleged attorney in fact for Non-Party US Bank as the alleged assignee of plaintiff, (2) the affidavit of mailing and note possession of Saije Krupp ("Ms. Krupp" or "Krupp Affidavit"), a purported "Foreclosure Support Ass. II" of Nationstar Mortgage LLC d/b/a Mr. Cooper ("Nationstar") as authorized subservicer for plaintiff and former employee of Seterus, Inc. ("Seterus") the former subservicer of plaintiff. Various alleged business records are attached to the aforementioned affidavits including inter alia, payment histories, copies of several notices

Defendants oppose the motion contending that plaintiff failed to establish prima facie entitlement to judgment as a matter of law. Specifically, defendants contend plaintiff's submission is inadmissible hearsay and failed to establish prima facie, it has standing, compliance with the notice of default provision of the mortgage, RPAPL 1304, RPAPL 1306, a default under the mortgage and the certificate of merit requirement.

In reply, plaintiff contends it demonstrated prima facie entitlement to judgment as a matter of law and that defendants failed to raise an issue of fact.

Discussion

I. Standard of Review

"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]

"Summary judgment is a "drastic remedy" that should be granted only where the moving party has tender[ed] sufficient evidence to demonstrate the absence of any material issue of fact…Even then, summary judgment should be granted only if, upon the moving party's meeting this burden, the non-moving party fails to establish the existence of material issues of fact which require a trial of the action…Issue finding, not issue deciding, is the court's purpose at the summary judgment stage…Thus, [w]here the court entertains any doubt as to whether a triable issue of fact exists, summary judgment should be denied…When ruling on a motion for summary judgment, the deciding court must view the facts "in the light most favorable to the non-moving party" *U.S. Bank N.A. v DLJ Mtge. Capital, Inc.*, 38 NY3d 169 [2022][internal citations and quotation marks omitted]

"[A] motion for summary judgment will not be granted if it depends on proof that would be inadmissible at the trial under some exclusionary rule of evidence…Records made in the regular course of business are hearsay when offered for the truth of their contents…When a party relies upon the business records exception to the hearsay rule in attempting to establish its prima facie

case, '[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." *HSBC Bank USA, N.A. v Vasishta*, 241 AD3d 1299 [2d Dept 2025][internal citations and quotation marks omitted]

"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]

II. Non-Party US Bank Failed to Demonstrate Authority and Compliance with CPLR 3212[b]

Initially, in support of the motion, plaintiff relies on the affidavit Ms. Modlin of Caliber, the alleged servicer of Non-Party US Bank. As proof of authority, Mr. Modlin annexes a "limited power of attorney" executed by US Bank in favor of Caliber, dated April 26, 2018. However, the power of attorney is expressly limited by "related servicing agreements" which have not been proffered. Therefore, the power of attorney is insufficient to demonstrate that Caliber possessed the requisite authority to act on behalf of plaintiff. See *HSBC Bank USA, N.A. v. Betts*, 67 Ad3d 735 [2d Dept 2009]; *Citibank, N.A. v Herman*, 215 AD3d 626 [2d Dept 2023]; *US Bank N.A. v Cusati*, 185 AD3d 870 [2d Dept 2020]; See also *U.S. Bank N.A. v Tesoriero*, 204 AD3d 1066 [2d Dept 2022]["the limited power of attorney submitted...restricted and conditioned its authority based on the terms of other agreements which were not provided by the plaintiff. Thus, the limited power of attorney was insufficient to demonstrate that Nationstar possessed the authority to act on behalf of the plaintiff"]

Therefore, movant failed to demonstrate prima facie entitlement to summary judgment.

III. Non-Party US Bank Demonstrated Plaintiff Had Standing To Commence the Action

"Where, 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"]

"A plaintiff has standing to commence a foreclosure action where it is the holder or assignee of the underlying note, either by physical delivery or execution of a written assignment prior to the commencement of the action with the filing of the complaint...Thus, a plaintiff may demonstrate its standing in a foreclosure action through proof that it was in possession of the subject note endorsed in blank, or the subject note and a firmly affixed allonge endorsed in blank, at the time of commencement of the action" *US Bank Tr., N.A. v Loring*, 193 AD3d 1101 [2d Dept 2021][internal citations omitted]

Additionally, 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, contrary to defendant's contentions, movant established prima facie it had standing to commence the action by annexing the subject note, endorsed in blank to the complaint

IV. Non-Party US Bank Failed To Demonstrate Prima Facie Strict Compliance with RPAPL 1304

"[W]here, as here, a defendant raises the issue of compliance with RPAPL 1304 as an affirmative defense, the moving party is also required to make a prima facie showing of strict compliance with RPAPL 1304...RPAPL 1304(1) provides that "at least ninety days before a lender, an assignee or a mortgage loan servicer commences legal action against the borrower...including mortgage foreclosure, such lender, assignee or mortgage loan servicer shall give notice to the borrower. RPAPL 1304(2) requires that the notice be sent by registered or certified mail, and also by first-class mail, to the last known address of the borrower and to the residence that is the subject of the mortgage." *Caliber Home Loans, Inc. v Weinstein*, 197 AD3d 1232 [2d Dept 2021][internal citations and quotation marks omitted]

"By requiring the lender or mortgage loan servicer to send the RPAPL 1304 notice by registered or certified mail and also by first-class mail, the Legislature implicitly provided the means for the plaintiff to demonstrate its compliance with the statute, i.e., by proof of the requisite mailing, which can be established with proof of the actual mailings, such as affidavits of mailing or domestic return receipts with attendant signatures, or proof of a standard office mailing procedure designed to ensure that items are properly addressed and mailed, sworn to by someone with personal knowledge of the procedure." *US Bank N.A. v Pierre*, 189 AD3d 1309 [2d Dept 2020]; *Wells Fargo Bank, N.A. v Fregosi*, 222 AD3d 811 [2d Dept 2023]["A plaintiff can establish strict compliance with RPAPL 1304 by submitting domestic return receipts, proof of a standard office procedure designed to ensure that items are properly addressed and mailed, or an affidavit from someone with personal knowledge that the mailing of the RPAPL 1304 notice actually happened."]

"[I]n order for the presumption to arise, [the] office practice must be geared so as to ensure the likelihood that [the] notice...is always properly addressed and mailed." *Wells Fargo Bank, N.A. v Shields*, 201 AD3d 1007, 1009 [2d Dept 2022]

Here, movant failed to establish prima facie it strictly complied with RPAPL 1304.

First, Ms. Modlin and Ms. Krupp contend the notices were allegedly served by Seterus. However, no proof has been offered that Seterus was authorized to send the notices on the dates in question. Therefore, plaintiff failed to establish prima facie compliance with RPAPL 1304. See *Siegel v Kentucky Fried Chicken of Long Is., Inc.*, 108 AD2d 218 [2d Dept 1985]["the mere assertion of authority on the face of the notice by a total stranger...that he is authorized to act on the latter's behalf cannot be deemed to provide...notice..."], *affd*, 67 NY2d 792 [1986]; See also RPAPL 1304[1]["such lender, assignee or mortgage loan servicer shall give notice"]; *Deutsche Bank Natl. Trust Co. v Pariser*, 207AD3d 518 [2d Sept. 2022]["The plaintiff further failed to establish that the RPAPL 1304 notices were sent by the "lender, assignee, or loan servicer" as

required by the statute...Here, the RPAPL notices were allegedly sent on August 7, 2014, by the Law Offices of McCabe, Weisberg, and Conway, P.C., on behalf of Ocwen Financial, the plaintiff's loan servicer. However, the limited power of attorney authorizing Ocwen Financial to act on behalf of the plaintiff, which was submitted by the plaintiff in support of its motion, states that it was executed on and effective as of September 17, 2014."][citations omitted]; See also *MTGLQ Invs., L.P. v Cacioppo*, 217 AD3d 939 [2d Dept 2023]["Here, the plaintiff failed to establish, prima facie, that it strictly complied with RPAPL 1304. The plaintiff submitted a detailed affidavit of mailing from an assistant secretary of loan documentation at Rushmore Loan Management Services, LLC (hereinafter Rushmore), which demonstrated that the RPAPL 1304 notices had been mailed in accordance with the statute...However, this affidavit failed to demonstrate that Rushmore had the authority to service the loan at the time that it mailed the RPAPL 1304 notices to the defendant...and this record presents triable issues of fact as to whether Rushmore had this authority."][citations omitted]

Second, while Ms. Krupp alleges that she is familiar Seterus' standard office practices, she does not detail what the standard office mailing practices and procedures are that "ensure that items are properly addressed *and mailed*." Her statements amount to nothing more than a conclusory assertion that plaintiff has undisclosed mailing procedures and that the notices were allegedly properly mailed. This is insufficient. See e.g. *Freedom Mtge. Corp. v King*, 215 AD3d 923 [2d Dept 2023]["Further, the plaintiff failed to present sufficient proof of a standard office mailing procedure designed to ensure that items are properly addressed and mailed, including how the mail was transmitted to the postal service."]; *Wells Fargo Bank, N.A. v Shields*, 201 AD3d 1007 [2d Dept 2022]["[I]n order for the presumption to arise, [the] office practice must be geared so as to ensure the likelihood that [the] notice...is always properly addressed and mailed."]

"Because the plaintiff "failed to provide proof of the actual mailing, or proof of a standard office mailing procedure designed to ensure that items are properly addressed and mailed, sworn to by someone with personal knowledge of the procedure, the plaintiff failed to establish its strict compliance with RPAPL 1304" and, therefore, failed to establish, prima facie, its entitlement to judgment as a matter of law." *Bethpage Fed. Credit Union v Hernon*, 216 AD3d 895 [2d Dept 2023]; *NS194, LLC v Gregg*, 231 AD3d 1162 [2d Dept 2024]; *US Bank N.A. v Okoye-Oyibo*, 213 AD3d 718 [2d Dept 2023]; *MTGLQ Invs., L.P. v Cacioppo*, 217 AD3d 939 [2d Dept 2023]

V. Non-Party US Bank Failed To Demonstrate Prima Facie Strict Compliance with RPAPL 1306

"RPAPL 1306 provides, in pertinent part, that within three business days of the mailing of the foreclosure notice pursuant to RPAPL 1304(1), every lender or assignee "shall file" certain information with the superintendent of financial services, including "***at a minimum, the name, address, last known telephone number of the borrower, and the amount claimed as due and owing on the mortgage***, and such other information as will enable the superintendent to ascertain the type of loan at issue...Like RPAPL 1304, compliance with RPAPL 1306 is a condition precedent to the commencement of a foreclosure action..." *HSBC Bank USA, N.A. v Bermudez*, 175 AD3d 667 [2d Dept 2019][internal citations omitted and emphasis added] *Deutsche Bank Natl. Tr. Co. v Goetz*, 239 AD3d 934 [2d Dept 2025]["In support of his cross-motion, the defendant established, prima facie, that the plaintiff failed to establish its compliance with RPAPL 1306, which provides, in pertinent part, "that within three business days of the mailing of the foreclosure

notice pursuant to RPAPL 1304(1)"][emphasis added]

"Compliance with RPAPL 1306 is a condition precedent to the commencement of a foreclosure action...[S]trict compliance" with the statutory requirement of making the appropriate filing within three business days of the mailing of the RPAPL 1304 notice is required." See e.g *Bank of New York Mellon v Peralta*, 239 AD3d 932 [2d Dept 2025][internal citations and quotation marks omitted]

Here, plaintiff alleges that it mailed the notices on March 31, 2018 and allegedly made the requisite RPAPL 1306 filing on April 2, 2018. However, a review of the USPS tracking information attached to the Krupp Affidavit reflects that a label may have been created on March 31, 2018, but that the notice was not actually provided to USPS until April 6, 2018, which is more than three days after the alleged RPAPL 1306 filing. Therefore, issues of fact persist as to whether plaintiff complied RPAPL 1306.

Moreover, it is clear that the borrower's telephone number is missing from the filing. However, it is unclear if such a defect is fatal or may be disregarded as mere technical defect or irregularity. Accordingly, an analysis of the statute and the legislative intent is appropriate.

"[O]ur primary consideration is to ascertain and give effect to the intention of the [l]egislature...Because the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself...with due consideration given to the statutory purpose and history, including the objectives the legislature sought to achieve through its enactment." *CIT Bank N.A. v Schiffman*, 36 NY3d 550 [2021][internal citations and quotation marks omitted]

Here, the statute on its face expressly provides that the filing shall include "at a minimum, the name, address, *last known telephone number of the borrower*, and the amount claimed as due and owing on the mortgage and such other information as will enable the superintendent to ascertain the type of loan at issue." RPAPL 1306[2][emphasis added]

RPAPL 1306[4] further provides in relevant part that the "information provided to the superintendent pursuant to this section...shall be used by the superintendent exclusively for the purposes of monitoring on a statewide basis the extent of foreclosure filings within this state, to perform an analysis of loan types which were the subject of a pre-foreclosure notice and directing as appropriate available public and private foreclosure prevention and counseling services to borrowers at risk of foreclosure. The superintendent may share information contained in the database with housing counseling agencies designated by the division of housing and community renewal as well as with other state agencies with jurisdiction over housing, for the purpose of coordinating or securing help for borrowers at risk of foreclosure."

The Appellate Division Second Department held in the context of the information pertaining to the type of loan that "RPAPL 1306(2) specifically requires the filing of information that will enable the superintendent to ascertain the type of loan at issue... and states that the data collected shall be used to perform an analysis of loan types...*and to direct appropriate services to borrowers in need*." *U.S. Bank N.A. v Adams*, 202 AD3d 867, 870 [2d Dept 2022][citation omitted and emphasis removed and added]; See also *CIT Bank N.A. v Schiffman*, 36 NY3d 550

[2021]["This provision shows that the principal objective of the filings is to provide statistical data permitting DFS to accurately track and analyze loans at risk of foreclosure and properly allocate foreclosure counseling resources statewide in order to combat the mortgage crisis—an aim also reflected in the legislative history."]

The Court finds that the failure to include the borrower's last known phone number is not a mere technical defect or irregularity. It is a failure to comply with an express requirement of RPAPL 1306 and undermines the purpose of the statute to "*direct appropriate services to borrowers in need.*" See *U.S. Bank N.A. v Adams*, 202 AD3d 867, 870 [2d Dept 2022]; See also *CIT Bank N.A. v Schiffman*, 36 NY3d 550 [2021]

The Court further finds the reasoning in the holding of the Hon. C. Stephen Hackeling, JSC of our sister court in Suffolk County persuasive. "Because the statutory text permits the agency to share information contained on the filing with certain housing counseling agencies that coordinate help for distressed borrowers, and the Department of Financial Services may use the information to facilitate a review of whether the borrower might benefit from counseling or other foreclosure prevention services, including a borrower's last known telephone number is critical to facilitate the statutory purpose of RPAPL 1306." *Deutsche Bank Natl. Tr. Co. as Tr. for GSAMP Tr. 2005-WMC3 v Velasquez*, 86 Misc 3d 288, 294 [Sup Ct 2025]; See also *Brown v Amarante*, 23-CV-3514 (JGLC) (RWL), 2024 WL 4716364, at *14 [SDNY Nov. 8, 2024]["the Court sees no difference between leaving the space blank and filling it in with a non-telephone number (i.e., 9999999999). The result is the same: the minimum information required by the statute, particularly the borrower's telephone number, has not been provided. While addressing other aspects of § 1306 in reply, Plaintiff ignores entirely the telephone-number deficiency. Plaintiff has not demonstrated compliance with RPAPL § 3106 and thus has failed to establish having satisfied a condition precedent to suit."] [United States Magistrate Judge Robert W, Lehrburger] *report and recommendation adopted*, 23-CV-3514 (JGLC), 2025 WL 934318 [SDNY Mar. 27, 2025][United States District Judge Jessica G. L. Clarke]

As aptly noted in reaching the same conclusion, the Hon. Carolyn Mazzu[1] Genovesi, JSC, held that "within the context of the RPAPL 1304, plaintiff's failure to include the telephone number

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[1]This Court respectfully disagrees with Judge Genovesi that "[a]rguably, the plaintiff's misstatement of whether the loan was modified, which the Appellate Division, Second Department excuses, is a more egregious defect than the omission of borrower's telephone number." *Gargiulo, supra, citing U.S. Bank N.A. v Adams*, 202 AD3d 867, 870 [2d Dept 2022]. The Court in *Adams*, specifically reasoned that the requirement to specify the modification status of the mortgage was <u>not</u> a statutory requirement. See *Adams, supra.* ["RPAPL 1306 (2) specifically requires the filing of information that "will enable the superintendent to ascertain the *type of loan at issue*" (emphasis added) and states that the data collected shall be used to "perform an analysis of loan types" (*id.* § 1306 [4]) and to direct appropriate services to borrowers in need. Here, the Proof of Filing Statement provides that information, indicating that the loan is "Fixed Rate" and "1st Lien." Plainly stated, a loan modification is not a "type of loan."]

The Courts have recently experienced the consequences of judicial policy making in the context foreclosure law and will not engage in the type of meddling the legislature as representatives of the People of the State of New York have expressly denounced. See the Foreclosure Abuse and Prevention Act which abrogated *Freedom Mtge. Corp. v Engel (37 NY3d 1 [2021])* and legislation has been introduced to abrogate *Bank of Am., N.A. v Kessler, 39 NY3d 317 [2023],* was passed unanimously in the Assembly (A05841) and passed the Senate in the following year (S.5829); See also *Diamond v Chakrabarty*, 447 US 303 [1980]["The choice we are urged to make is a matter of high policy for resolution within the legislative process after the kind of investigation, examination, and study that legislative bodies can provide and courts cannot. That process involves the balancing of competing values and interests, which in our democratic

of the Department of Financial Services' toll-free helpline is a facial defect that invalidates the RPAPL 1304 notice." *The Bank of New York Mellon; et al v Susan Gargiulo et al*, 2025 NY Slip Op 51886[U] [Sup Ct Nov. 25, 2025] citing *Fed. Natl. Mtge. Assn. v Williams-Jones*, 235 AD3d 953 [2d Dept 2025]["Since the notices failed to include the telephone number for the Department of Financial Services' toll-free helpline—a piece of information specifically required by the version of RPAPL 1304 in effect at the time the notices were sent—the notices were facially defective, and the defendant's motion for summary judgment dismissing the complaint insofar as asserted against her should have been granted"]

Indeed, the Hon. Francois A. Rivera, JSC recently held that the absence of the correct telephone number in a RPAPL 1303 rendered the notice defective. See *HSBC Bank USA, N.A. v Williams* 2025 NY Slip Op 34650(U) [Sup Ct Dec. 19, 2025]["As the trial record reflects, plaintiff's witness, Zambrano, expressly admitted that the toll-free telephone number and website were both different than the mandatory language contained in RPAPL 1303 at the time of the commencement of this action.... Accordingly, this Court concludes that a necessary pre-commencement mandate for the lawsuit was not complied with."]

It makes little sense for this Court to apply RPAPL 1306 to a different standard then RPAPL 1303 and RPAPL 1304. All three require strict compliance. All three require a phone number. Accordingly, this Court will not second guess the policy considerations underpinning passage RPAPL 1303 RPAPL 1304 and RPAPL 1306. Like Justices Hackling, Genovesi, Lehrburger, Clarke and Rivera, this Court will apply the telephone number requirement strictly.

Accordingly, for this reason as well, plaintiff's motion must be denied.

VI. Movant Failed To Demonstrate That US Bank Has Standing To Maintain or Continue this Action

Lastly, plaintiff's alleged assignee failed to establish it has standing to even make this motion or continue to prosecute this action.

Here, in support of the contention that US Bank is in possession the note, Ms. Modlin, as an employee of Caliber, asserts, in a conclusory manner, based upon a review of unproduced records, that US Bank took possession of the note on October 29, 2018. Ms. Modlin does not explain how she can attest whether US Bank, as separate entity, is in possession of the note. In the absence of the records allegedly read and sufficient foundation for same, Ms. Modlin's statements amount to inadmissible hearsay and are insufficient to demonstrate that US Bank has standing.

While an assignment of mortgage is annexed to the motion, the same does not assign the underlying note and is therefore a nullity. "In a mortgage foreclosure action, a plaintiff has standing where it is both the holder or assignee of the subject mortgage and the holder or assignee of the underlying note...Moreover, while assignment of a promissory note also effectuates assignment

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system is the business of elected representatives. Whatever their validity, the contentions now pressed on us should be addressed to the political branches of the Government, the Congress and the Executive, and not to the courts."]

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]; See also *Citimortgage, Inc. v Stosel*, 89 AD3d 887 [2d Dept 2011]["Moreover, an assignment of the mortgage without assignment of the underlying note or bond is a nullity"]

Therefore, plaintiff's alleged assignee failed to establish it has standing to make this motion or to maintain this action. *See e.g. Citicorp Mortg. v Adams*, 153 AD3d 779 [2d Dept 2017]["Here, the plaintiff failed to demonstrate that it transferred its interest in the action to FNMA and, therefore, the Supreme Court improvidently exercised its discretion in granting the plaintiff's motion pursuant to CPLR 1018"]; *U.S. Bank N.A. v Medina*, 230 AD3d 1371 [2d Dept 2024]["U.S. Bank also failed to establish that the caption should be amended to substitute U.S. Bank as the plaintiff. Leave to amend a caption to substitute an assignee for the plaintiff may properly be granted upon evidence that the mortgage and underlying debt were assigned to the assignee"]; *Citimortgage, Inc. v Bredehorn*, 160 AD3d 803 [2d Dept 2018]["The Supreme Court improvidently exercised its discretion in granting that branch of the plaintiff's motion…to amend the caption by substituting FNMA as the plaintiff…Although the plaintiff submitted evidence that the mortgage was assigned to FNMA, there was no evidence in admissible form of an assignment of the note or a transfer of possession of the note to FNMA."]

Accordingly, non-party US Bank is precluded from participating in these proceedings, until such time as it can demonstrate entitlement to relief pursuant to CPLR 5015[a][2], CPLR 5015[a][5] or CPLR 2221.

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

Accordingly, it is hereby

ORDERED, that non-party US Bank's motion is DENIED with PREJUDICE; and it is further

ORDERED, that non-party US Bank is precluded from participating in these proceedings, until such time as it can demonstrate entitlement to relief pursuant to CPLR 5015[a][2], CPLR 5015[a][5] or CPLR 2221; and it is further

ORDERED, that 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
JAN 06 2026
KINGS COUNTY CLERK'S OFFICE