

**Nationstar Mtge. LLC v Grunwald**

2025 NY Slip Op 35227(U)

October 15, 2025

Supreme Court, Kings County

Docket Number: Index No. 504132/2014

Judge: Francois A. Rivera

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At an IAS Term, Part 52 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 15th day of October 2025

HONORABLE FRANCOIS A. RIVERA

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NATIONSTAR MORTGAGE LLC,<sup>1</sup>

Plaintiff,

- against -

JONATHAN GRUNWALD, BOARD OF MANAGERS OF BOROUGH PARK TOWNE HOUSE CONDOMINIUM, "JOHN DOE" AND "JANE DOE"; said names being fictitious, it being the intention of Plaintiff to designate any and all occupants of premises being foreclosed herein,

Defendants.

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**FINDINGS OF FACT & DECISION AFTER A BENCH TRIAL**

Index No. 504132/2014

The following are the findings of fact and decision after a non-jury trial in the instant action to foreclose a mortgage brought by plaintiff U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation not in its individual capacity, but solely as Trustee for the RMAC Trust, Series 2016-CTT (hereinafter "the plaintiff" or "USBNA") against Jonathan Grunwald (hereinafter "the defendant" or "Grunwald").

<sup>1</sup> By decision and order dated January 29, 2019, by Justice Dear, the trial court, among other things, denied the plaintiff's motion for leave to amend the caption to substitute U. S. Bank Trust capital N. A., as trustee for LSF9 Master Participation Trust as the plaintiff. On appeal, the Appellate Division, Second Department modified the order, on the law, by granting leave to amend the caption as requested (*see Nationstar Mtge., LLC v Grunwald*, 203 AD3d 1170 [2d Dept 2022]). Although the parties submitted their respective proposed findings using Nationstar Mortgage LLC in the caption, the instant decision and order is directed to U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation.

## **BACKGROUND**

On May 8, 2014, Nationstar Mortgage LLC (hereinafter “Nationstar”) commenced the instant action seeking, inter alia, to foreclosure a mortgage on the residence of defendant Jonathan Grunwald, by filing a summons, complaint, and a notice of pendency with the Kings County Clerk’s office (KCCO).

By answer dated June 11, 2014, defendant Grunwald joined issue. The answer asserted several affirmative defenses including lack of standing, failure to comply with contractual pre-foreclosure notice of default, and statutory provisions of RPAPL 1303 and 1304.

After the issuance of a directed verdict of dismissal followed by an order which, among other things, granted the plaintiff’s motion vacating the directed verdict, the matter was scheduled for a bench trial.

## **THE TRIAL**

Thereafter, the matter proceeded to a bench trial in Part 52. The trial commenced on November 15, 2021, and continued November 22, 2021, December 20, 2021, March 28, 2022, and May 13, 2022. On May 13, 2022, the plaintiff rested.

The plaintiff introduced eighteen exhibits into evidence. Exhibit 1 was a Power of Attorney (Certified Copy). Exhibit 2 was the subject note. Exhibit 3 was a Notice of Sale of Loan. Exhibit 4 was a copy of the subject mortgage. Exhibit 5 was an Assignment of the subject mortgage. Exhibit 6 was a payment history. Exhibit 7 was Judgment Figures. Exhibit 8 was proof of Note Possession. Exhibit 9 was a file tracking history report. Exhibit 10 was Nationstar’s payment history. Exhibit 11 was Notices of Default. Exhibit 12 was proof of mailing for the Notice of Default. Exhibit 13 was the RPAPL1304 Notices. Exhibit 14 was proof of mailing of the RPAPL1304 Notices. Exhibit 15 was a communication history. Exhibit

16 was an RPAPL1306 Registration Statement. Exhibit 17 was the instant summons and complaint with RPAPL1303 Notice. Exhibit 18 was the affidavit of service of the summons, complaint and RPAPL1303 Notice upon Jonathan Grunwald.

At the time of trial plaintiff called two witnesses. Plaintiff's first witness was Darla Martin of Rushmore Loan Management Services, LLC, as servicer for USBNA. Ms. Martin attested to USBNA's current ownership of the loan, the note and mortgage, defendant's default, and the amounts currently due and owing herein. Trial exhibits 1 through 7 were admitted through her testimony. Plaintiff then called Kristen Trompisz, a Principal Litigation Ambassador of plaintiff. Ms. Trompisz testified to plaintiff's exhibits 8 through 16 in evidence and through those exhibits and her testimony established plaintiff's standing, defendant's default, and the proper mailing of the contractual notice of default and RPAPL 1304 notice. Regarding the notices, Ms. Trompisz attested to her training and knowledge of the practices and procedures used by plaintiff's vendor, Walz, now known as Covius, for mailing both the RPAPL 1304 notice and the notice of default.

In addition to copies of the notice of default and RPAPL 1304 notices that were admitted into evidence as exhibits 11 and 13, Ms. Trompisz's testimony further included Walz's Trackright document tracking reports demonstrating proper mailing of said notices, which were admitted into evidence as exhibits 12 and 14. Through her testimony, Ms. Trompisz established her knowledge of the creation of these records and her training thereon, as well as the fact that she has access to them in the regular course of her business.

During the pendency of trial in this matter, the Appellate Division, Second Department issued an order holding, in part, that plaintiff had established its standing as well as entitlement to amend the caption to name U.S. Bank Trust, N.A. as Trustee for LSF9 Master Participation

Trust as the plaintiff. After the conclusion of plaintiff's case in chief, on July 14, 2022, defendant filed a motion for a directed verdict, seeking in part a directed verdict pursuant to the Appellate Division, Second Department's holding in *Bank of Am. N.A. v. Kessler*, 202 AD.d 10 (2d Dept 2021). By order dated September 30, 2022 and decision and order dated March 27, 2024, the defendant's motion was granted.

After the Court of Appeals reversed the Appellate Division, Second Department's ruling in *Bank of Am., N.A. v. Kessler* 39 NY3d 317 (2023), plaintiff made a motion to renew the granting of a directed verdict to the defendant. By order dated March 28, 2024, the Court granted the plaintiff's motion to renew and restored the defendant's motion for a directed verdict to the Court's calendar for a determination of the remaining issues set forth therein.

By interim order dated November 21, 2024, the Court denied Defendant's motion for a directed verdict holding that plaintiff offered evidence of proper mailing of the Notice of Default and the RPAPL1304 Notice. The Court further held that due to the death of process server David Feldman, the Affidavit of Service admitted into evidence as plaintiff's exhibit 18 was proper evidence of plaintiff's compliance with RPAPL1303 pursuant to CPLR 4531.

On November 21, 2024, the Court issued an additional order adjourning the trial in this matter to February 4, 2024, for defendant to present his case. Defendant thereafter chose not to present any further witnesses or evidence.

By order dated January 31, 2025, the court directed that both parties file proposed findings of fact in accordance with CPLR 4213, as well as their respective conclusions of law and post-trial memorandum on or before March 31, 2005, with oral argument scheduled for April 10, 2025. Both sides filed proposed findings of fact and post-trial memorandum of law.

By decision and order dated May 6, 2025, the Court issued a verdict after a non-jury trial in favor of the plaintiff and directed an order of reference. The court also ordered the appointment of Judith Constance Aarons, Esq. as a referee to compute the amount due and owing to the plaintiff. The Court stated that a separate decision containing the Court's findings of fact after the non-jury trial would be issued.

### **FINDINGS OF FACT**

On September 8, 2008, the defendant delivered to MetLife Home Loans, a division of MetLife Bank NA, a note in the amount of \$400,000. As collateral security for the payment of this sum defendant also executed and delivered to the Mortgage Electronic Registration System (MERS), as nominee for MetLife, a mortgage granting MetLife a mortgage lien on the premises commonly known as 1845 52nd St. unit 29, Brooklyn, New York 11204. The mortgage was duly recorded with the office of the City Register on October 14, 2008. Thereafter, the note and mortgage were assigned from MERS as nominee for MetLife to MetLife by an assignment of mortgage dated December 3, 2012, which was recorded with the office of the City Registrar on January 7, 2013. The note and mortgage were further assigned from MetLife to Nation Star Mortgage LLC by assignment of mortgage dated January 8, 2014, and recorded on March 6, 2014, at the Office of the City Registrar.

After the commencement of this action, the note and mortgage were further assigned from Nationstar to USBNA by Assignment of Mortgage dated August 19, 2016, and recorded with the Office of the City Register on October 21, 2016. The note and mortgage were ultimately assigned from U.S. Bank Trust, N.A. as Trustee for LSF9 Master Participation Trust to U.S. Bank NA, not in its individual capacity, but solely as Trustee for the RMAC Trust, Series

2016-CTT by Assignment of Mortgage dated January 8, 2021, and recorded with the Office of the City Register on January 29, 2021.

The original Note, endorsed to blank was in the possession of the original named plaintiff Nationstar Mortgage LLC prior to and at the time of commencement of this action. That since the commencement of this action, the original Note has been transferred to U.S. Bank National Association, not in its individual capacity but solely as Trustee for the RMAC Trust, Series 2016-CTT which has been the owner of the Note since October 13, 2020.

The defendant defaulted in making the installment payment due and payable on July 1, 2011, and each payment due monthly thereafter. In accordance with the terms and conditions of the note and mortgage, on October 4, 2013, Nationstar Mortgage LLC mailed to the defendant by first class and certified mail a Notice of Default. On October 4, 2013, plaintiff also mailed to the defendant by certified and first-class mail 90-day Pre-Foreclosure Notices along with the required list of housing counseling agencies, at least ninety days prior to commencement of this action and pursuant to RPAPL 1304. Plaintiff complied with the registration requirements of RPAPL 1306. On May 19, 2014, Plaintiff served defendant with the Help for Homeowners in Foreclosure Notice pursuant to RPAPL1303. Defendant has failed to prove any defenses or Counterclaims to this foreclosure action.

### ***Defendant and Plaintiff's Contentions***

The defendant argued that plaintiff did not introduce sufficient evidence to prove compliance with RPAPL 1303 because it offered no testimony regarding its compliance. Instead, the plaintiff attempted to introduce at trial the affidavit of service which states that the plaintiff complied with RPAPL 1303. The defendant has contended that the affidavit is hearsay and therefore not probative to prove the facts asserted in the affidavit.

The plaintiff countered with the following argument. The inclusion of the RPAPL 1303 notice with the summons and complaint that was stipulated into evidence provided clear proof of the service of same and the defendant waived any argument regarding its service with the summons and complaint to which the RPAPL 1303 notice was attached.

The affidavit of service, sworn to by David Feldman on May 21, 2014, described delivery of the “Section 1303 Notice on colored paper that is other than the color of the NOTICE REGARDING AVAILABILITY OF ELECTRONIC FILING SUPREME COURT CASES...” on defendant on May 19, 2014. The affidavit of service admitted into evidence, to which defendant has offered no substantive challenge, evidenced plaintiff’s compliance with RPAPL 1303. CPLR 4531 provides that “[a]n affidavit by a person who served, posted or affixed a notice, showing such service, posting or affixing is prima facie evidence of the service, posting or affixing if the affiant is dead, mentally ill or cannot be compelled with due diligence to attend at the trial” (CPLR 4531). Plaintiff cited to *Gordon v Nemeroff Realty Corp.*: “[p]ursuant to both statutory and decisional law, where a process server dies after service and prior to a hearing as to whether service was properly effected, his affidavit of service shall be received as prima facie evidence of service provided it is not conclusory and devoid of sufficient detail” (*Gordon v Nemeroff Realty Corp.*, 139 AD2d 492, 492 [2d Dept 1988]). Here, process server David Feldman died on January 16, 2020, as demonstrated by the death certificate annexed to plaintiff’s affirmation in opposition as exhibit 1. As a result, the affidavit of service is further proper evidence of plaintiff’s service of the RPAPL 1303 notice pursuant to CPLR 4531.

Plaintiff’s argument has merit. Due to the process server’s death and the detailed information contained within the affidavit of service, his affidavit of service was properly

admitted as prima facie proof of service. The plaintiff did make a prima facie showing of its compliance with RPAPL 1303.

Second, the defendant has argued that plaintiff did not introduce sufficient evidence to prove compliance with either RPAPL 1304 or the contractual notice of default. The defendant contends that the plaintiff's proof of mailing of the RPAPL 1304 and the contractual notice of default was through the testimony of Ms. Trompisz. The defendant argues that Ms. Trompisz had no personal knowledge of Walz's business procedures as of 2013. Ms. Trompisz further argued that Walz was testifying about a document which was a part of Nationstar's business records and that those records had no indication that a default notice was ever sent.

The plaintiff countered with the following arguments. The plaintiff had provided evidence of the proper mailing of both the contractual notice of default and the RPAPL 1304 notice through the testimony of Ms. Trompisz and the documentary evidence introduced at trial. The defendant's contentions were directed at the credibility of Ms. Trompisz's testimony regarding her knowledge of the business practices and procedures of Walz and the documents admitted by such testimony. On a motion for a directed verdict, the plaintiff correctly contends that the plaintiff, as the nonmovant, is entitled to every reasonable inference which could reasonably be drawn from the evidence submitted. Inasmuch as the evidence had already been duly admitted at the time of trial, the defendant could not now attack the admissibility of said evidence on a motion for a directed verdict. The plaintiff's argument has merit.

## LAW AND APPLICATION

“[A] plaintiff establishes its prima facie case through the production of the mortgage, the unpaid note, and evidence of default” (*Capital One, N.A. v McComb*, 180 AD3d 743, 743-44 [2d Dept 2020]; *Bank of NY Mellon Trust Co., N.A. v Baskin*, 218 AD3d 633, 634 [2d Dept 2023]).

“Additionally, where [ ] a plaintiff’s standing is put into issue” by a defendant, “the plaintiff must prove its standing to be entitled to relief” (*Bank of NY Mellon Trust Co., N.A. v Baskin*, 218 AD3d 633, 634 [2d Dept 2023]). “A plaintiff in a mortgage foreclosure action establishes its standing by demonstrating that it was the holder or assignee of the underlying note at the time the action was commenced” (*id.* [internal citations and quotations omitted]). “A plaintiff may establish, prima facie, its standing as the holder of the note by demonstrating that a copy of the note, including an endorsement in blank, was among the exhibits annexed to the complaint at the time the action was commenced” (*id.*, citing *US Bank N.A. v Nelson*, 169 AD3d 110, 114 [2d Dept 2019]). Where standing is challenged by a defendant, “the plaintiff must prove its standing in order to be entitled to relief.” (*HSBC Bank USA, N.A. v Herod*, 203 AD3d 805, 807 [2d Dept 2022]), citing *Bayview Loan Servicing, LLC v Kelly*, 166 AD3d 843, 845 [2d Dept 2018].

In the case at bar the plaintiff demonstrated by admissible evidence that Nationstar had possession of the note and the mortgage prior to the commencement of the instant action. The plaintiff also established the defendant’s default on the note and mortgage by failing to pay the monthly amounts due and owing July 1, 2011, and each payment due monthly thereafter. Plaintiff also established that it properly mailed to the defendant in accordance with the terms and conditions of the note and mortgage, by first class and certified mail a Notice of Default. The plaintiff also established its compliance with the statutory requirements of RPAPL 1303, 1304, and 1306. In sum, the plaintiff established its entitlement to a judgment in its favor for foreclosure of the subject note and mortgage and for an order of reference.


## CONCLUSION

After a non-jury trial, the plaintiff U.S. Bank, National Association, not in its individual capacity, but solely as Trustee for the RMAC Trust, Series 2016-CTT, ultimate successor in

interest to the named plaintiff Nationstar Mortgage, LLC, has established its entitlement to foreclosure and is directed to submit a proposed order of reference on notice.

The foregoing constitutes the findings of fact and the decision of this Court.

ENTER:

  
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J.S.C.