

<b>Nationstar Mtge. LLC v Tittle</b>
2025 NY Slip Op 35228(U)
October 28, 2025
Supreme Court, Kings County
Docket Number: Index No. 506627/2013
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 28<sup>th</sup> day of October 2025

HONORABLE FRANCOIS A. RIVERA

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NATIONSTAR MORTGAGE LLC,

**DECISION, ORDER & JUDGMENT AFTER A BENCH TRIAL**

Plaintiff,

Index No.: 506627/2013

- against -

CYNTICA TITTLE, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, "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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The following are the findings of fact and decision after a non-jury trial in the instant action to foreclose a mortgage brought by (hereinafter "the plaintiff" or "Nationstar") against Cynthia Tittle (hereinafter "the defendant" or "Tittle").

**BACKGROUND**

On October 29, 2013, Nationstar commenced the instant action seeking, inter alia, to foreclosure a mortgage on the residence of defendant Cynthia Tittle by filing a summons, complaint, and a notice of pendency (hereinafter the commencement papers) with the Kings County Clerk's office (KCCO).

On December 5, 2013, Tittle, initially proceeding pro se, submitted an answer consisting of a general denial and an affirmative defense of lack of standing.

The complaint alleges the following salient facts among others. On March 23, 2007, the defendant executed a note in favor of Lehman Brothers Bank, FSB in the principal sum of \$420,000.00 (hereinafter “the note”). On that same date, the defendant executed and delivered to Mortgage Electronic Registration Systems Inc. (hereinafter “MERS”) as nominee for Lehman Brothers Bank, FSB a mortgage (hereinafter “the subject mortgage”) on certain real property known as 677 East 38th street, Brooklyn, New York, Block 4985 Lot 84 (hereinafter “the subject property”) to secure the note. By an assignment dated December 18, 2012, the mortgage and note were assigned to the plaintiff.

The plaintiff alleges that the defendant failed to make payments when due from March 1, 2011, and thereafter. Plaintiff also alleged that the defendant defaulted on the subject note and that the plaintiff accelerated the note and commenced the instant action based on the defendant’s default.

## **PRIOR MOTIONS**

By notice of motion filed on October 27, 2015, under motion sequence number one, the defendant through her counsel, the Brooklyn Volunteer Lawyers Project moved for leave to serve a late answer.<sup>1</sup>

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<sup>1</sup> Defendant’s counsel later conceded that the motion was filed in error based on the incorrect assumption that the defendant had not yet filed an answer to the complaint.

By notice of motion filed on April 7, 2016, under motion sequence number two, the plaintiff sought, among other things, an order striking the defendant's answer and granting summary judgment in plaintiff's favor.

In opposition to motion sequence number two, the defendant contended, among other things, that there was no basis to strike the defendant's answer. The defendant also contended that the plaintiff failed to prove: (1) that it had standing to commence the action, and (2) that it had strictly complied with the 90-day notice requirements of New York Real Property Actions and Proceedings Law (RPAPL) 1304.

By decision and order dated June 6, 2016, the Court denied the plaintiff's motion under sequence number two finding that the plaintiff did not demonstrate compliance with RPAPL 1304 in that they were timely sent.

By notice of motion filed on June 23, 2016, under motion sequence number three, the defendant sought an order granting summary judgment in the defendant's favor and dismissing the complaint based on the plaintiff's failure to comply with RPAPL 1304.

By decision and order dated December 19, 2016, the Court denied the defendant's motion under sequence number three finding that the defendant did not demonstrate that the plaintiff failed to comply with RPAPL 1304.

By notice of motion filed on July 17, 2017, under motion sequence number four, the plaintiff sought again, among other things, an order: (1) striking the defendant's

answer, (2) granting summary judgment in plaintiff's favor, and (3) appointing a referee to determine the amount due and whether the premises may be sold in parcels.

By decision and order dated November 27, 2017, the Court denied the plaintiff's successive motion for summary judgment in its entirety.

By order to show cause signed on August 2, 2018, under motion sequence number five, the Brooklyn Volunteer Lawyers Project sought leave to withdraw as counsel for the defendant.

By order entered on October 18, 2018, the Court granted the Brooklyn Volunteer Lawyers Project leave to withdraw as counsel for the defendant and imposed a 45 day stay to allow the defendant an opportunity to obtain new counsel.

On March 21, 2025, the Court scheduled a bench trial to commence on May 9, 2025.

## **THE TRIAL**

The trial commenced and ended on May 9, 2025. Plaintiff's sole witness was Elen Brand (hereinafter Brand) who described herself as a principal litigation ambassador for the plaintiff. The defendant, proceeding pro se, called no witnesses. The plaintiff introduced fourteen documents into evidence. The defendant did not introduce any evidence.

After both parties rested, the parties were ordered pursuant to CPLR 4213 to file with the KCCO written requests for findings of fact on or before June 23, 2025. The matter was then adjourned to July 31, 2025.

On July 31, 2025, the defendant submitted her requests for findings of fact in open court. The plaintiff accepted the late tender and agreed as a courtesy to file the defendant's request for findings of fact with the KCCO on or before August 15, 2025. The matter was adjourned to October 9, 2025, for the Court's decision.

On October 9, 2025, the court discussed with the parties that the plaintiff was considering a potential short sale of the subject property. If such short sale were to occur it would resolve the action and obviate the need for the court to issue a decision on the trial.

The Court directed the plaintiff to decide on whether it would approve a short sale and notify the Court via e-mail on or before October 17, 2025, of its decision. The Court then set a control date of December 4, 2025, for its decision.

The plaintiff advised the Court on October 20, 2025, that it would not agree to a short sale of the subject property.

## **THE EVIDENCE**

The plaintiff introduced fourteen exhibits into evidence. Exhibit 1 was a copy of the subject note. Exhibit 2 was a copy of the subject mortgage. Exhibit 3 was a certified copy of the assignment of the subject mortgage to the plaintiff. Exhibit four was a copy

of the plaintiff's demand letter sent by certified mail to the defendant of the amount due to make the loan current and the deadline for doing so. Exhibit five was a copy of the plaintiff's same demand letter sent by regular mail to the defendant of the amount due to make the loan current and the deadline for doing so. Exhibit six was a copy of the TrackRight transaction report. Exhibit seven was a copy of 90-day notice letter sent to the defendant by certified mail. Exhibit eight is a copy of the certified mail return receipt showing that the letter was unclaimed. Exhibit nine is a copy of the TrackRight transaction information report. Exhibit ten was a copy of the same 90-day notice letter sent to the defendant by first class mail. Exhibit eleven is a copy of the TrackRight transaction information report. Exhibit twelve is a copy of the proof of filing of the RPAPL 1306 with the New York State Department of Banking. Exhibit thirteen is a copy of the loan payment history. Exhibit fourteen is the plaintiff's calculation of the amount due on the loan.

### **FINDINGS OF FACT**

On March 23, 2007, the defendant executed a note in favor of Lehman Brothers Bank, FSB in the principal sum of \$420,000.00.

On that same date, the defendant executed and delivered to Mortgage Electronic Registration Systems Inc. (hereinafter MERS) as nominee for Lehman Brothers Bank, FSB a mortgage (hereinafter the subject mortgage) on certain real property known as 677 East 38th street, Brooklyn, New York, Block 4985 Lot 84 (hereinafter the subject property) to secure the note.

By an assignment dated December 18, 2012, the mortgage and note were assigned to the plaintiff.

The defendant failed to make payments when due from March 1, 2011, and thereafter.

On April 11, 2013, Plaintiff, through a third-party mailing vendor, WALZ, mailed the RPAPL §1304 90-Day Pre-Foreclosure Notices to the defendant via first class mail and certified mail to the property address at 677 E 38th Street, Brooklyn, NY 11210-1940.

On April 10, 2013, Plaintiff, through a third-party mailing vendor, WALZ, mailed a contractual notice of default to the defendant via first class mail and certified mail to the property address at 677 E 38th Street, Brooklyn, NY 11210-1940.

On April 11, 2013, plaintiff electronically filed notice with the Superintendent of Financial Service in accordance with RPAPL § 1306 and confirmation number NYS3247270 was issued.

On October 29, 2013, Nationstar commenced the action to foreclosure the subject mortgage by filing a summons, complaint, and a notice of pendency with the Kings County Clerk's office.

The summons complied with the requirements of RPAPL § 1320, containing the notice in boldface type and in the exact format required by statute.

The complaint set forth Nationstar's intention to accelerate the entire debt.

The plaintiff admitted the note, the mortgage, and evidence of the defendant's default.

Plaintiff admitted a payment history demonstrating the defendant's default by non-payment of the monthly loan obligation as of April 1, 2011.

Plaintiff was in possession of the note at the time of commencement of this action, a copy of the note, which is endorsed in blank, was annexed to the complaint.

Plaintiff admitted the 90-day notice and proof of its mailing by both certified mail and by first class mail to the defendant at the subject property.

Plaintiff admitted the default notice and proof of its mailing by both certified mail and by first class mail to the defendant at the subject property.

Plaintiff used a third-party vendor, WALZ, to mail the demands and 90-Day notices.

Ms. Brandt had personal knowledge of the plaintiff's business record-keeping systems, including the maintenance of such records and the creation of such records.

Ms. Brandt also had on-site training at the WALZ site, in addition to other virtual trainings with WALZ, including her personal familiarity with WALZ's business practices and mailing process, specifically, how letters were generated and mailed and how records were created and maintained.

Ms. Brandt also testified about the interplay between WALZ and the plaintiff, as well as how the proof of mailing information from WALZ was automatically

incorporated into plaintiff's own business records and routinely relied upon by the plaintiff in the course of its business.

## LAW AND APPLICATION

“To establish a prima facie case in an action to foreclose a mortgage, a plaintiff must produce the mortgage, the unpaid note, and evidence of default” (*Christiana Trust v Larmond*, – NYS 3d –, 2025 NY Slip Op 05664 [2d Dept 2025]). “Moreover, where, as here, the issue of standing is raised by the defendants in their answer, the plaintiff must also prove its standing as part of its prima facie case” (*id.*, citing *Residential Mtge. Loan Trust 2013–TT2 v Kaodichimma*, 212 AD3d 742, 742 [2d Dept 2023]). “A plaintiff establishes its standing in a mortgage foreclosure action by demonstrating that, when the action was commenced, it was either the holder or assignee of the underlying note” (*Christiana Trust v Larmond*, – NYS 3d –, 2025 NY Slip Op 05664 [2d Dept 2025], citing *JPMorgan Chase Bank, N.A. v Grennan*, 175 AD3d 1513, 1515 [2d Dept 2019]).

“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” (*Residential Mtge. Loan Trust 2013–TT2 v Kaodichimma*, 212 AD3d 742, 742 [2d Dept 2023], citing *Wells Fargo Bank, N.A. v Malek*, 199 AD3d 1040, 1041 [2d Dept 2021]). 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 from March 1, 2011, and thereafter.

Plaintiff 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.

The plaintiff established its strict compliance with RPAPL 1304 by presenting “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” (*U.S. Bank N.A. v Pickering-Robinson*, 197 AD3d 757, 759 [2d Dept 2021]; *U.S. Bank N.A. v Glasgow*, 218 AD3d 717, 719 [2d Dept 2023]). Additionally, the plaintiff established the actual certified mailing of the 90-day notice by submitting a copy of the notice containing a 20-digit United States Postal Service (USPS) tracking number, along with a copy of a certified mail return receipt indicating that the notice was returned unclaimed. The plaintiff also established a mailing of the notice by first-class mail by submitting a copy of the notice with a 10-digit USPS tracking number, along with a TrackRight report generated by Walz Group, LLC, the third-party entity that mailed the notices on behalf of the plaintiff. The plaintiff also established that a notice of default

was properly mailed to the defendant by first-class mail pursuant to paragraphs 15 and 22 of the mortgage agreement (*see U.S. Bank N.A. v Glasgow*, 218 AD3d 717, 719-720 [2d Dept 2023])).

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. Defendant, on the other hand, has failed to prove any defense to the foreclosure action.

### CONCLUSION

After a non-jury trial, the plaintiff Nationstar Mortgage LLC has established its entitlement to foreclosure and is directed to submit a proposed order of reference on notice within 30 days of the entry of the instant order.

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

ENTER:

  
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J.S.C.