

Wells Fargo Bank, N.A. v Dublin

2026 NY Slip Op 30087(U)

January 2, 2026

Supreme Court, Kings County

Docket Number: Index No.11788/2014

Judge: Menachem M. Mirocznik

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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 21 of January 2026

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

WELLS FARGO BANK, NATIONAL ASSOCIATION AS TRUSTEE FOR SOUNDVIEW HOME LOAN TRUST 2007-OPT1,

Plaintiff,

-against-

WAYNE DUBLIN, NEW YORK CITY PARKING VIOLATIONS BUREAU, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, JOANNE DUBLIN, LEDIA WILLIAMS, MARY JONES, DAVID ADAMS,

Defendant.

Index No. 11788/2014

Decision, Order and Judgment (Motion Seq. 5 and 6)

Papers	Numbered
Notice of Motion	NYSCEF Doc. 45-59
Notice of Cross-Motion	NYSCEF Doc. 62-79
Opposition to Cross-Motion/Reply Papers	NYSCEF Doc. 82-86
Reply In Further Support to Cross-Motion	NYSCEF Doc. 87

Upon the foregoing papers, the motion(s) is/are determined in accordance with this Decision, Order and Judgment as follows:

Relevant Procedural and Factual History

This action was commenced on August 12, 2014, seeking to foreclose a mortgage (the "mortgage") executed by defendant Wayne Dublin (the "defendant") which encumbers the property known as 639 East 77th Street, Brooklyn, NY 11236 (the "property").

Initially, defendant did not timely answer or appear.

Defendant Joanne Dublin joined issue with service of an answer.

On December 3, 2015, the Court granted plaintiff's motion for summary judgment and related relief and on May 11, 2018, the Court issued a long form order granting summary judgment, default judgment and order of reference.

On January 9, 2019, the Court denied plaintiff's motion to confirm the referee's report and for judgment of foreclosure and sale.

On October 25, 2023, plaintiff moved a second time to confirm the referee's report and for a judgment of foreclosure and sale. Defendant cross-moved to dismiss the action, to vacate the orders granting summary judgment, to vacate his default and for leave to serve a late answer and to toll interest.

On January 29, 2024, plaintiff and defendant stipulated to withdraw their respective motions, to accept defendant's answer, to vacate the orders dated May 11, 2018 and December 3, 2015 and defendant consented to personal jurisdiction of the Court.

On February 20, 2024, defendant joined issue with the filing of an answer asserting various affirmative defenses including non-compliance with RPAPL 1304 and RPAPL 1306.

Plaintiff now moves for summary judgment, to strike defendant's answer and to appoint a referee to compute the amounts due to plaintiff. Plaintiff argues it is entitled to summary judgment through submission of the note, mortgage, loan modification, and an affidavit of indebtedness demonstrating default beginning November 1, 2010. Plaintiff contends it had standing at commencement through physical possession of the note endorsed via allonge, that prior orders granting summary judgment constitute law of the case as to standing and default, and that defendant's answer and affirmative defenses consist only of conclusory denials insufficient to raise a triable issue of fact, thereby warranting dismissal of defenses, reappointment of a referee.

Defendant opposes the motion and cross-moves for summary judgment dismissing the action. Defendant argues that plaintiff's motion must be denied and the complaint dismissed because plaintiff failed to strictly comply RPAPL 1304 and 1306, in as much as the that the RPAPL 1306 filing is materially defective due to incorrect loan data, misstating the loan type, loan term, modification status, delinquency information, and omitting the borrower's telephone number, and that the RPAPL 1304 notice is defective for including the wrong DFS helpline number and for improper mailing, and that plaintiff further failed to validly accelerate the debt by omitting operative loan modifications from the complaint, rendering the entire action jurisdictionally defective as a matter of law.

In opposition to the cross-motion and in further support of the motion, Plaintiff contends defendant's cross-motion relies on hypertechnical challenges to otherwise sufficient proof, arguing that its affidavits are admissible business records establishing standing, default, and compliance with notice requirements, that alleged inaccuracies in the RPAPL 1306 filing do not warrant dismissal because DFS accepted the filing and defendant has shown no prejudice, that defendant's attorney affirmation lacks probative value due to lack of personal knowledge, that RPAPL 1304, and that defendant improperly seeks to relitigate issues previously resolved by the court, entitling plaintiff to summary judgment and denial of the cross-motion.

In reply and in further support of the cross-motion, defendant argues that plaintiff effectively concedes multiple dispositive statutory defects by failing to rebut the substance of the RPAPL 1306 errors and the incorrect DFS helpline number in the RPAPL 1304 notice, that misreporting loan characteristics and omitting the borrower's telephone number undermines the statute's core consumer-protection purpose, that DFS acceptance is irrelevant, and that plaintiff's failure to plead operative loan modifications is renders the complaint defective, all requiring dismissal of the complaint as a matter of law.

Discussion

“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]

Initially, plaintiff's contention that the law of the case doctrine precludes consideration of defendant's arguments is meritless.

“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... Such a rule is essential to an orderly and seemly administration of justice in a court composed of several judges...” *U.S. Bank N.A. v Tenenbaum*, 228 AD3d 696 [2d Dept 2024]; *Bank of New York Mellon v Singh*, 205 AD3d 866, 867 [2d Dept 2022][“The doctrine of the law of the case seeks to prevent relitigation of issues of law that have already been determined at an earlier stage of the proceeding.”]

However, “[t]he law of the case doctrine applies only to legal determinations that were necessarily resolved on the merits in a prior decision... and to the same questions presented in the same case” *U.S. Bank N.A. v Moss*, 186 AD3d 1753, 1753 [2d Dept 2020][internal citations and quotation marks omitted]; See also *Deutsche Bank Natl. Tr. Co. v Bruno*, 239 AD3d 827, 829 [2d Dept 2025][“The law of the case doctrine applies only to legal determinations that were necessarily resolved on the merits in a prior decision and to the same questions presented in the same case”]; *US Bank, N.A. v Kandra*, 2025 NY Slip Op 06889 [2d Dept Dec. 10, 2025][“However, the doctrine of law of the case applies only to legal determinations that were necessarily resolved on the merits in [a] prior decision.”]

Here, not only were the issues raised by defendant not resolved on the merits, but the orders granting summary judgment were vacated by stipulation of the parties. Therefore, the law of the case doctrine provides no barrier to consideration of the merits of defendant's arguments.

“[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]

However, “[w]here an RPAPL 1304 notice fails to reflect information mandated by the statute...the statute will not have been strictly complied with and the notice will not be valid.” *Emigrant Bank v Cohen*, 205 AD3d 103 [2d Dept 2022]; *Fed. Natl. Mtge. Assn. v Williams-Jones*, 235 AD3d 953 [2d Dept 2025][“Here, at the time the RPAPL 1304 notices were purportedly sent to the defendant, the version of RPAPL 1304 in effect required the notice to include the following sentence: “If you need further information, please call the New York State Department of Financial Services’ toll-free helpline at (show number) or visit the Department’s website at (show web address)”]

Here, defendant established prima facie non-compliance with RPAPL 1304 in as much as the RPAPL 1304 notice contained the incorrect number for the New York State Department of Financial Services. In opposition to defendant’s showing plaintiff does not contend the telephone number was correct or otherwise explain why the action should not be dismissed. See e.g. *Bank of New York Mellon v Weber*, 169 AD3d 981 [2d Dept 2019]

Therefore, plaintiff’s motion is denied, defendants’ cross-motion is granted and the action is dismissed. See *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”]; See also *Emigrant Bank v Cohen*, 205 AD3d 103 [2d Dept 2022]

Lastly, given the dismissal of the complaint, the notices of pendency filed herein must also be cancelled. See CPLR 6514; See also generally, *Nationstar Mtge., LLC v Davis*, 240 AD3d 790 [2d Dept 2025]; *Bayview Loan Servicing, LLC v Starr-Klein*, 193 AD3d 807 [2d Dept 2021]

The party’s remaining contentions need not be reached in light of the Court’s determinations.

Accordingly, it is hereby

ORDERED AND ADJUDGED, that plaintiff’s motion is DENIED; and it is further

ORDERED AND ADJUDGED, that defendants’ cross-motion is GRANTED and the complaint is DISMISSED; and it further

ORDERED, that the Clerk is directed to cancel Notices of Pendency filed August 12, 2014, July 20, 2017 and August 10, 2023.

This constitutes the decision, order and judgment of the Court.

ENTER: 
Hon. Menachem M. Mirocznik, JSC

KINGS COUNTY CLERK'S OFFICE

JAN 15 2026

FILED