

U.S. Bank Trust N.A. v Belchanskaia

2026 NY Slip Op 30165(U)

January 13, 2026

Supreme Court, New York County

Docket Number: Index No. 850021/2024

Judge: Francis A. Kahn III

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.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. FRANCIS A. KAHN, III PART 32

Justice

INDEX NO. 850021/2024

MOTION DATE

MOTION SEQ. NO. 001

U.S. BANK TRUST NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS OWNER TRUSTEE FOR RCF 2 ACQUISITION TRUST,

Plaintiff,

- v -

MARIANNA GENNADYEVNA BELCHANSKAIA, MB REAL ESTATE HOLDING, LLC, THE BOARD OF MANAGERS OF 75 WALL STREET CONDOMINIUM, NEW YORK CITY DEPARTMENT OF FINANCE, JOHN DOE

Defendant.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, the motion and cross-motion are determined as follows:

This is an action to foreclose on a consolidated, extended and modified mortgage (CEMA) encumbering a parcel of real property located at 75 Wall Street, Unit 35H, New York, New York. The mortgage was given by Defendant MB Real Estate Holding, LLC ("MB") to non-party HSBC Bank USA, N.A. ("HSBC"). The mortgage secures a loan with an alleged original principal amount of \$858,000.00 which is memorialized by a consolidated note given by Defendant Marianna Belchanskaia ("Belchanskaia"). The note and mortgage, both dated November 28, 2018, were executed Belchanskaia, individually and as authorized signatory of MB, respectively. Plaintiff commenced this action, and pled Defendants defaulted in repayment of the indebtedness beginning on or about October 1, 2021. Defendants MB and Belchanskaia answered and pled eleven affirmative defenses, including lack of standing. Now, Plaintiff moves for summary judgment against the appearing Defendants, to strike their answers and affirmative defenses, for a default judgment against the non-appearing Defendants, for an order of reference and to amend the caption. Defendants oppose the motion and cross-move for summary judgment dismissing Plaintiff's complaint pursuant to CPLR §3211[a][3] and [7]. Plaintiff opposes the cross-motion.

In moving for summary judgment, Plaintiff was required to establish prima facie entitlement to judgment as a matter of law though proof of the mortgage, the note, and evidence of Defendants' default in repayment (see U.S. Bank, N.A. v James, 180 AD3d 594 [1st Dept 2020]; Bank of NY v Knowles, 151 AD3d 596 [1st Dept 2017]; Fortress Credit Corp. v Hudson Yards, LLC, 78 AD3d 577 [1st Dept 2010]). Also, based on the affirmative defenses pled, Plaintiff was required to demonstrate, prima facie, its

standing (see eg *Wells Fargo Bank, N.A. v Tricario*, 180 AD3d 848 [2nd Dept 2020]), its strict compliance with, or demonstrate the inapplicability of, RPAPL §§1303, 1304 and 1306 (see *U.S. Bank, NA v Nathan*, 173 AD3d 1112 [2d Dept 2019]; *HSBC Bank USA, N.A. v Bermudez*, 175 AD3d 667, 669 [2d Dept 2019]) as well as its substantial compliance with the requisites under paragraph 22 of the mortgage (see eg *Wells Fargo Bank, N.A. v McKenzie*, 186 AD3d 1582, 1584 [2d Dept 2020]).

Proof supporting a *prima facie* case on a motion for summary judgment a cause of action for foreclosure must be in admissible form (see CPLR §3212[b]; *Tri-State Loan Acquisitions III, LLC v Litkowski*, 172 AD3d 780 [1st Dept 2019]). A plaintiff may rely on evidence from persons with personal knowledge of the facts, documents in admissible form and/or persons with knowledge derived from produced admissible records (see eg *U.S. Bank N.A. v Moulton*, 179 AD3d 734, 738 [2d Dept 2020]). No precise set of business records must be proffered, so long as the admissibility requirements of CPLR 4518[a] are fulfilled and the records evince the facts for which they are relied upon (see eg *Citigroup v Kopelowitz*, 147 AD3d 1014, 1015 [2d Dept 2017]).

Plaintiff's motion was supported by an affidavit from Amanda Harvey ("Harvey"), a contested default case manager for Selene Finance LP ("Selene"), the alleged servicer and attorney-in-fact of Plaintiff. Selene's authority to act on Plaintiff's behalf was established with submission of a power of attorney dated January 27, 2021 (see *U.S. Bank N.A. v Tesoriero*, 204 AD3d 1066 [2d Dept 2022]; *Deutsche Bank Natl. Trust Co. v Silverman*, 178 AD3d 898 [2d Dept 2019]; *US Bank N.A. v Louis*, 148 AD3d 758 [2d Dept 2017]). Harvey avers that her affidavit is based on personal review of Selene's business records and her affidavit laid a proper foundation for the admission of Selene's records into evidence under CPLR §4518 (see *Bank of N.Y. Mellon v Gordon*, 171 AD3d 197 [2d Dept 2019]). Nevertheless, virtually all the salient loan documents were created by Plaintiff's assignors, for instance HSBC, and Harvey failed to demonstrate knowledge of any other entity's record keeping practices (see *Berkshire Bank v Fawer*, 187 AD3d 535 [1st Dept 2020]; *IndyMac Fed. Bank, FSB v Vantassell*, 187 AD3d 725 [2d Dept 2020]). Harvey also failed to attest that any records received from prior makers were incorporated into the records her employer kept and were routinely relied on in its business (see *U.S. Bank N.A. v Kropp-Somoza*, 191 AD3d 918 [2d Dept 2021]; *Tri-State Loan Acquisitions III, LLC v Litkowski*, 172 AD3d 780, 782-783 [2d Dept 2019]; cf. *Bank of Am., N.A. v Brannon*, 156 AD3d 1, 10 [1st Dept 2017]).

As to Defendants' default, it "is established by (1) an admission made in response to a notice to admit, (2) an affidavit from a person having personal knowledge of the facts, or (3) other evidence in admissible form" (*Deutsche Bank Natl. Trust Co. v McGann*, 183 AD3d 700, 702 [2d Dept 2020]). Where, as here, proof of a default is based on records, the documents evidencing the default (ie. an account ledger or similar), must be proffered (see eg *US Bank v Rowe*, 194 AD3d 978 [2d Dept 2021]) and annexed to the affiants' affidavit (see *938 St. Nicholas Ave. Lender LLC v 936-938 Cliffcrest Hous. Dev. Fund Corp.*, supra; *Nationstar Mortgage LLC v Konitz I, LLC*, 208 AD3d 500 [2d Dept 2022]). Default notices are, in and of themselves, insufficient to establish a default in repayment (see *Bank of N.Y. Mellon v Mannino*, 209 AD3d 707 [2d Dept 2022]).

In this case, Plaintiff pled in the complaint, and Harvey avers in her affidavit, that the original mortgagors defaulted on October 1, 2021, and Selene's account records were annexed to the affidavit. But these records are lacking as Harvey admits Plaintiff did not become the holder of the note until April 12, 2022 (see *Fulton Holding Group, LLC v Lindoff*, 165 AD3d 1053, 1055 [2d Dept 2018]). Further, Harvey failed to indicate whether Selene was the servicer at the time the default occurred. As presented,

Selene's account records are an inadmissible summary of other records (*see 76-82 St. Marks, LLC v Gluck*, 147 AD3d 1011 [2d Dept 2017]; *National States Elec. Corp. v LFO Constr. Corp.*, 203 AD2d 49 [1st Dept 1994]). Accordingly, since the evidence proffered to demonstrate the note and mortgage is not in admissible form and the records evidencing the default were inadequate, Plaintiff failed to establish any of the *prima facie* elements of the cause of action for foreclosure (*see Federal Natl. Mtge. Assn. v Allanah*, 200 AD3d 947 [2d Dept 2021]).

As to standing in a foreclosure action, it is established in one of three ways: [1] direct privity between mortgagor and mortgagee, [2] physical possession of the note prior to commencement of the action that contains an indorsement in blank or bears a special indorsement payable to the order of the plaintiff either on its face or by allonge, and [3] assignment of the note to Plaintiff prior to commencement of the action (*see eg Wells Fargo Bank, N.A. v Tricario*, 180 AD3d 848 [2d Dept 2020]; *Wells Fargo Bank, NA v Ostiguy*, 127 AD3d 1375 [3d Dept 2015]). "The attachment of a properly endorsed note to the complaint may be sufficient to establish, prima facie, that the plaintiff is the holder of the note at the time of commencement" (*Deutsche Bank Natl. Trust Co. v Webster*, 142 AD3d 636, 638 [2d Dept 2016]; *cf. JPMorgan Chase Bank, N.A. v Grennan*, *supra*). In support of the motion, Harvey averred that "[s]tamped to the back of the final page of the Promissory Note is the final endorsement of the Promissory Note into [sic] 'blank'". However, this Court's review failed to reveal any evidence of such an endorsement of the November 28, 2018, consolidated note, either attached to the complaint or this motion. The only endorsement in "blank" that was submitted appeared to be on the face of one of the earlier notes dated June 19, 2017. As such, *prima facie* proof of Plaintiff's standing was not established.

As to the branch of Defendants' cross-motion to dismiss pursuant to CPLR §3211[a][1] is denied as the proof submitted it is wholly contingent on affidavit from Belchanskaia which is not documentary evidence (*see eg Pineda v. 525 SMA Owner LLC*, 216 AD3d 475 [1st Dept 2023]; *Melrose Assoc. L.P. v Floral Assoc. L.P.*, 212 AD3d 482 [1st Dept 2023]; *Granada Condominium III Assn. v Palomino*, 78 AD3d 996 [2d Dept 2010]). Defendants' argument that Plaintiff's complaint fails to state a claim for foreclosure and should be dismissed pursuant to CPLR §3211[a][7] is nonsensical. The purported absence of a note executed by Belchanskaia "at the date of the execution and delivery of the mortgage does not impair it, since there was other sufficient consideration therefor" (*Sullivan v Corn Exch. Bank*, 154 AD 292, 294 [2d Dept 1912]). The validity of the mortgage "does not depend upon the form of the indebtedness, whether by note, bond or otherwise, but upon the existence of the debt which it was given to secure" (*id.*). "Whether the complaint will later survive a motion for summary judgment, or whether the plaintiff will ultimately be able to prove its claims, of course, plays no part in the determination of a prediscovery CPLR 3211 motion to dismiss" (*Shaya B. Pac., LLC v Wilson, Elser, Moskowitz, Edelman & Dicker, LLP*, 38 AD3d 34, 38 [2d Dept 2006]). To the extent Defendants cite to the precept of novation, that is an affirmative defense which it must prove, not Plaintiff (*see DCA Adver., Inc. v Fox Group, Inc.*, 2 AD3d 173 [1st Dept 2003]).

Regarding the issue of lack of standing raised in the cross-motion, it is Movant's obligation to demonstrate *prima facie* Plaintiff lacked standing as a matter of law (*see Wilmington Sav. Fund Socy., FSB v Matamoro*, 200 AD3d 79 [2d Dept 2021]; *DLJ Mtge. Capital v Mahadeo*, 166 AD3d 512 [1st Dept 2018]). "Thus, the defendants here, in moving to dismiss the complaint under CPLR 3211(a)(1) and (3), needed to affirmatively prove that the plaintiff was not in direct privity with them, was not in physical possession of the note indorsed to it or in blank at the time of the commencement of the action, and that the assignment of the note . . . to the plaintiff was invalid." (*Wilmington Sav. Fund Socy., FSB v*

Matamoro, supra). “To defeat a defendant’s motion, the plaintiff has no burden of establishing its standing as a matter of law; rather, the motion will be defeated if the plaintiff’s submissions raise a question of fact as to its standing” (Deutsche Bank Trust Co. Ams. v Vitellas, 131 AD3d 52, 60 [2d Dept 2015]; DLJ Mtge. Capital v Mahadeo, supra).

It is unquestionable that Plaintiff did not originate the loan and is not in direct privity with the Mortgagor. However, Defendants failed to establish, as a matter of law, that Plaintiff lacked standing when the action was commenced since they neglected to address whether written assignments of the notes and mortgages exist (see generally Broome Lender LLC v Empire Broome LLC, 220 AD3d 611 [1st Dept 2023]) or establish prima facie with admissible evidence Plaintiff was not a holder of the consolidated note when the action was commenced (see (Wilmington Sav. Fund Socy., FSB v Matamoro, supra at 92 [a plaintiff “need not allege standing . . . to state a cause of action to foreclose upon a mortgage”][emphasis added]). Defendants’ argument that Plaintiff’s foreclosure action fails for lack of proof of Defendants’ default similarly fails. As a movant seeking dismissal, Defendants were required, but failed, to show they did not default as a matter of law (see generally Guggenheimer v Ginzburg, 43 NY2d 268, 275 [1977]).

Defendants’ request for imposition of sanctions for “noncompliance with CPLR§ 3408 by tolling the interest and late charges to the date” is denied. Section 3408 of the Civil Practice Law and Rules “only mandates a settlement conference in a residential foreclosure action involving a ‘home loan’ as defined by RPAPL §1304, and when the ‘defendant is a resident of the property subject to foreclosure’” as defined in CPLR §3408[a][1] (Richlew Real Estate Venture v Grant 131 AD3d 1223 [2d Dept 2015]; see also CPLR §3408; JP Morgan Chase Bank, N.A. v Venture, 148 AD3d 1269 [3d Dept 2017]). Absent from the cross-motion is any proof of Belchanskaia’s residency at the mortgaged premises in 2024. Indeed, Belchanskaia’s affidavit is entirely silent on this issue. Moreover, as the mortgagor is a limited liability company, Defendants have not established this action concerns a “home loan” as defined by RPAPL §1304 (see 72nd Ninth LLC v 753 Ninth Ave Realty LLC, 168 AD3d 597 [1st Dept 2019]).

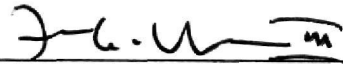
Accordingly, it is

ORDERED that Plaintiff’s motion and Defendants’ cross-motion are denied, and it is

ORDERED that this matter is scheduled for a preliminary conference on **February 24, 2026 @ 10:00 am** in Courtroom 1127[b] of the Courthouse located at 111 Centre Street.

1/13/2026

DATE



FRANCIS A. KAHN, III, A.J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE

HON. FRANCIS A. KAHN III
J.S.C.