Reverse Mtge. Funding LLC v Ridgeway
2026 NY Slip Op 30183(U)
January 2, 2026
Supreme Court, Kings County
Docket Number: Index No. 507466/2022
Judge: Menachem M. Mirocznik
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.

file:///LRB-ALB-FS1/Vol1/ecourts/Process/covers/NYSUP.5074662022.KINGS.001.LBLX000_TO.html[02/06/2026 3:45:56 PM]

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 2nd of January 2026

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

REVERSE MORTGAGE FUNDING LLC,

Plaintiff,

-against-

SHIRLEY RIDGEWAY, AS HEIR AND DISTRIBUTEE OF THE ESTATE OF HATTIE L. RIDGEWAY; ET AL,

Defendant.

Index No. 507466/2022

Decision and Order
(Motion Seq. 4 and 5)

Papers	Numbered
Notice of Motion	NYSCEF Doc. 135-164
Notice of Cross-Motion	NYSCEF Doc. 167-171
Opposition to Cross-Motion/Reply	NYSCEF Doc. 172-177

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

Relevant Procedural and Factual History

This action was commenced on March 14, 2022, seeking to foreclose a reverse mortgage (the "mortgage") executed by decedent Hattie L. Ridgeway (the "decedent") which encumbers the property known as 370 East 54th Street, Brooklyn, NY 11203 (the "property"). On November 24, 2021, decedent died.

On August 10, 2022, plaintiff moved to appoint a guardian ad litem for defendant. By order dated September 19, 2022 the Court granted the motion and appointed Dana Jenkins, Esq.as guardian for the unknown heirs and distributee of the estate of the decedent.

On November 21, 2022, the unknown heirs and distributee of the estate of the decedent joined issue with service of an answer.

Settlement conferences were held on January 10, 2023 and February 8, 2023 after which the matter was released from the settlement part.

On November 9, 2023, plaintiff filed its first motion for a default judgment and order of reference. Defendant Shirley Ridgeway ("defendant") cross-moved to dismiss the action pursuant to CPLR 3215[c] or in the alternative for leave to serve a late answer. Defendant's answer asserted

various affirmative defenses including non-compliance with RPAPL 1303, RPAPL 1304, RPAPL 1306 and notice of provisions of the mortgage and asserted several counterclaims

On January 2, 2024, the Court denied the motion and granted the cross-motion to the extent of accepting defendant's answer. Importantly, the Court adopted plaintiff's argument that defendant resides at the property and it's filing of a request for judicial intervention seeking the scheduling of settlement conferences in accordance with CPLR 3408 satisfied CPLR 3215[c].

On April 17, 2024, plaintiff filed reply to defendant's counterclaims.

Plaintiff now moves for summary judgment, to strike defendant's answer, to appoint a referee to compute, for a default judgment against the non-answering defendants and to substitute non-party Carrington Mortgage Services LLC ("Carington") as plaintiff. In support of the motion, plaintiff annexes the affidavit of Kinsey Bartlett ("Ms. Bartlett" or "Bartlett Affidavit") of Compu-Link d/b/a Celink ("Celink") the alleged attorney in fact and servicer for Carrington.

Plaintiff argues it has established prima facie entitlement to summary judgment by producing the note, mortgage, and proof of default triggered by the borrower's death and non-occupancy of the subject property, that summary judgment is warranted and defendant's answer fails to raise an issue of fact. Plaintiff further contends it had standing at commencement because a copy of the note endorsed in blank was annexed to the complaint and the Bartlett Affidavit established possession of note at commencement, that The RPAPL and contractual notices were either complied with or inapplicable and substitution of Carrington is appropriate based on the Bartlett Affidavit.

Defendant opposes the motion and cross-moves to dismiss. Defendant argues that plaintiff failed to establish prima facie entitlement to summary judgment and substitution, asserting that no admissible business records demonstrate possession or transfer of the note, that the Bartlett Affidavit is inadmissible hearsay without personal knowledge, and that purported allonges were not shown to be firmly affixed. Defendant further argues that plaintiff's evidence is illegible and does not support it's affiant's assertions. Defendant further contends that RPAPL 1304 is applicable despite the borrower's death and that plaintiff failed to establish strict compliance with RPAPL 1304, RPAPL 1306 and the contractual notice-of-default condition precedent.

In reply to the motion and in opposition to the cross-motion, plaintiff contends that standing was conclusively established by annexing the note endorsed in blank to the complaint, rendering challenges to affidavit foundations irrelevant, and that supplemental business records and affidavits confirm possession of the note and firm affixation of allonges. Plaintiff argues substitution of Carrington is proper based on a recorded assignment and delivery of the original note, that RPAPL 1304 and 1306 defenses are unavailable to a non-borrower and were satisfied in any event, that a notice of default was not required and in case was properly served, and that defendant's opposition raises only speculative or conclusory claims insufficient to defeat summary judgment or support dismissal

Discussion

"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]

"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]

Here, plaintiff failed to demonstrate prima facie entitlement to the drastic remedy of summary judgment.

First, plaintiff failed demonstrate the authority of its affiant. No affidavit of plaintiff is proffered, rather plaintiff relies on relies on the testimony of Ms. Bartlett of Celink the alleged attorney in fact and servicer of Carrington, plaintiff's alleged assignee. However, the power of attorney annexed to the moving papers is expressly limited to acts that are "required or permitted under the terms of the Servicing Agreement" which has not been proffered. Therefore, plaintiff failed to establish that Celink and Ms. Bartlett have authority to act for plaintiff.

This alone mandates denied of the motion. See e.g. *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"]

Second, plaintiff failed to establish it had standing at the time the action was commenced.

"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]

In general, 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, the note attached to the complaint contains two endorsements on allonges. First an endorsement on an allonge from the original lender, Franklin First Financial Ltd specifically to Live Well Financial Inc. and second endorsement on an allonge from Live Well Financial Inc. in blank. However, the complaint does not allege the existence of the allonges let alone allege they were "so firmly affixed thereto as to become a part thereof."

Contrary to plaintiff's contention, attaching the note to the complaint alone does not establish the allonge was firmly affixed to the note at the time the action was commenced. See e.g. *Nationstar Mtge., LLC v Calomarde,* 201 AD3d 940, 942 [2d Dept 2022] ["Although the plaintiff attached to the complaint copies of the note and an undated purported allonge endorsed in blank, the plaintiff did not demonstrate that the purported allonge, which was on a piece of paper completely separate from the note, was "so firmly affixed thereto as to become a part thereof," as required by UCC 3-202 (2)"];

Therefore, to demonstrate standing plaintiff was required to demonstrate that subject allonges were "so firmly affixed thereto as to become a part thereof."

In support of the contention that the allonges were firmly affixed to the note at the time the action was commenced, Ms. Bartlett states that "Plaintiff was the holder of the aforesaid Note prior to, and at the time this action was commenced. The Note contains two allonges, each of which were firmly affixed to the Note at the time this action was commenced, which I can attest based on the review of the Note, and Celink's standard practice of ensuring that allonges are firmly affixed to the original note prior to commencing a foreclosure action."

However, a review of the records attached to the Bartlett affidavit do not demonstrate the allonges were firmly affixed to the note and the various notations in the records are not explained. Indeed, the records attached to her affidavit show one line item for the note and single line item for an endorsement, which may indicate separate documents, and while plaintiff contends there are two endorsements. Nor does Ms. Bartlett explain who was in possession of the note at the time the action was commenced. While she appears to claim *plaintiff* was in possession of the note and appears to claim knowledge of this fact from the attached records, she does not explain how a review of Celink's records and Celink's alleged "standard practice of ensuring that allonges are firmly affixed" establishes that *plaintiff* was in possession of the note with allonges firmly affixed thereto. Plaintiff's counsel contends that it was not Celink that was in possession of the note, but rather that plaintiff's unidentified document custodian was, whose records were allegedly incorporated into Celink's records. Further still, plaintiff's counsel contends that the note was delivered to plaintiff's counsel from *Carrington after commencement* of the action.

"Although, [t]he foundation for admission of a business record usually is provided by the testimony of the custodian, the author or some other witness familiar with the practices and procedures of the particular business...it is the business record itself, not the foundational affidavit, that serves as proof of the matter...Accordingly, [e]vidence of the contents of business records is admissible only where the records themselves are introduced...Without their introduction, a witness's testimony as to the contents of the records is inadmissible hearsay" *Bank of NY Mellon v Gordon*, 171 AD3d 197 [2d Dept 2019][internal citations and quotation marks omitted]; See also See *U.S. Bank N.A. v Pickering-Robinson*, 197 AD3d 757 [2d Dept 2021]["However, while the Lee affidavit was sufficient to lay a proper foundation for the admission of a business record pursuant to CPLR 4518 (a)...Lee failed to identify the records upon which she relied in making the statements, and the plaintiff failed to submit copies of the records themselves."]; *Deutsche Bank Trust Co. Ams. v Miller*, 198 AD3d 867 [2d Dept 2021]["Moreover, even if Lee's affidavit set forth a proper foundation for the admissibility of the unspecified records he relied on...Lee failed to identify the records upon which [ ]he relied in making the statements, and the plaintiff failed to submit copies of the records themselves...It is the business record itself, not the foundational affidavit, that serves as proof of the matter asserted"][internal citations and quotation marks omitted]

Accordingly, Ms. Bartlett's conclusory and hearsay assertions are insufficient to demonstrate plaintiff had standing at the time the action was commenced. See *Nationstar Mtge.. LLC v Calomarde,* 201 AD3d 940, 942 [2d Dept 2022] ["Although the plaintiff attached to the complaint copies of the note and an undated purported allonge endorsed in blank, the plaintiff did not demonstrate that the purported allonge, which was on a piece of paper completely separate from the note, was "so firmly affixed thereto as to become a part thereof," as required by UCC 3-202 (2)"]; See also *LNV Corp. v Almberg*, 194 AD3d 703, 704 [2d Dept 2021]["Here...the plaintiff failed, prima facie, to establish its standing to commence this action. The copy of the note submitted in support of the plaintiff's motion contained two additional pages, the first entitled "Allonge to Note" and the second entitled "Note Allonge." However, as the defendants correctly contend, the plaintiff did not submit any evidence to indicate that the purported allonges were so firmly affixed to the note so as to become a part thereof..."]

Therefore, plaintiff's motion must be denied without regard to the sufficiency of the opposition papers. See *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]["Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers"];*Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]["Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers"]; *Gregg v Key Food Supermarket*, 50 AD3d 1093 [2d Dept 2008]["Moreover, when the defendant fails to meets its burden, the motion must be denied without regard to the sufficiency of the plaintiff's opposition papers"]

Lastly, contrary to defendant's cross-motion is denied. Merely pointing to gaps in plaintiff's prima facie showing is insufficient to meet defendant's burden in establishing entitlement to judgment as a matter of law.

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

Accordingly, it is hereby

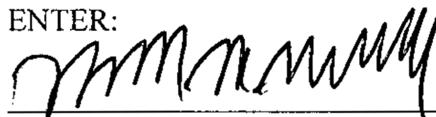
ORDERED, that plaintiff's motion is DENIED with PREJUDICE; and it is further

ORDERED, that defendant's cross-motion is DENIED with PREJUDICE; 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 15 2026
KINGS COUNTY CLERK'S OFFICE