U.S. Bank N.A. v Gaspard
2026 NY Slip Op 30184(U)
January 2, 2026
Supreme Court, Kings County
Docket Number: Index No. 511224/2023
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 2nd of January 2026

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

U.S. BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR THE RMAC TRUST, SERIES 2018-G-CTT,

Plaintiff,

-against-

JEAN CHARLES GASPARD AKA JEAN CHARLES GASPARD, PROPERTY ASSET MANAGEMENT NY INC., CITIBANK (SOUTH DAKOTA), NA, NEW YORK CITY DEPARTMENT OF FINANCE, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, PEOPLE OF THE STATE OF NEW YORK, AAMES CAPITAL CORPORATION, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR ALLIANCE MORTGAGE BANKING CORP., BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATE HOLDERS CWABS, INC. ASSET-BACKED CERTIFICATES SERIES 2005-17, CITY REGISTER OF THE CITY OF NEW YORK, COUNTY OF KINGS JOHN DOE (Those unknown tenants, occupants, persons or corporations or their heirs, distributees, executors, administrators, trustees, guardians, assignees, creditors or successors claiming an interest in the mortgaged premises.)

Defendant.

Index No. 511224/2023

Decision and Order
(Motion Seq. 3)

Papers	Numbered
Notice of Motion	NYSCEF Doc. 91-112
Opposition Papers	NYSCEF Doc. 113-114
Reply Papers	NYSCEF Doc. 115

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 April 17, 2023, seeking to foreclose a mortgage (the "mortgage") executed by defendant Jean Charles Gaspard Aka Jean Charles Gaspard (the "defendant") which encumbers the property known as 548 Elton Street Brooklyn, NY 11208 (the "property").

On January 22, 2024, defendant filed an answer which was rejected by plaintiff as untimely.

On April 4, 2024, the Court granted defendant's motion to vacate defendant's default and compelled the acceptance of defendant's answer. Defendants answer asserted various affirmative defenses including lack of standing, non-compliance with RPAPL 1304, RPAPL 1306 and the notice provision of the mortgage.

On November 22, 2024, plaintiff first moved for summary judgment and order of reference. Defendant filed opposition to defendant's motion. Plaintiff thereafter withdrew the motion.

Plaintiff now moves again for summary, to strike defendant's answer and affirmative defenses, for a default judgment against the non-appearing defendants, appointing a Referee to compute and to amend the case caption. In support of the motion, plaintiff annexes the affirmation of Frank Velazquez ("Mr. Velazquez" or "Velazquez Affirmation"), a purported Assistant Secretary of Nationstar Mortgage LLC ("Nationstar"), the alleged attorney in fact and servicer of plaintiff. Plaintiff also annexes the "Affirmation of Mailing" of Juan Alverez ("Mr. Alverez" or Alverez Affidavit"), a purported Assistant Secretary of Nationstar. Plaintiff contends that it established entitlement to relief with the production of the note, mortgage and evidence of defendant's default. Plaintiff further argues that it established compliance with RPAPL 1304 and RPAPL 1306, that a notice of default is not required and, in any case, the affidavits are sufficient to demonstrate that plaintiff sent the required notices. Plaintiff also avers it established it's standing through the affidavits and by annexing the note endorsed in blank to the complaint.

Defendant opposes the motion as an improper successive summary-judgment application because plaintiff previously withdrew an earlier motion after defendants briefed the motion, and plaintiff offers no newly discovered evidence or sufficient justification. On the merits, defendants contend plaintiff failed to establish its prima facie entitlement due to lack of standing (asserting inadmissible hearsay and insufficient proof of possession of the note at commencement), failure to comply with contractual notice-of-default provisions, defective and inadmissible proof of RPAPL 1304 mailing, a facially deficient RPAPL 1306 filing, and lack of competent evidence demonstrating compliance with mandatory FHA pre-foreclosure servicing regulations. Each he contends raise triable issues of fact and independently require denial of summary judgment.

In reply, plaintiff argues the motion is procedurally proper because the prior motion was withdrawn before adjudication and courts may entertain a subsequent motion where it will dispose of the case and promote judicial economy. Plaintiff reiterates that standing is conclusively established by annexing the endorsed note to the complaint and by sworn testimony of possession prior to commencement, that defendants failed to rebut plaintiff's proof with admissible evidence, and that all notice-based, statutory, and regulatory defenses fail as a matter of law, leaving no triable issues of fact and entitling plaintiff to summary judgment and the appointment of a referee.

Discussion

I. Standard of Review

"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]

"[A] motion for summary judgment will not be granted if it depends on proof that would be inadmissible at the trial under some exclusionary rule of evidence...Records made in the regular course of business are hearsay when offered for the truth of their contents...When a party relies upon the business records exception to the hearsay rule in attempting to establish its prima facie case, '[a] proper foundation for the admission of a business record must be provided by someone with personal knowledge of the maker's business practices and procedures." *HSBC Bank USA, N.A. v Vasishta*, 241 AD3d 1299 [2d Dept 2025][internal citations and quotation marks omitted]

"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]

II. Plaintiff established prima facie it had standing when 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]

"A "holder" is 'the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession...Pursuant to article 3 of the Uniform Commercial Code, a note can be endorsed, or signed over, to a new owner. A note can

also be endorsed in blank, naming no specific payee, which makes it a bearer instrument under article 3 of the Uniform Commercial Code, so that any party that possesses the note has the legal authority to enforce it." *U.S. Bank N.A. v Moulton*, 179 AD3d 734 [2d Dept 2020][internal citations and quotation marks omitted]; NY UCC 1-201(21); See also *U.S. Bank N.A. for Citigroup Mtge. Loan Tr., Inc., 2006-NC2 v Brody*, 156 AD3d 839 [2d Dept 2017]["A "holder" is 'the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession"]

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]

Contrary to defendant's contentions, plaintiff established prima facie it had standing by annexing a copy of the note endorsed in blank to the complaint.

III. Plaintiff failed to establish prima facie it strictly complied with RPAPL 1306.

"RPAPL 1306 provides, in pertinent part, that within three business days of the mailing of the foreclosure notice pursuant to RPAPL 1304(1), every lender or assignee "shall file" certain information with the superintendent of financial services, including "***at a minimum, the name, address, last known telephone number of the borrower, and the amount claimed as due and owing on the mortgage***, and such other information as will enable the superintendent to ascertain the type of loan at issue...Like RPAPL 1304, compliance with RPAPL 1306 is a condition precedent to the commencement of a foreclosure action..." *HSBC Bank USA, N.A. v Bermudez*, 175 AD3d 667 [2d Dept 2019][internal citations omitted and emphasis added] *Deutsche Bank Natl. Tr. Co. v Goetz*, 239 AD3d 934 [2d Dept 2025]["In support of his cross-motion, the defendant established, prima facie, that the plaintiff failed to establish its compliance with RPAPL 1306, which provides, in pertinent part, "that within three business days of the mailing of the foreclosure notice pursuant to RPAPL 1304(1)"][emphasis added]

"Compliance with RPAPL 1306 is a condition precedent to the commencement of a foreclosure action...[S]trict compliance with the statutory requirement of making the appropriate filing...is required." See e.g. *Bank of New York Mellon v Peralta*, 239 AD3d 932 [2d Dept 2025][internal citations and quotation marks omitted]

Here, it is clear that the space on the form for the borrower's telephone number is redacted from the filing. Therefore, the Court cannot assess whether plaintiff strictly complied with RPAPL 1306 and it's submission of a redacted form is insufficient to demonstrate prima facie strict compliance with RPAPL 1306. However, since the Appellate Division has not directly addressed the issue, an analysis of the statute and the legislative intent is appropriate.

"[O]ur primary consideration is to ascertain and give effect to the intention of the [l]egislature...Because the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself...with due consideration given to the statutory purpose and history, including the objectives the legislature sought to achieve through its enactment." *CIT Bank N.A. v Schiffman*, 36 NY3d 550 [2021][internal citations and

quotation marks omitted]; See also *S. H. v Diocese of Brooklyn*, 205 AD3d 180, 185 [2d Dept 2022]["[i]t is fundamental that a court, in interpreting a statute, should attempt to effectuate the intent of the Legislature"] *People v Roberts*, 31 NY3d 406, 418 [2018]["[O]ur task—as it is in every case involving statutory interpretation—is to ascertain the legislative intent and construe the pertinent statutes to effectuate that intent"]; *Riley v County of Broome*, 95 NY2d 455 [2000]["The primary consideration of courts in interpreting a statute is to "ascertain and give effect to the intention of the Legislature".]

"All parts of the constitutional provision or statute must be harmonized with each other as well as with the general intent of the whole statute, and effect and meaning must, if possible, be given to the entire statute and every part and word thereof. Indeed, our well-settled doctrine requires us to give effect to each component of the provision or statute to avoid a construction that treats a word or phrase as superfluous." *Matter of Hoffmann v NY State Ind. Redistricting Commn.*, 41 NY3d 341, 359 [2023][internal citations and quotation marks omitted]; See also *People v Roberts*, 31 NY3d 406, 428 [2018]["meaning and effect should be given to every word of a statute and that an interpretation that renders words or clauses superfluous should be rejected."]

"The literal language of a statute is generally controlling unless the plain intent and purpose of a statute would otherwise be defeated...In interpreting statutory language, all parts of a statute are intended to be given effect and a statutory construction which renders one part meaningless should be avoided." *Matter of Anonymous v Molik*, 32 NY3d 30, 37 [2018]; See also *Matter of Jun Wang v James*, 40 NY3d 497 [2023]["[A]ll parts of a statute are intended to be given effect and a statutory construction which renders one part meaningless should be avoided"]

Here, the statute on its face expressly provides that the filing shall include "at a minimum, the name, address, *last known telephone number of the borrower*, and the amount claimed as due and owing on the mortgage and such other information as will enable the superintendent to ascertain the type of loan at issue." RPAPL 1306[2][emphasis added]

Accordingly, the express language should be, and at least for this Court, is the end of the inquiry.

Nevertheless, RPAPL 1306[4] further provides in relevant part that the "information provided to the superintendent pursuant to this section...shall be used by the superintendent exclusively for the purposes of monitoring on a statewide basis the extent of foreclosure filings within this state, to perform an analysis of loan types which were the subject of a pre-foreclosure notice and directing as appropriate available public and private foreclosure prevention and counseling services to borrowers at risk of foreclosure. The superintendent may share information contained in the database with housing counseling agencies designated by the division of housing and community renewal as well as with other state agencies with jurisdiction over housing, for the purpose of coordinating or securing help for borrowers at risk of foreclosure."

The Appellate Division Second Department held in the context of the information pertaining to the type of loan that "RPAPL 1306(2) specifically requires the filing of information that will enable the superintendent to ascertain the type of loan at issue... and states that the data collected shall be used to perform an analysis of loan types...*and to direct appropriate services to borrowers in need.*" *U.S. Bank N.A. v Adams,* 202 AD3d 867, 870 [2d Dept 2022][citation omitted

and emphasis removed and added]; See also *CIT Bank N.A. v Schiffman*, 36 NY3d 550 [2021]["This provision shows that the principal objective of the filings is to provide statistical data permitting DFS to accurately track and analyze loans at risk of foreclosure and properly allocate foreclosure counseling resources statewide in order to combat the mortgage crisis—an aim also reflected in the legislative history."]

The Court finds that the failure to include the borrower's last known phone number is not a mere technical defect or irregularity. It is a failure to comply with an express requirement of RPAPL 1306 and undermines the purpose of the statute to "*direct appropriate services to borrowers in need.*" See *U.S. Bank N.A. v Adams*, 202 AD3d 867, 870 [2d Dept 2022]; See also *CIT Bank N.A. v Schiffman*, 36 NY3d 550 [2021]

The Court further finds the reasoning in the holding of the Hon. C. Stephen Hackeling, JSC of our sister court in Suffolk County persuasive. "Because the statutory text permits the agency to share information contained on the filing with certain housing counseling agencies that coordinate help for distressed borrowers, and the Department of Financial Services may use the information to facilitate a review of whether the borrower might benefit from counseling or other foreclosure prevention services, including a borrower's last known telephone number is critical to facilitate the statutory purpose of RPAPL 1306." *Deutsche Bank Natl. Tr. Co. as Tr. for GSAMP Tr. 2005-WMC3 v Velasquez*, 86 Misc 3d 288, 294 [Sup Ct 2025]; See also *Brown v Amarante*, 23-CV-3514 (JGLC) (RWL), 2024 WL 4716364, at *14 [SDNY Nov. 8, 2024]["the Court sees no difference between leaving the space blank and filling it in with a non-telephone number (i.e., 9999999999). The result is the same: the minimum information required by the statute, particularly the borrower's telephone number, has not been provided. While addressing other aspects of § 1306 in reply, Plaintiff ignores entirely the telephone-number deficiency. Plaintiff has not demonstrated compliance with RPAPL § 3106 and thus has failed to establish having satisfied a condition precedent to suit."] [United States Magistrate Judge Robert W, Lehrburger] *report and recommendation adopted*, 23-CV-3514 (JGLC), 2025 WL 934318 [SDNY Mar. 27, 2025][United States District Judge Jessica G. L. Clarke]

As aptly noted in reaching the same conclusion, the Hon. Carolyn Mazzu Genovesi, JSC, held that "within the context of the RPAPL 1304, plaintiff's failure to include the telephone number of the Department of Financial Services' toll-free helpline is a facial defect that invalidates the RPAPL 1304 notice." *The Bank of New York Mellon: et al v Susan Gargiulo et al*, 2025 NY Slip Op 51886[U] [Sup Ct Nov. 25, 2025] citing *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"]

This Court respectfully disagrees with Judge Genovesi that "[a]rguably, the plaintiff's misstatement of whether the loan was modified, which the Appellate Division, Second Department excuses, is a more egregious defect than the omission of borrower's telephone number." *Gargiulo, supra. citing U.S. Bank N.A. v Adams*, 202 AD3d 867, 870 [2d Dept 2022].

The Court in *Adams*, specifically reasoned that the requirement to specify the modification status of the mortgage was ***not*** a statutory requirement as opposed to simply disregarding the will

of the people as set forth in the express language of the statute, which would render the language pertaining to the telephone number superfluous and without meaning. See *Adams, supra.* ["RPAPL 1306 (2) specifically requires the filing of information that "will enable the superintendent to ascertain the *type of loan at issue*" (emphasis added) and states that the data collected shall be used to "perform an analysis of loan types" (*id.* § 1306 [4]) and to direct appropriate services to borrowers in need. Here, the Proof of Filing Statement provides that information, indicating that the loan is "Fixed Rate" and "1st Lien." Plainly stated, a loan modification is not a "type of loan."]

The Courts have recently experienced the consequences of judicial policy making in the context foreclosure law and will not engage in the type of meddling the legislature as representatives of the People of the State of New York have expressly denounced. See the Foreclosure Abuse and Prevention Act which abrogated *Freedom Mtge. Corp. v Engel (3 7 NY3d 1 [2021])* and legislation has been introduced to abrogate *Bank of Am., N.A. v Kessler, 39 NY3d 317 [2023],* was passed unanimously in the Assembly (A05841) and passed the Senate in the following year (S.5829); See also *Diamond v Chakrabarty*, 447 US 303 [1980]["The choice we are urged to make is a matter of high policy for resolution within the legislative process after the kind of investigation, examination, and study that legislative bodies can provide and courts cannot. That process involves the balancing of competing values and interests, which in our democratic system is the business of elected representatives. Whatever their validity, the contentions now pressed on us should be addressed to the political branches of the Government, the Congress and the Executive, and not to the courts."]

Indeed, the Hon. Francois A. Rivera, JSC recently held that the absence of the correct telephone number in a RPAPL 1303 rendered the notice defective. See *HSBC Bank USA, N.A. v Williams* 2025 NY Slip Op 34650(U) [Sup Ct Dec. 19, 2025]["As the trial record reflects, plaintiff's witness, Zambrano, expressly admitted that the toll-free telephone number and website were both different than the mandatory language contained in RPAPL 1303 at the time of the commencement of this action.... Accordingly, this Court concludes that a necessary pre-commencement mandate for the lawsuit was not complied with."]

It makes little sense for this Court to apply RPAPL 1306 to a different standard than RPAPL 1303 and RPAPL 1304. All three require strict compliance. All three require a phone number. Accordingly, this Court will not second guess the policy considerations underpinning passage RPAPL 1303 RPAPL 1304 and RPAPL 1306. Like Justices Hackling, Genovesi, Lehrburger, Clarke and Rivera, this Court [Mirocznik, J.] will apply the telephone number requirement strictly.

Accordingly, plaintiff's motion must be denied with regard to the sufficiency of the opposition papers.

IV. Plaintiff failed to establish strict compliance with RPAPL 1304

"[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]

Here, Mr. Alverez alleges the notices were sent by Rushmore Loan Management Services LLC ("Rushmore"). However, no proof is proffered that Rushmore was authorized to send the subject notices.

Therefore, plaintiff failed to establish strict compliance with RPAPL 1304. See *Siegel v Kentucky Fried Chicken of Long Is., Inc.*, 108 AD2d 218 [2d Dept 1985]["the mere assertion of authority on the face of the notice by a total stranger…that he is authorized to act on the latter's behalf cannot be deemed to provide…notice…"], *affd,* 67 NY2d 792 [1986]; See also RPAPL 1304[1]["such lender, assignee or mortgage loan servicer shall give notice"]; *Deutsche Bank Natl. Trust Co. v Pariser*, 207AD3d 518 [2d Sept. 2022]["The plaintiff further failed to establish that the RPAPL 1304 notices were sent by the "lender, assignee, or loan servicer" as required by the statute…Here, the RPAPL notices were allegedly sent on August 7, 2014, by the Law Offices of McCabe, Weisberg, and Conway, P.C., on behalf of Ocwen Financial, the plaintiff's loan servicer. However, the limited power of attorney authorizing Ocwen Financial to act on behalf of the plaintiff, which was submitted by the plaintiff in support of its motion, states that it was executed on and effective as of September 17, 2014."][citations omitted]; See also *MTGLQ Invs., L.P. v Cacioppo*, 217 AD3d 939 [2d Dept 2023]["Here, the plaintiff failed to establish, prima facie, that it strictly complied with RPAPL 1304. The plaintiff submitted a detailed affidavit of mailing from an assistant secretary of loan documentation at Rushmore Loan Management Services, LLC (hereinafter Rushmore), which demonstrated that the RPAPL 1304 notices had been mailed in accordance with the statute...However, this affidavit failed to demonstrate that Rushmore had the authority to service the loan at the time that it mailed the RPAPL 1304 notices to the defendant…and this record presents triable issues of fact as to whether Rushmore had this authority."][citations omitted]

V. <u>Plaintiff failed to established prima facie compliance with 24 CFR 203.604</u>

24 CFR 203.604(a)(1) provides that the "mortgagee must conduct a meeting with the mortgagor, or make a reasonable effort to arrange such a meeting, before three full monthly installments due on the mortgage are unpaid and at least 30 days before foreclosure is commenced, or at least 30 days before assignment is requested if the mortgage is insured on Hawaiian homelands pursuant to section 247 of the National Housing Act. The meeting with the mortgagor must be conducted in a manner as determined by the Secretary."

Here, plaintiff alleges an attempt to arrange a meeting on February 16, 2018, and the complaint alleges a default date of April 1, 2018. Therefore, it does not appear that plaintiff complied with 24 CFR 203.604(a)(1). Defendant is correct that an alleged attempt to arrange a face-to-face meeting prior to defendant's default does not accomplish the loss mitigation purpose of the rule. It defied logic that loss mitigation can occur when a defendant is not in default and no loss occurred.

Plaintiff's contention that defendant did not prove the applicability of the statute because defendant failed to show plaintiff was located within 200 miles of defendant's is without merit. On a motion for summary judgment, the burden is on plaintiff to demonstrate the absence of any

issues of fact. It is not defendant's burden to establish the defense as a matter of law.

Moreover, plaintiff's contention that it sent the notice attempting arrange a face-to-face meeting is unsubstantiated, conclusory and insufficient to demonstrate the notice was actually sent.

Proof of mailing of a required notice, "can be established with proof of the actual mailings, such as affidavits of mailing or domestic return receipts with attendant signatures, or 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." *US Bank N.A. v Pierre*, 189 AD3d 1309 [2d Dept 2020]; *Wells Fargo Bank, N.A. v Fregosi*, 222 AD3d 811 [2d Dept 2023]

"[I]n order for the presumption to arise, [the] office practice must be geared so as to ensure the likelihood that [the] notice...is always properly addressed and mailed." *Wells Fargo Bank, N.A. v Shields*, 201 AD3d 1007 [2d Dept 2022]

Here, Mr. Velazquez' contentions are conclusory and insufficient to establish the notice was actually sent. Mr. Velazquez does not allege personal knowledge of the mailing. Nor does Mr. Velazqeuz attempt to establish knowledge of a standard office mailing procedure designed to ensure that items are properly addressed and mailed. Indeed, the notice was allegedly sent by Wells Fargo Home Loan ("Wells Fargo"), not Nationstar or Rushmore the alleged prior servicer, and plaintiff's offers no proof that Wells Fargo was the servicer at the time. See *Siegel v Kentucky Fried Chicken of Long Is., Inc.*, 108 AD2d 218 [2d Dept 1985], *affd*, 67 NY2d 792 [1986]; *Deutsche Bank Natl. Trust Co. v Pariser*, 207AD3d 518 [2d Sept. 2022]; *MTGLQ Invs., L.P. v Cacioppo*, 217 AD3d 939 [2d Dept 2023]

Although Mr. Velazquez alleges the notice was sent by certified and first class mail, the record do not indicate how the letter was sent. Nor is the proffered alleged certified mailing envelope insufficient as it is not clear if the subject notice was sent in the proffered envelope, which was returned to sender. Further still, the plaintiff's proffer of property inspection report does not establish the same was an attempt to arrange a face-to-face meeting.

Lastly, counsel's justification for a premature attempt to arrange a face-to-face-meeting as being based on alleged December 2017 default is not substantiated by any testimony of its affiant and is belied by the plaintiff's own proffered records which reflect any default was cured after December 2017.

Therefore, the motion must be denied for this reason as well. See e.g. *Green Planet Servicing, LLC v Martin*, 141 AD3d 892, 893 [3d Dept 2016]["As relevant here, it was incumbent upon plaintiff, prior to commencing this action, to have a face-to-face meeting with defendant, or, at the very least, make reasonable efforts to arrange such a meeting before three full monthly installments due on the mortgage became unpaid (*see* 24 CFR 203.604 [b]; 203.606 [a]). Plaintiff's submissions are wholly devoid of any proof, explanation or argument showing that it met these federal regulations or that it was exempt from complying with them (*see* 24 CFR 203.604 [c]; 203.606 [b]). We therefore conclude that plaintiff failed to satisfy its burden on its motion and that the summary judgment motion should have been denied regardless of the sufficiency of defendant's opposition papers"]; *Bank of Am., N.A. v Spencer*, 166 AD3d 1514, 1515 [4th Dept 2018]["Plaintiff failed to establish that it complied with the requirements of 24 CFR 203.604 and thus failed to establish that it was entitled to judgment as a matter of law on the amended

complaint...More specifically, plaintiff did not arrange or attempt to arrange a face-to-face interview with defendant at any time "before three full monthly installments...[were] unpaid" (§ 203.604 [b]). Instead, the first attempt was made in June 2011, i.e., more than six months after the first installment went unpaid."][Internal citations omitted]

In light of the above, plaintiff failed to demonstrate prima facie entitlement to the drastic remedy of summary judgment and it'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"]

The parties remaining contentions not 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 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