

<b>Nationstar Mtge. LLC v Izrailov</b>
2026 NY Slip Op 30222(U)
January 14, 2026
Supreme Court, Kings County
Docket Number: Index No. 516892/2024
Judge: Carolyn Walker-Diallo
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At an IAS Term, Part FRP4, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 320 Jay Street, Brooklyn, New York, on the 14th day of January 2026.

PRESENT:

HON. CAROLYN WALKER-DIALLO, J.S.C.

Index No.: 516892/2024

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NATIONSTAR MORTGAGE LLC,

Plaintiff,

**DECISION AND ORDER**

*-against-*

MIKHAIL IZRAILOV, et al.,

Defendants.

\_\_\_\_\_ x

Recitation, as required by CPLR 2219 (a), of the papers considered in the review of this

Motion:

**Papers**

Motion, Affirmation in Support, and Exhibits  
Affirmation in Opposition  
Affirmation in Reply

**Numbered**

NYSCEF Doc. Nos. 26-48  
NYSCEF Doc. No. 54  
NYSCEF Doc. No. 55

Motion Sequence #1

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

Plaintiff moves for an Order granting summary judgment against Mikhail Izrailov (“Defendant”), default judgment, an order of reference, and an amendment of the caption. Defendant opposes and Plaintiff submits reply papers.

## DISCUSSION

**I. PLAINTIFF HAS ESTABLISHED ITS STANDING AND ITS PRIMA FACIE BURDEN.**

“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 N.Y.2d 320, 324 (1986) (Internal citations omitted). Further, it is well established that “[i]n a residential mortgage foreclosure action, a plaintiff establishes its prima facie entitlement to judgment as a matter of law by producing the mortgage and the unpaid note, and evidence of the default.” *Onewest Bank v. Wellington Roy Mahoney*, 154 A.D.3d 770, 771 (2d Dep’t 2017); *Loancare v. Firshing*, 130 A.D.3d 787 (2d Dep’t 2015). Plaintiff has done so.

As an initial matter, Defendant’s assertion that Plaintiff’s affidavit of Grace Cruz-Allegro, Foreclosure Associate II of Plaintiff, is defective for failure to include a certificate of conformity is without merit. *See* Affidavit of Grace Cruz-Allegro (“Cruz-Allegro Aff.”), dated January 13, 2025, NYSCEF Doc. No. 34. “[T]he absence of a certificate of conformity is a mere irregularity, not a fatal defect, which can be disregarded in the absence of a showing of actual prejudice.” *Capital One, N.A. v. Mc Cormack*, 183 A.D.3d 644, 645 (2d Dep’t 2020).

However, “[w]here, 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 A.D.3d 734, 736 (2d Dep’t 2020). Generally, a Plaintiff can establish its standing to commence an action by annexing a copy of the note, endorsed to blank, to the complaint. *U.S. Bank N.A. v. Auguste*, 173 A.D.3d 930 (2d Dep’t 2019). “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 Trust, N.A. v. Loring*, 193 A.D.3d 1101, 1103 (2d Dep’t 2021) (Internal quotation and citations omitted); see *Bank of Am., N.A. v. Paulsen*, 125 A.D.3d 909, 910 (2d Dep’t 2015). Here, contrary to Defendant’s contentions, Plaintiff established that it had standing by annexing the subject note, indorsed to blank, to the complaint. See Complaint and Note, NYSCEF Doc. No. 2.

## **II. PLAINTIFF HAS FAILED TO DEMONSTRATE COMPLIANCE WITH RPAPL 1304.**

However, Plaintiff has failed to establish 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.’ The statute further sets forth the required content for the notice and provides that the notice must be sent by registered or certified mail and also by first-class mail to the last known address of the borrower (*see id.* § 1304 [2]). Strict compliance with RPAPL 1304 notice to the borrower or borrowers is a condition precedent to the commencement of a foreclosure action. Proof of the requisite mailings of the RPAPL 1304 notices may 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.” *Deutsche Bank Nat’l Trust Co. v. Pirozzi*, 230 A.D.3d 736, 738-39 (2d Dep’t 2024) (Internal quotations and citations omitted). “In 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.” *CIT Bank N.A. v. Schiffman*, 36 N.Y.3d 550, 556 (2021) (Internal quotation marks omitted).

In support of its motion, Plaintiff annexes the Cruz-Allegro affidavit and an affirmation of mailing by Minh Nghiem, Document Execution Associate of Plaintiff. *See Cruz-Allegro Aff.*, NYSCEF Doc. No. 34, Affirmation of Minh Nghiem (“Nghiem Aff.”), dated October 7, 2024, NYSCEF Doc. No. 41. Ms. Cruz-Allegro does not contend that she possesses any personal knowledge of the mailing and avers in a conclusory manner that the RPAPL 1304 notices were allegedly sent on April 27, 2023. *See Cruz-Allegro Aff.*, NYSCEF Doc. No. 34, ¶7. No proof of mailing is annexed for the certified and first-class mailings, nor does Ms. Cruz-Allegro allege personal familiarity with Plaintiff’s standard office mailing procedures that are designed to ensure that mailings are properly addressed and mailed to the addressees.

Such deficiencies repeat in the annexed affirmation of Minh Nghiem. While Minh Nghiem avers that “[i]t was the normal practice . . . on April 27, 2023 to send 90-Day Notices” by certified and first-class mail and retain copies of all such notices and certified mail receipts and that a notice was sent on that date, no such receipts with signature are annexed to Plaintiff’s papers despite the alleged retention practice of Plaintiff. *See Nghiem Aff.*, NYSCEF Doc. No. 41, ¶¶12-14. Moreover, the “comment log” attached to the papers contains only a single notation, dated April 27, 2023, stating “NY90 DAY LETTER SENT,” which may refer to the required RPAPL 1304

mailing. *See* Comment Log, NYSCEF Doc. No. 43 at 9. However, Minh Nghiem does not explain what this notation means, and it is unclear from the comment log provided whether this notation refers to certified mail, first-class mail, or both.

Lastly, while the affiant provides in a conclusory manner that the affiant is familiar with Plaintiff's standard office practices, there is no detail provided as to what these practices and procedures are, such that they ensure "that the items are properly addressed and mailed." The affiant's statements therefore amount to nothing more than conclusory assertions that Plaintiff has undisclosed procedures and that the notices were allegedly sent. "[T]he plaintiff failed to present sufficient proof of a standard office mailing procedure designed to ensure that items are properly addressed and mailed, including how the mail was transmitted to the postal service." *Freedom Mtge. Corp. v. King*, 215 A.D.3d 923, 926 (2d Dep't 2023) (Internal quotation marks omitted); *see CIT Bank N.A.*, 36 N.Y.3d at 556.

Therefore, as Plaintiff fails to establish prima facie that it strictly complied with RPAPL 1304, Plaintiff's motion must be denied without regard to the sufficiency of the opposition papers. *See Winegrad v. N.Y. Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985) ("Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers"). The parties' remaining contentions need not be reached in light of the Court's determinations.

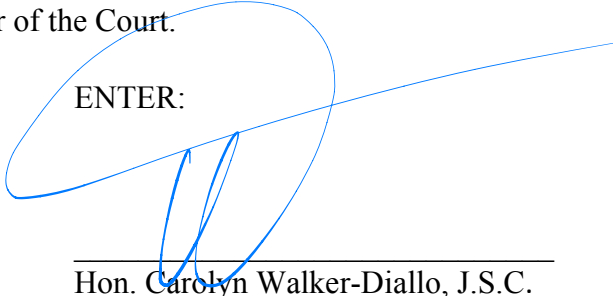
#### CONCLUSION

Accordingly, Plaintiff's motion is DENIED. The Court has considered the additional contentions of the parties not specifically addressed herein. To the extent that any relief requested was not addressed by the Court, it is hereby DENIED. The note of issue date is extended to April 15, 2026, and the parties are directed to complete discovery and proceed to trial. Plaintiff shall

serve notice of entry within fifteen (15) days of upload of the instant order to NYSCEF upon Defendants and all parties who have appeared in this action.

This constitutes the Decision and Order of the Court.

ENTER:



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Hon. Carolyn Walker-Diallo, J.S.C.