

Wilmington Sav. Fund Socy., FSB v Nedd
2026 NY Slip Op 30224(U)
January 2, 2026
Supreme Court, Kings County
Docket Number: Index No. 524005/2023
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

WILMINGTON SAVINGS FUND SOCIETY, FSB
AS OWNER TRUSTEE OF THE RESIDENTIAL
CREDIT OPPORTUNITIES TRUST V-D,

Plaintiff,

-against-

IVAN NEDD; UNITED STATES OF AMERICA
(EASTERN DISTRICT) OBO INTERNAL
REVENUE SERVICE; NEW YORK CITY PARKING
VIOLATIONS BUREAU; NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD; NEW
YORK STATE DEPARTMENT OF TAXATION
AND FINANCE; "JOHN DOE" and "JANE DOE" said
names being fictitious, it being the intention of Plaintiff
to designate any and all occupants of premises being
foreclosed herein,

Defendant.

Index No. 524005/2023

**Decision and Order
(Motion Seq. 1)**

Papers	Numbered
Notice of Motion	NYSCEF Doc. 47-56
Opposition Papers	NYSCEF Doc. 60-62
Reply Papers	NYSCEF Doc. 63-64

Upon the foregoing papers, the motion is determined in accordance with this Decision, Order and Judgment as follows:

Relevant Procedural and Factual History

This action was commenced on August 18, 2023, seeking to foreclose a mortgage (the "mortgage") executed by Ivan Nedd (the "defendant") which encumbers the property known as 630 Schenectady Avenue Brooklyn, NY 11203 (the "property").

On October 12, 2023, defendant joined issue with the filing of an answer asserting various affirmative defenses including non-compliance with RPAPL 1303, RPAPL 1304, RPAPL 1306 and notice of default provisions of the mortgage.

Settlement conferences were held on November 14, 2023, December 12, 2023, February

15, 2024, and April 4, 2024, after which the matter was released from the settlement part.

Plaintiff now moves for summary judgment, a default judgment against the non-answering defendants, to appointing a referee to compute, to amending the caption; and to extend the time to complete service. Plaintiff contends that it established prima facie entitlement to judgment as a matter of law with the submission of the note, mortgage and evidence of defendant's default and that defendant's answer fails raise and issue of fact.

Defendant opposes the motion arguing, inter alia, that the RPAPL 1306 filing is facially defective because the notice omits the borrower's last known telephone number and incorrectly lists the mortgage as not being modified.

In reply plaintiff contends, inter alia, that it demonstrated compliance with RPAPL 1306 with the submission of the RPAPL 1306 filing and that the failure to list the loan as being modified does not invalidate the RPAPL 1306 filing under *U.S. Bank N.A. v. Adams*, 202 AD3d 867 [2d Dept 2022] and the failure to include the borrowers last known telephone number is similarly does not invalidate the filing under *Wells Fargo Fin. Credit Servs. N.Y., Inc. v. Mammen*, 191 AD3d 737 [2d Dept 2021]

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 Gemuth*, 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]

“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 borrower’s last known telephone number is missing from the filing. 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* 37 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.

Contrary, to plaintiff's contentions, the Appellate Division in *Wells Fargo Fin. Credit Servs. N.Y., Inc. v. Mammen*, 191 AD3d 737 [2d Dept 2021] did not address whether the omission of the borrower's last known telephone number was excusable and it is not clear whether the issue was raised to the trial court or the Appellate Division. Therefore, Mammen is not dispositive of the issue.

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 need not be reached in light of the Court's determinations.

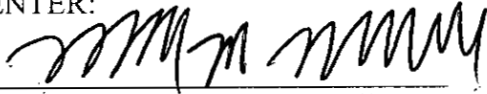
Accordingly, it is hereby

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

ORDERED, that 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

KINGS COUNTY CLERK'S OFFICE

JAN 15 2026

FILED