

U.S. Bank Trust N.A. v Fruchter
2026 NY Slip Op 30251(U)
January 12, 2026
Supreme Court, Kings County
Docket Number: Index No. 515904/2024
Judge: Derefim B. Neckles
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At an IAS Term, Part FSMP of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, 11201 on the 12th day of January 2026.

P R E S E N T:

HON. DEREKIM B. NECKLES,
Justice.

-----X
U.S. BANK TRUST NATIONAL ASSOCIATION,

Plaintiff,

- against -

Index No. 515904/2024

ZEV FRUCHTER; ET AL,

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Affidavits (Affirmations) Annexed
Opposition Affirmation to Motion
Reply Affirmation to Opposition

37-74
80:83
81:84

Upon the foregoing papers in this proceeding, plaintiff U.S. Bank (“plaintiff”) moves (under mot. seq. 1) for an order: (1) Granting summary judgment pursuant to CPLR §3212; (2) Dismissing the defenses and counterclaims asserted in the answer filed by Defendant Yitschok Tessler pursuant to CPLR §3211(b); (3) Permitting the answer to be treated as a limited notice of appearance requiring plaintiff to serve the answering defendant, without prior notice, a copy of the entered judgment of foreclosure and sale, notice of sale, notice of discontinuance, and notice of surplus money proceedings pursuant to CPLR § 320; (4) Appointing a referee to compute the amount due to the plaintiff and to examine and report whether the mortgaged premises can be sold in parcels pursuant to RPAPL §1321; (5) Amending the caption to substitute Baruch Tessler as a party defendant

in place of “John Doe” pursuant to RPAPL § 1311; (6) Granting a default judgment against all non-appearing and non-answering defendants and the defaults be fixed and determined pursuant to CPLR § 3215; and (7) For such other and further relief as to the court may deem just and proper.

Background

Plaintiff commenced the instant action on June 10, 2024, by filing a summons and complaint. In accordance with CPLR § 3408, settlement conferences were held on August 6, 2024, and September 4, 2024. As no settlement was reached, the matter was released from the settlement conference part. Plaintiff now moves, inter alia, for summary judgment.

In opposition to the motion, defendants Zev and Rachel Fruchter (“defendants”) argue that plaintiff’s purported witness lacks personal knowledge and that his affidavit must therefore be disregarded. Defendants assert that, although the affiant attests to having personal knowledge and is an employee of Nationstar, the attached power of attorney relates to U.S. Bank and Rushmore Loan Management Services. Defendants further contend that plaintiff neither sent nor produced a 30-day notice of default. They note that the default notice submitted by plaintiff was sent by Rushmore Loan Services, not by plaintiff. Additionally, defendants argue that plaintiff failed to prove that it possessed the note at the time the action was commenced.

In reply, plaintiff argues that it submitted several affidavits, each supported by a sufficient power of attorney or otherwise self-evidently authorized. Plaintiff further asserts

that the affidavits were made by individuals with personal knowledge of plaintiff's business record-keeping practices and that those individuals testified as to mailing based upon those records. Plaintiff also maintains that the affidavits establish that the records of prior servicers of the note and mortgage were incorporated into plaintiff's own records. Moreover, plaintiff contends that defendants failed to submit any evidence demonstrating that they were not served with notices of default. Finally, plaintiff argues that it has been in possession of the note since the commencement of the action.

Discussion

I. Affidavits

“[T]he affidavit of merit from a representative of the plaintiff's servicing agent, accompanied by a power of attorney demonstrating the authority of the agent to act on behalf of the plaintiff, in which the representative averred that she had acquired personal knowledge of the matters discussed in her affidavit by reviewing the loan servicer's business records, was competent evidence to establish the plaintiff's entitlement to a default judgment against [the defendant] and [for] an order of reference” (*U.S. Bank N.A. v. Louis*, 148 A.D.3d 758, 758–759, 48 N.Y.S.3d 458); *Deutsche Bank Nat'l Tr. Co. v. Silverman*, 178 A.D.3d 898, 900, 114 N.Y.S.3d 110, 113 (2019)).

Here, Daniel Martinez, Assistant Secretary of Nationstar Mortgage LLC, acting as attorney-in-fact for plaintiff and as servicer of the mortgage loan that is the subject of this action, provided a power of attorney evidencing his authority to act on behalf of plaintiff. Additionally, an affidavit from Juan Alvarez, Assistant Secretary of Rushmore Loan

Management Services, LLC (“Rushmore”), likewise included a power of attorney evidencing his authority to act on plaintiff’s behalf. Accordingly, the affidavits properly demonstrate that the affiants possessed the requisite authority to act. Additionally, both affiants testify that they have personal knowledge of the business practices for their respective entities.

II. Default notice

A “plaintiff must show that it complied with any conditions precedent to commencing the action contained in the mortgage agreement” (see *U.S. Bank N.A. v. Callender*, 176 A.D.3d 1249, 1251, 111 N.Y.S.3d 65; *U.S. Bank, N.A. v. Maiorino*, 219 A.D.3d 538, 541, 194 N.Y.S.3d 130, 133 (2023)).

Here, defendants do not allege that they failed to receive the default notices. Rather, they argue that the notices were mailed by an entity other than plaintiff, despite the mortgage agreement requiring plaintiff to send a notice of default at least 30 days prior to commencing a foreclosure action. Contrary to defendants’ contention, Rushmore was authorized to send such notices on plaintiff’s behalf. Juan Alvarez attests that the notice was mailed to defendants via first-class mail and that it is Rushmore’s standard business practice and procedure to generate notices of default addressed to mortgagors at their last known address as provided by the mortgagors (*U.S. Bank, N.A. v. Akbar*, 221 A.D.3d 1045, 1049, 201 N.Y.S.3d 155; see *Bank of N.Y. Mellon v. Stewart*, 216 A.D.3d 720, 723–724, 190 N.Y.S.3d 80; *U.S. Bank N.A. v. Callender*, 176 A.D.3d 1249, 1250, 111 N.Y.S.3d 65).

III. Summary Judgment

“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” (*Plaza Equities, LLC v. Lamberti*, 118 A.D.3d 688, 689, 986 N.Y.S.2d 843; *Deutsche Bank Natl. Trust Co. v. Brewton*, 142 A.D.3d 683, 684, 37 N.Y.S.3d 25). Where standing is put into issue by a defendant, the plaintiff must prove its standing in order to be entitled to relief (*JPMorgan Chase Bank, N.A. v. Rosa*, 169 A.D.3d at 889, 94 N.Y.S.3d 602; *Deutsche Bank Natl. Trust Co. v. Brewton*, 142 A.D.3d at 684, 37 N.Y.S.3d 25)

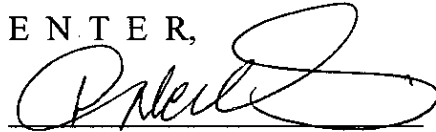
Here, plaintiff established that it had physical possession of the note prior to the commencement of this action, as evidenced by its attachment of the note, endorsed in blank, to the summons and complaint. Plaintiff also produced a copy of the mortgage and evidence of defendants’ default by producing defendants’ payment history. (*Deutsche Bank Natl. Trust Co. v. Kingsbury*, 171 A.D.3d at 871, 95 N.Y.S.3d 893; *HSBC Bank USA, N.A. v. Oscar*, 161 A.D.3d at 1056, 78 N.Y.S.3d 428).

Accordingly, it is

ORDERED that plaintiff’s motion (mot. seq. one) is granted in its entirety.

This constitutes the decision and order of the court.

E N T E R,



HON. DEREFIM B. NECKLES
J. S. C.

Hon. Derefim B. Neckles
Supreme Court Justice

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 KINGS COUNTY CLERK
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