

Caliber Home Loans Inc. v Seant-Bertrand

2026 NY Slip Op 30326(U)

January 12, 2026

Supreme Court, Kings County

Docket Number: Index No. 515078/2022

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 12th day of January 2026.

PRESENT:

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

Index No.: 515078/2022

_____ x

CALIBER HOME LOANS INC.,

Plaintiff,

DECISION AND ORDER

-against-

DENISE SEANT-BERTRAND and PHEDY
BERTRAND, et al.,

Defendants.

_____ x

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

Motion¹:

Papers

Numbered

Motion, Affirmation in Support, and Exhibits
Affirmations in Opposition²

NYSCEF Doc. Nos. 72-88
NYSCEF Doc. Nos. 103-112, 117-118, 122,
127, 151, 153-154, 168³

Affirmations in Reply

NYSCEF Doc. Nos. 120, 155

Motion Sequence #2

¹ Motion Sequences 3 and 5 were marked off by this Court for Defendants' failure to appear on the motions' return date. *See* Order dated October 30, 2025, NYSCEF Doc. No. 163-165.

² These papers are only considered as opposition papers to Motion Sequence 2 and not for any affirmative relief sought.

³ The Court notes that Defendant Seant-Bertrand requests leave to file the "attached affidavit in sur-reply," but none is attached for review or consideration by this Court.

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

NewRez LLC d/b/a Shellpoint Mortgage Servicing (“Movant”) moves for an Order: (1) granting summary judgment; (2) striking Defendant Denise Seant-Bertrand’s (“Defendant Seant-Bertrand”) answer; (3) amending the caption; and (4) granting a default judgment against Phedy Bertrand (“Defendant Bertrand”) and Chelsea Bejjai; and an order of reference. Defendant Seant-Bertrand opposes, and Plaintiff submits reply papers. For the foregoing reasons, Movant’s motion is DENIED.

DISCUSSION

I. PLAINTIFF HAS ESTABLISHED ITS STANDING IN THIS ACTION.

“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).

“[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 A.D.3d 1299, 1300 (2d Dep’t 2025) (Internal quotations and citations omitted). 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). Further, “while assignment of a promissory note also effectuates assignment of the mortgage, the converse is not true: since a mortgage is merely security for a debt, it cannot exist independently of the debt, and thus, a transfer or assignment of

only the mortgage without the debt is a nullity and no interest is acquired by it.” *U.S. Bank N.A. v. Dellarmo*, 94 A.D.3d 746, 748 (2d Dep’t 2012) (Internal citations omitted).

Here, Plaintiff established that it had standing to commence this action by annexing the note with an indorsement to itself, to the Complaint. *See* Summons, Complaint, and Note, NYSCEF Doc. No. 1. Defendant Seant-Bertrand’s arguments regarding the allonge’s indorsement to blank and the allonge being “firmly affixed” do not impact whether *Plaintiff* Caliber had standing to commence the action. However, this same note has bearing on whether Movant NewRez LLC has standing as Plaintiff’s successor-in-interest.

In support of this assertion, Movant proffers an affirmation⁴ from Robert Ortega, Document Verification Specialist of “NewRez LLC d/b/a Shellpoint Mortgage Servicing as Assignee of Plaintiff.” *See* Affirmation of Robert Ortega (“Ortega Aff.”), dated July 30, 2024, NYSCEF Doc. No. 39. The Ortega Aff., Paragraph 11, provides that the original note was “delivered to Plaintiff’s Document Custodian, Deutsche Bank [which] . . . has maintained possession of the original Note since April 28, 2020.” *Id.* at ¶11. Screenshots of some unknown electronic record(s) of Caliber Home Loans provide that the note remains with *Plaintiff’s* custodian, Deutsche Bank, as per the latest entry dated December 9, 2022. *See* Screenshots, NYSCEF Doc. No. 80. There is no indication that Deutsche Bank is also custodian for Movant. Mr. Ortega then provides in the next paragraph that “[a]fter commencement of this action, the original Note and Mortgage were transferred and **delivered to and the** Mortgage was assigned to NewRez.” Ortega Aff. at ¶12 (Emphasis added). These two paragraphs contradict one another. As noted above, assignment of the mortgage only, without an accompanying assignment of the note,

⁴ Though the affirmation is styled as an affidavit, the document submitted is an affirmation.

is a nullity. Mr. Ortega's contention that the subject note was transferred to NewRez from Plaintiff is unsupported by any documentary evidence. Finally, Mr. Ortega does not allege that he has personal knowledge of the transfer, merely claiming knowledge based upon a review of business records.

“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 asserted. 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 N.Y. Mellon v. Gordon*, 171 A.D.3d 197, 205-06 (2d Dep't 2019) (Internal quotations and citations omitted).

Here, Mr. Ortega's assertion that the records reviewed demonstrate transfer of the original note is nothing more than inadmissible hearsay. *See Deutsche Bank Trust Co. Ams. v. Miller*, 198 A.D.3d 867, 868 (2d Dep't 2021) (“Moreover, even if Lee's affidavit set forth a proper foundation for the admissibility of the unspecified records he relied on (*see Deutsche Bank Natl. Trust Co. v Ezeji*, 194 AD3d 909, 911 [2021]), 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’ (*U.S. Bank N.A. v Pickering-Robinson*, 197 AD3d 757, 153 NYS3d 179, 2021 NY Slip Op 04775, *3 [2d Dept 2021]). It is the business record itself, not the foundational affidavit, that serves as proof of the matter asserted”). Lastly, the Limited Power of Attorney attached to Movant's papers is limited by “certain loan servicing agreements” not attached to Movant's papers, to establish its

authority even as attorney-in-fact for Plaintiff. *See* Limited Power of Attorney, NYSCEF Doc. No. 80 at 4.

Therefore, Movant NewRez fails to establish that it had standing to make this motion, maintain this action on behalf of Plaintiff, or be substituted as Plaintiff. *See e.g. Citicorp Mtge. v. Adams*, 153 A.D.3d 779, 780 (2d Dep't 2017) (“Here, the plaintiff failed to demonstrate that it transferred its interest in the action to FNMA and, therefore, the Supreme Court improvidently exercised its discretion in granting the plaintiff's motion pursuant to CPLR 1018”); *U.S. Bank N.A. v. Medina*, 230 A.D.3d 1371, 1376 (2d Dep't 2024) (“U.S. Bank also failed to establish that the caption should be amended to substitute U.S. Bank as the plaintiff. Leave to amend a caption to substitute an assignee for the plaintiff may properly be granted upon evidence that the mortgage and underlying debt were assigned to the assignee”); *Citimortgage, Inc. v. Bredehorn*, 160 A.D.3d 803 (2d Dep't 2018). As such, Movant NewRez has not demonstrated its entitlement to participate in this action.

II. MOVANT HAS FAILED TO DEMONSTRATE 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).

Movant NewRez fails to establish compliance with RPAPL 1304 as Mr. Ortega provides in a conclusory manner that the RPAPL 1304 notices were allegedly sent by Plaintiff to Defendants Seant-Bertrand and Defendant Bertrand on January 26, 2022. He does not claim personal knowledge of same. *See Ortega Aff.* at ¶15. No proof of mailing is annexed for the certified and first-class mailings, nor does Mr. Ortega 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. Therefore, NewRez fails to establish compliance with RPAPL 1304. Movant’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”).

CONCLUSION

Accordingly, Movant’s motion is DENIED. To the extent that any relief requested was not addressed by the Court, it is hereby DENIED. This Court extends the time to file a note of issue until April 13, 2026, to provide the parties with an opportunity to exchange discovery. The parties are to complete discovery and proceed to trial. Plaintiff shall serve notice of entry within fifteen (15) days of the upload of the order to NYSCEF upon Defendants, Movant, and all parties who have appeared in this action.

This constitutes the Decision and Order of the Court.

ENTER: 

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