

U.S. Bank Trust N.A. v Love
2026 NY Slip Op 30341(U)
February 4, 2026
Supreme Court, Nassau County
Docket Number: Index No. 602606/2024
Judge: Carolyn Mazzu Genovesi
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SUPREME COURT OF THE STATE OF NEW YORK
NASSAU COUNTY

PRESENT: HON. CAROLYN MAZZU GENOVESI PART 35

Acting Justice

INDEX NO. 602606/2024

U.S. BANK TRUST NATIONAL ASSOCIATION, AS
TRUSTEE OF DWELLING SERIES IV TRUST,

Plaintiff,

MOTION SEQ. NO. 001

- v -

AUBREY LOVE, ANDREA GORDON, SUFFOLK PLASTIC
SURGEONS PC, NEW YORK STATE DEPARTMENT OF
TAXATION AND FINANCE, JOHN DOE AND JANE DOE,

DECISION + ORDER ON
MOTION

Defendants.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 41, 42, 43, 44, 45, 46, 47, 48,
49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 67, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81

were read on this motion to/for ORDER OF REFERENCE/REFERENCE TO COMPUTE.

Plaintiff's motion (MS # 1) for summary judgment and to appoint a Referee, inter alia, is
GRANTED. "[P]laintiff establishe[d] its prima facie case through the production of the mortgage,
the unpaid note, and evidence of default." U.S. Bank, N.A. v. Zientek, 192 A.D.3d 1189, 1190 (2d
Dep't 2021) quoting Deutsche Bank Natl. Trust Co. v. Bowens, 181 A.D.3d 871, 873 (2d Dep't
2020). Additionally, plaintiff demonstrated its standing "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." Wells Fargo Bank, N.A. v. Mitselmakher, 216
A.D.3d 1056, 1057, (2d Dep't 2023) quoting US Bank Trust, N.A. v. Loring, 193 A.D.3d 1101,
1103 (2d Dep't 2021). Moreover, plaintiff submitted affidavits of service from a process server,
indicating proper service of the summons and complaint upon all required defendants.
Additionally, plaintiff proffered all relevant loan modification.

Defendants claims that the mortgage is unenforceable under Tax Law 258, because plaintiff failed to record a loan modification. Assuming that plaintiff failed to record and pay taxes on the loan modification, that failure is not a defense to mortgage foreclosure action. "Since Section 258 of the Tax Law does not create the obligation to record a mortgage, the failure to record the mortgage and pay the tax does not render the mortgage and note unenforceable." *Commonwealth Land Title Ins. Co. v. Lituchy*, 161 A.D.2d 517, 518 (1st Dep't 1990).

Defendant also contends that plaintiff failed to establish its standing, as defendant claims the initial assignment of mortgage was executed by Mortgage Electronic Registration Systems, Inc. ("MERS"), while there is no proof that MERS had the authority to execute the assignment. However, MERS' only involvement was its role in recording the mortgage as nominee of the original lender, IndyMac Bank, F.S.B. The original mortgage and note list IndyMac Bank, F.S.B., as the initial lender. In *MERSCORP, Inc. v. Romaine*, 8 N.Y.3d 90 (2006), the Court of Appeals upheld the practice of MERS recording mortgages in its capacity as the lender's nominee. Accordingly, defendant's contention that MERS' connection to the mortgage obviates plaintiff's standing is without merit.

The Proposed Order annexed to the moving papers shall be forwarded to the Foreclosure Department of this Court, and should it be consistent with the terms of this and prior Orders, it shall be executed upon completion of such review.

This constitutes the Decision and Order of the Court.

ENTER

Date: 2/4/26


Hon. Carolyn Maizu Genovesi

ENTERED

Feb 11 2026

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NASSAU COUNTY
COUNTY CLERK'S OFFICE