

Citimortgage, Inc. v Maccioni

2026 NY Slip Op 30438(U)

January 23, 2026

Supreme Court, New York County

Docket Number: Index No. 850023/2020

Judge: Francis A. Kahn III

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. FRANCIS A. KAHN, III PART 32

Justice

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INDEX NO. 850023/2020

CITIMORTGAGE, INC.,

MOTION DATE

Plaintiff,

MOTION SEQ. NO. 001

- v -

MAURO MACCIONI, BOARD OF MANAGERS OF 444 EAST 57TH STREET CONDOMINIUM, NEW YORK CITY DEPARTMENT OF FINANCE-PARKING VIOLATIONS BUREAU PAYMENT AND ADJUDICATION CENTER, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, EGIDIANA MACCIONI, JOHN DOE,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81

ORDER OF REFERENCE/REFERENCE TO COMPUTE

were read on this motion to/for

Upon the foregoing documents, the motion is determined as follows:

The within action is to foreclose on a mortgage encumbering a parcel of residential real property located at 444 East 57th Street, New York, New York. The mortgage, dated April 21, 2014, was given by Defendant Mauro Maccioni ("Maccioni") to non-party Citibank, NA. The mortgage secures an indebtedness with an original principal amount of \$1,364,500.00 memorialized by a consolidated note the same date as the mortgage. Executed with the note and mortgage was a consolidation, extension and modification agreement ("CEMA") that grouped existing prior mortgages on the premises. Plaintiff commenced this action alleging Maccioni defaulted in making payments under the note. Maccioni answered and pled thirty-five affirmative defenses, including standing, and one counterclaim. Now, Plaintiff moves for summary judgment against Maccioni, striking the answer and affirmative defenses, a default judgment against all non-appearing parties, to appoint a Referee to compute, and to amend the caption. Maccioni opposes the motion and cross-moves to dismiss pursuant to CPLR §3211 based upon an alleged to comply with RPAPL §1304.

In moving for summary judgment, Plaintiff was required to establish prima facie entitlement to judgment as a matter of law though proof of the mortgage, the note, and evidence of Defendants' default in repayment (see U.S. Bank, N.A. v James, 180 AD3d 594 [1st Dept 2020]; Bank of NY v Knowles, 151 AD3d 596 [1st Dept 2017]; Fortress Credit Corp. v Hudson Yards, LLC, 78 AD3d 577 [1st Dept 2010]). Also, based upon Defendants' affirmative defenses, Plaintiff was also required to demonstrate it had standing when this action was commenced (see eg Wells Fargo Bank, N.A. v Tricario, 180 AD3d 848 [2d Dept 2020]), its strict compliance with RPAPL §§1303, 1304, and 1306 (see U.S. Bank, NA v Nathan, 173 AD3d 1112 [2d Dept 2019]; HSBC Bank USA, N.A. v Bermudez, 175 AD3d 667, 669 [2d

Dept 2019)) as well as its substantial compliance with the requisites under paragraph 22 of the mortgage (see *eg Wells Fargo Bank, N.A. v McKenzie*, 186 AD3d 1582, 1584 [2d Dept 2020]).

Proof supporting a *prima facie* case on a motion for summary judgment a cause of action for foreclosure must be in admissible form (see CPLR §3212[b]; *Tri-State Loan Acquisitions III, LLC v Litkowski*, 172 AD3d 780 [1st Dept 2019]). A plaintiff may rely on evidence from persons with personal knowledge of the facts, documents in admissible form and/or persons with knowledge derived from produced admissible records (see *eg U.S. Bank N.A. v Moulton*, 179 AD3d 734, 738 [2d Dept 2020]). No precise set of business records must be proffered, so long as the admissibility requirements of CPLR 4518[a] are fulfilled and the records evince the facts for which they are relied upon (see *eg Citigroup v Kopelowitz*, 147 AD3d 1014, 1015 [2d Dept 2017]).

Here, Plaintiff offers the affidavit of Alex Crossman (“Crossman”), Vice President of Document Execution of Cenlar FSB (“Cenlar”), Plaintiff’s alleged loan servicer. Crossman avers that the affidavit is based on his personal knowledge of the business records that are kept by Cenlar in the regular course of business, as well as his personal knowledge of the procedures of Cenlar. Crossman demonstrated his qualification to provide a foundation for admission of business records under CPLR 4518 (see *Wells Fargo Bank, N.A. v Jones*, 139 AD3d 520, 521 [1st Dept 2016]; *Bank of N.Y. Mellon v. Gordon*, 171 AD3d 197 [2d Dept 2019]). This affidavit and supporting documents established the mortgage, note, evidence of mortgagor’s default as well as its standing and was sufficiently supported by appropriate documentary evidence (see *eg Bank of NY v. Knowles, supra; Fortress Credit Corp. v. Hudson Yards, LLC, supra*).

Plaintiff’s motion was supported by an affirmation from Alex Crossman (“Crossman”), Vice President of Document Execution of Cenlar FSB (“Cenlar”), Plaintiff’s alleged loan servicer. Crossman avers that the affidavit is based on his personal knowledge of the business records that are kept by Cenlar in the regular course of business, as well as his personal knowledge of the procedures of Cenlar. Crossman’s affidavit laid a proper foundation for the admission of Plaintiff’s records into evidence under CPLR §4518 by sufficiently showing that the records “reflect[ed] a routine, regularly conducted business activity, and that it be needed and relied on in the performance of functions of the business”, “that the record[s][were] made pursuant to established procedures for the routine, habitual, systematic making of such a record” and “that the record[s] [were] made at or about the time of the event being recorded” (*Bank of N.Y. Mellon v Gordon*, 171 AD3d 197, 204 [2d Dept 2019]; see also *Bank of Am v Brannon*, 156 AD3d 1 [1st Dept 2017]). The records referenced by Crossman were annexed to the moving papers (*cf. Deutsche Bank Natl. Trust Co. v Kirschenbaum*, 187 AD3d 569 [1st Dept 2020]). The subservicing agreement submitted demonstrated Cenlar’s authority to act for Plaintiff (see *Deutsche Bank Natl. Trust Co. v Silverman*, 178 AD3d 898 [2d Dept 2019]; *Deutsche Bank Natl. Trust Co. v Rudman*, 170 AD3d 950 [2d Dept 2019]). Crossman’s review of the attached records demonstrated the material facts underlying the claim for foreclosure, to wit the mortgage, note, and evidence of mortgagor’s default in repayment under the note (see *eg ING Real Estate Fin. (USA) LLC v Park Ave. Hotel Acquisition, LLC*, 89 AD3d 506 [1st Dept 2011]; see also *Bank of NY v Knowles, supra; Fortress Credit Corp. v Hudson Yards, LLC, supra*).

As to standing in a foreclosure action, it is established in one of three ways: [1] direct privity between mortgagor and mortgagee, [2] physical possession of the note prior to commencement of the action that contains an indorsement in blank or bears a special indorsement payable to the order of the plaintiff either on its face or by allonge, and [3] assignment of the note to Plaintiff prior to commencement of the action (see *eg Wells Fargo Bank, N.A. v Tricario, supra; Wells Fargo Bank, NA v*

Ostiguy, 127 AD3d 1375 [3d Dept 2015]). “The attachment of a properly endorsed note to the complaint may be sufficient to establish, prima facie, that the plaintiff is the holder of the note at the time of commencement” (*Deutsche Bank Natl. Trust Co. v Webster*, 142 AD3d 636, 638 [2d Dept 2016]; cf. *JPMorgan Chase Bank, N.A. v Grennan*, supra). In this case, Plaintiff annexed a copy of the note, endorsed in blank on its face, to the complaint which is sufficient to demonstrate that Plaintiff was the holder of the note when the action was commenced (see *Ocwen Loan Servicing LLC v Siame*, 185 AD3d 408 [1st Dept 2020]; *Bank of NY v Knowles*, supra at 597).

Plaintiff was also required to proffer “sufficient evidence demonstrating the absence of material issues as to its strict compliance with RPAPL 1304” (*Aurora Loan Servs., LLC v Weisblum*, 85 AD3d 95, 106 [2d Dept 2011]). While RPAPL §1304 does not specify the proof necessary to demonstrate compliance therewith, the Court of Appeals “has long recognized a party can establish that a notice or other document was sent through evidence of actual mailing . . . or . . . by proof of a sender's routine business practice with respect to the creation, addressing, and mailing of documents of that nature” (*Cit Bank N.A. v Schiffman*, 36 NY3d 550, 556 [2020][internal citations omitted]). “In other words, there are two methods by which a plaintiff can demonstrate the requisite mailings” (*U.S. Bank N.A. v Romano*, 231 AD3d 1079, 1080 [2d Dept 2024]). Proof of actual mailing may be shown with a contemporaneous affidavit of mailing or other admissible evidence, including loan service documentation or postal records which evidence the required mailings (see eg *U.S. Bank N.A. v Romano*, supra at 1083; *US Bank v Zientek*, 192 AD3d 1189, 1191 [2d Dept 2021]). Alternatively, a plaintiff may proffer evidence of a satisfactory office practice can raise a rebuttable presumption that the required notice was sent and received by the addressee (*Cit Bank N.A. v Schiffman*, supra).

Here, Crossman’s affidavit and documentation, like the “letter log” sufficiently demonstrated that actual mailing of a 90-day notice occurred (see *Homebridge Fin. Servs., Inc. v Mauras*, 201 AD3d 890, 891-892 [2d Dept 2022]; *U.S. Bank N.A. v Pickering-Robinson*, 197 AD3d 757, 760 [2d Dept 2021]). Similarly, Crossman explained Cenlar’s office practice regarding the mailing of a RPAPL §1304 notice in adequate detail as to raise the presumption of proper mailing of same in this case (see eg *Citimortgage, Inc. v Ustick*, 188 AD3d 793, 794 [2d Dept 2020]).

As to the substance of the RPAPL §1304 notice, Plaintiff failed to eliminate triable issues of fact as to whether it was defective on its face. To be compliant with RPAPL §1304, the notice served must “contain all of the mandatory language and information set forth in the version of RPAPL §1304(1) at the time plaintiff commenced this action” (*HSBC Bank USA, N.A. v Ji Youn Min*, 237 AD3d 564 [1st Dept 2025]). “Where an RPAPL 1304 notice fails to reflect information mandated by the statute, including but not limited to the duration and an amount of the default, the statute will not have been strictly complied with and the notice will not be valid” (*Emigrant Bank v Cohen*, 205 AD3d 103, 111 [2d Dept 2022]). In this case, Plaintiff pled in the complaint, and stated in all its pre-foreclosure notices, that the default occurred on July 1, 2019. However, the 90-day notice sent by Plaintiff, dated April 10, 2019, stated that the duration of Maccioni’s default was 68 days, suggesting a default date of February 1, 2019. This disparity raises an issue of fact as to the sufficiency of the content of the RPAPL §1304 notice (see *Green Tree Servicing, LLC v Helmsorig*, 227 AD3d 1053 [2d Dept 2024]; *U.S. Bank N.A. v Cox*, 203 AD3d 1206, 1209-1210 [2d Dept 2022]).

As to the contractual pre-foreclosure notice, paragraph 22 of the mortgage, a ubiquitous provision in residential mortgages, provides that prior to acceleration of the note, the lender must send a notice containing the information specified in paragraph 22[b][1] – [6] in the manner described in paragraph 15 of the mortgage. That section provides that all notices must be in writing and “is

considered given to [Mortgagor] when mailed by first class mail or when actually delivered to my notice address if sent by other means” and states “[t]he notice address is the address of the Property unless I give notice to Lender of a different address”. On the mailing of this notice, Crossman’s affidavit was insufficiently corroborated. Unlike the RPAPL §1304 notices, no “letter log” referencing the default notices was provided. To the extent Plaintiff attempted to correct this error in reply, it is insufficient (*see Urban Equity Partners, LLC v Aribisala*, 143 AD3d 887 [2d Dept 2016]).

Accordingly, Plaintiff failed to establish *prima facie* the mailing of a contractual pre-foreclosure notice occurred and neglected to eliminate issues of fact concerning the sufficiency of the contents of the RPAPL §1304 notice sent.

As to the branch of the motion to dismiss Maccioni’s affirmative defenses, CPLR 3211[b] provides that “[a] party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit”. For example, affirmative defenses that are without factual foundation, conclusory or duplicative cannot stand (*see Countrywide Home Loans Servicing, L.P. v Vorobyov*, 188 AD3d 803, 805 [2d Dept 2020]; *Emigrant Bank v Myers*, 147 AD3d 1027, 1028 [2d Dept 2017]). When evaluating such a motion, a “defendant is entitled to the benefit of every reasonable intendment of its pleading, which is to be liberally constructed. If there is any doubt as to the availability of a defense, it should not be dismissed” (*Federici v Metropolis Night Club, Inc.*, 48 AD3d 741, 743 [2d Dept 2008]). Further, to the extent that legal arguments are not proffered in support of any affirmative defense, those defenses are abandoned (*see U.S. Bank N.A. v Gonzalez*, 172 AD3d 1273, 1275 [2d Dept 2010]; *Flagstar Bank v Bellafore*, 94 AD3d 1044 [2d Dept 2012]; *Wells Fargo Bank Minnesota, N.A. v Perez*, 41 AD3d 590 [2d Dept 2007]). In this case, Maccioni pled thirty-five affirmative defenses and one counterclaim. In opposition to the motion, Maccioni proffered arguments only in support of the fourth and thirty-second affirmative defenses. All the other affirmative defenses and the counterclaim were abandoned.

The branch of Plaintiff’s motion for a default judgment against the non-appearing parties is granted without opposition (*see CPLR 3215; SRMOF II 2012-I Trust v. Tella*, 139 AD3d 599, 600 [1st Dept 2016]).

The branch of Plaintiff’s motion to amend the caption is granted without opposition (*see generally CPLR 3025; JP Morgan Chase Bank, N.A. v Laszio*, 169 AD3d 885, 887 [2d Dept 2019]).

Concerning the cross-motion, “[e]ven in the face of a plaintiff’s failure to establish, *prima facie*, that a notice was properly mailed on a motion for summary judgment on the complaint, ... a defendant still has to meet its burden, on a cross motion for summary judgment dismissing the complaint, of establishing that the condition precedent was not fulfilled” (*Citibank, N.A. v Conti-Scheurer*, 172 AD3d 17 [2d Dept 2019]). In support of the cross-motion, Maccioni failed to demonstrate, as a matter of law, that the notices were facially deficient (*see U.S. Bank N.A. v Cambardella*, 214 AD3d 925 [2d Dept 2023]), or that either was not appropriately served (*see Wells Fargo Bank NA v Tricario*, *supra*).

Accordingly, it is

ORDERED that the branches of Plaintiff’s motion for summary judgment on its causes of action for foreclosure and the appointment of a referee are denied, and it is

ORDERED that the branch of the motion for a default judgment against the non-appearing parties is granted, and it is

ORDERED that the caption of this action is amended to read as follows:

SUPREME COURT STATE OF NEW YORK
COUNTY OF NEW YORK

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CITIMORTGAGE, INC.

Plaintiff,

-against-

MAURO MACCIONI; BOARD OF MANAGERS
OF 444 EAST 57TH STREET CONDOMINIUM;
NEW YORK CITY DEPARTMENT OF FINANCE-
PARKING VIOLATIONS BUREAU PAYMENT
AND ADJUDICATION CENTER; NEW YORK
STATE DEPARTMENT OF TAXATION AND
FINANCE; EGIDIANA MACCIONI, MS. MACCIONI
(FIRST NAME REFUSED), AND STELLA MACCIONI,

Defendants,

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and it is further

ORDERED that Defendant April Maccioni's cross-motion is for summary judgment is denied, and it is

ORDERED that this matter is scheduled for a status conference on **April 2, 2026 @ 11:20am** via Microsoft Teams.

1/23/2026

DATE

Francis A. Kahn, III

FRANCIS A. KAHN, III, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE

KAHN III
J.S.C.