Deutsche Bank Natl. Trust Co. v Morgunova
2026 NY Slip Op 30536(U)
January 27, 2026
Supreme Court, Kings County
Docket Number: Index No. 500509/2023
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 27th of January 2026

PRESENT: HON. MENACHEM M. MIROCZNIK
JUSTICE OF THE SUPREME COURT

DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE FOR WAMU 2005- AR2,

Plaintiff,

-against-

JULIA MORGUNOVA A/K/A JULIA L. MORGUNOVA; DIANA ZHELKOVER; OLGA PLETIN; NEW YORK PARKING VIOLATIONS BUREAU; NEW YORK CITY ENVIRONMENTAL CONTROL BOARD; "JOHN DOES" AND "JANE DOES," said names being fictitious, parties intended being possible tenants or occupants of premises, and corporations, other entities or persons who claim, or may claim, a lien against the premises,

Defendant.

Index No. 500509/2023

Decision and Order
(Motion Seq. 3 and 4)

Papers	Numbered
Notice of Motion	NYSCEF Doc. 57-84
Notice of Cross-Motion/Opposition Papers	NYSCEF Doc. 88-107
Opposition to Cross-Motion/Reply Papers	NYSCEF Doc. 108-113
Letter Reply	NYSCEF Doc. 114

Upon the foregoing papers, the motion(s) is/are determined in accordance with this Decision and Order as follows:

Relevant Procedural and Factual History

This action was commenced on January 6, 2023, seeking to foreclose a mortgage (the "mortgage") executed by defendant Diana Zhelkover (the "borrower") which encumbers the property known as 2759 Whitman Drive,, Brooklyn, NY 11234 (the "property"). Prior to commencement of this action the property was transferred to defendant Julia Morgunova A/K/A Julia L. Morgunova (the "defendant")

On February 23, 2010, the borrower received a discharge in bankruptcy.

On March 29, 2017, defendant filed a bankruptcy petition. In connection with the bankruptcy, defendant executed a stipulation of settlement that provided, inter alia, that defendant

acknowledged the mortgage as a first mortgage lien and would execute an assumption agreement whereby defendant would assume the subject mortgage, be personal obligor under the subject note and the loan would thereafter be modified. On December 17, 2018, the bankruptcy approved the stipulation of settlement. It is undisputed that defendant did not consummate the settlement and did not assume the obligations under the note and mortgage.

On February 28, 2023, defendant joined issue with the filing of an answer that asserted numerous affirmative defenses, including lack of standing and non-compliance with RPAPL 1304 and 1306 as well as numerous counterclaims claiming the mortgage is not enforceable and seeking to quiet title.

On February 5, 2024, the Court granted the borrower's motion to dismiss the action as against the borrower as she no longer owns the property and received a discharge in bankruptcy eliminating her personal liability under the note.

On April 11, 2024, the Court granted plaintiff's motion to serve defendant Olga Pletin by publication and to appoint a guardian ad litem.

On February 7, 2025, plaintiff filed the instant motion for summary judgment, to strike defendant's answer, affirmative defenses and counterclaims, to amend the caption and for a default judgment against the non-answering defendants. The motion is supported by the affirmation of Sherry Benight ("Ms. Benight" or Benight Affidavit") a purported "Document Control Officer" of Select Portfolio Servicing, Inc. ("SPS") the alleged servicer and attorney in fact for plaintiff and the affidavit of Sherry Stafford ("Ms. Stafford" or "Stafford Affidavit") a purported Vice President of JPMorgan Chase Bank, N.A. ("Chase") and JPMorgan Chase Custody Services, Inc. ("JPMCCSI"), plaintiff's document custodian. Plaintiff argues it has established prima facie entitlement to summary judgment by producing the note, mortgage, and proof of default and defendant's answer fails to raise an issue of fact.

Defendant cross-moves for summary judgment seeking dismissal of the action and judgment quieting title pursuant to RPAPL 1501[4]. Defendant argues that plaintiff's motion must be denied and the complaint dismissed because plaintiff failed to establish through admissible evidence, standing, default, or compliance with RPAPL 1304 and that the servicer and custodian affidavits are conclusory, lack personal knowledge, and fail to lay a proper CPLR 4518 foundation. Defendant further contends that plaintiff lacks standing, that custodial possession by JPMorgan Chase does not establish plaintiff's holder status at commencement, that the original borrower's bankruptcy discharge and the absence of a valid assumption agreement bar enforcement against the owner, and that plaintiff failed to demonstrate compliance with RPAPL 1304, RESPA and TILA warranting dismissal and extinguishment of the mortgage as unenforceable due to bankruptcy discharge and as being barred by the statute of limitations and res judicata. Defendant further asserts other non-sensical arguments.

In opposition to the cross-motion and in further support of the motion, plaintiff argues that defendant's cross-motion should be denied or stricken because defendant cites fabricated or fictitious case citations amounting to frivolous conduct. Plaintiff argues it established standing by annexing a copy of the note endorsed in blank to the complaint and in any case established same through the Stafford Affidavit and annexed custodial records and that both affidavits lay sufficient foundation and the records are admissible under CPLR 4518. Plaintiff further argues that defendant

waived any purported defense of collateral estoppel, statute of limitations, or res judicata by failing to raise them in the Answer and that defendant, as a non-borrower lacks standing to assert RPAPL § 1304 and other borrower defenses, did not file a claim for a discharge of the mortgage under RPAPL 1501[4] and, abandoned the remaining affirmative defenses and counterclaims, leaving no triable issues of fact and entitling plaintiff to summary judgment.

Lastly, defense counsel submitted a letter apologizing for filing papers containing fabricated case citations generated by artificial intelligence, acknowledging the error as a serious lapse in diligence and candor and accepting full responsibility. Counsel assures the Court that additional review procedures have been implemented to prevent recurrence. Counsel also notes significant personal hardships at the time of filing but offers them only as context, not justification, and expresses sincere regret for any inconvenience caused. Notably, defense counsel did not withdraw the cross-motion or seek to correct the briefing.

Discussion

"Summary judgment is a "drastic remedy" that should be granted only where the moving party has tender[ed] sufficient evidence to demonstrate the absence of any material issue of fact…Even then, summary judgment should be granted only if, upon the moving party's meeting this burden, the non-moving party fails to establish the existence of material issues of fact which require a trial of the action…Issue finding, not issue deciding, is the court's purpose at the summary judgment stage…Thus, [w]here the court entertains any doubt as to whether a triable issue of fact exists, summary judgment should be denied…When ruling on a motion for summary judgment, the deciding court must view the facts "in the light most favorable to the non-moving party" *U.S. Bank N.A. v DLJ Mtge. Capital, Inc.*, 38 NY3d 169 [2022][internal citations and quotation marks omitted]

"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 Genuth*, 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]

"Where, 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 AD3d 734, 736 [2d Dept 2020]; See also *Deutsche Bank Nat. Tr. Co. v Brewton*, 142 AD3d 683, 684 [2d Dept 2016]["Where, as here, standing is put into issue by a defendant, the plaintiff must prove its standing in order to be entitled to relief"]

"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 Tr., N.A. v Loring*, 193 AD3d 1101 [2d Dept 2021][internal citations omitted]

In general, a plaintiff can establish prima facie that it had standing to commence the action by annexing a copy of the subject note, endorsed in blank, to the complaint. *U.S. Bank N.A. v Auguste*, 173 AD3d 930 [2d Dept 2019]; *Bank of New York Mellon v Swift*, 213 AD3d 624 [2d Dept 2023]; *Selene Fin., L.P. v Coleman*, 187 AD3d 1082 [2d Dept 2020]; *U.S. Bank N.A. v Rozo-Castellanos*, 201 AD3d 995 [2d Dept 2022]

Here, plaintiff established prima facie it had standing by annexing a copy of the note endorsed in blank to the complaint.

Moreover, plaintiff established prima facie entitlement to summary judgment.

"There is no requirement that a plaintiff in a foreclosure action rely on any particular set of business records to establish a prima facie case, so long as the plaintiff satisfies the admissibility requirements of CPLR 4518(a), and the records themselves actually evince the facts for which they are relied upon." *Citigroup v Kopelowitz*, 147 AD3d 1014 [2d Dept 2017]

"[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 AD3d 1299 [2d Dept 2025][internal citations and quotation marks omitted]

"Accordingly, to establish a foundation for the admission of a business record, the proponent of the record must satisfy the requirements identified in the statute (*see* CPLR 4518[a]). ***First***, the proponent must establish that the record be made in the regular course of business—essentially, that it reflect a routine, regularly conducted business activity, and that it be needed and relied on in the performance of functions of the business.... ***Second***, the proponent must also demonstrate that it be the regular course of such business to make the record ... essentially, that the record be made pursuant to established procedures for the routine, habitual, systematic making of such a record…***Third,*** the proponent must establish that the record be made at or about the time of the event being recorded—essentially, that recollection be fairly accurate and the habit or routine of making the entries assured." *Bank of New York Mellon v Gordon*, 171 AD3d 197 [2d Dept 2019][internal citations and quotation marks omitted and emphasis added]

Here, plaintiff's affiants provided sufficient foundation as required by CPLR 4518. Therefore, plaintiff established prima facie entitlement to judgment as a matter of law with the production of the note, mortgage and evidence of the borrowers default.

Defendant failed to raise an issue of fact.

First, defendant is not the borrower or obligor under the subject note and mortgage and expressly disclaims any personal liability under the subject loan documents. Therefore, defendant may not assert borrower defenses including non-compliance with RPAPL 1304. See *HSBC Bank USA, N.A. v Tigani*, 185 AD3d 796 [2d Dept 2020].

Second, defendant waived any defense predicated on the statute of limitations or res judicata by failing to assert same as an affirmative defense in her answer and relief pursuant to

RPAPL 1501[4] may not be asserted by motion and must be asserted as counterclaim. See *Wilmington Sav. Fund Socy., FSB v Mendez*, 240 AD3d 938 [2d Dept 2025]["CPLR 3018(b) requires a party to plead certain affirmative defenses, including fraud and the statute of limitations. The failure to plead such a defense or to raise it in a timely motion pursuant to CPLR 3211(a) generally results in a waiver.... Here, the defendant did not raise the statute of limitations...in a timely motion pursuant to CPLR 3211(a) or in her answer and, thus, waived those defenses"][internal citations omitted]; *Paterno v Carroll*, 75 AD3d 625 [2d Dept 2010][res judicata was waived because he failed to assert it in his answer or in a motion made before service of the answer was required"] *U.S. Bank N.A. v O'Rourke*, 209 AD3d 699 [2d Dept 2022]["relief pursuant to RPAPL 1501 (4) must be sought in an action or counterclaim and not by motion"]

Defendant's argument that the borrower's discharge or her own bankruptcy filing impacts the enforceability of the mortgage is meritless. Defendant expressly affirmed the validity of the mortgage in the bankruptcy stipulation and in any case, a discharge in bankruptcy does not impact the validity or enforceability of the mortgage. See *Deutsche Bank Trust Co. Ams. v Vitellas*, 131 AD3d 52 [2d Dept 2015]["even after the debtor's personal obligations have been extinguished, the mortgage holder still retains a 'right to payment' in the form of its right to the proceeds from the sale of the debtor's property"]; *Citimortgage, Inc. v Chouen*, 154 AD3d 914, 915 [2d Dept 2017]["Contrary to the defendant's contention, the plaintiff's security interest in the subject property survived the defendant's discharge in bankruptcy. "Although a bankruptcy discharge extinguishes one mode of enforcing a note—namely, an action against the debtor in personam, it leaves intact another—namely, an action against the debtor in rem"]

Lastly, the Court is deeply troubled by Defendant's submission of motion papers containing fabricated judicial decisions and quotations, which constitutes a serious breach of counsel's duty of candor and undermines the integrity of the judicial process. The submission of fictitious authorities—whether intentional or the result of inadequate supervision—cannot be excused as mere negligence, as it imposes an improper burden on the Court and opposing counsel and threatens the orderly administration of justice.

Moreover, despite being aware, accepting responsibility and apologizing for such misconduct, defense counsel did not attempt to withdraw the motion or specifically correct the record, which necessitated the Court's review of defendant's admittedly frivolous papers.

Rules of Professional Conduct Rule 3.3[a] provides that a "lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; (2) fail to disclose to the tribunal controlling legal authority known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel."

Defense counsel's conduct falls squarely within the definition of frivolous conduct under 22 NYCRR § 130-1.1(c). See *Deutsche Bank Natl. Tr. Co. v LeTennier*, 2026 NY Slip Op 00040, 2 [3d Dept Jan. 8, 2026]

"In New York, courts have discretion to award costs or impose financial sanctions against an attorney or party for engaging in frivolous conduct...In determining whether the conduct undertaken was frivolous, the court shall consider, among other issues the circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct, and whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party...Sanctions may be appropriate for frivolous and meritless [conduct]...and are a common consequence for misuses of judicial process which unnecessarily divert "the time and attention of . . . [the] Judges of this State" *Deutsche Bank Natl. Tr. Co. v LeTennier*, 2026 NY Slip Op 00040, 4-5 [3d Dept Jan. 8, 2026]

"It is axiomatic that submission of fabricated legal authorities is completely without merit in law and therefore constitutes frivolous conduct...It cannot be said that fabricated legal authorities constitute "existing law" so as to provide a nonfrivolous ground for extending, modifying or reversing existing law...Defense counsel acknowledged...that the papers were his own, and, nevertheless, "[b]y signing a paper, an attorney or party certifies that, to the best of that person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances . . . the presentation of the paper or the contentions therein are not frivolous". *Id.*

"Sanctions are retributive, in that they punish past conduct. They also are goal oriented, in that they are useful in deterring future frivolous conduct not only by the particular parties, but also by the Bar at large. The goals include preventing the waste of judicial resources, and deterring vexatious litigation and dilatory or malicious litigation tactics." *Levy v Carol Mgt. Corp.*, 260 AD2d 27, 34 [1st Dept 1999]; See also *Matter of Gordon v Marrone*, 202 AD2d 104 [2d Dept 1994]["Enforcement of the sanctions rule is essential to deter conduct that wastes judicial resources and inhibits the proper administration of the court system."]

The parties' remaining contentions need not be reached in light of the Court's determinations.

Accordingly, it is hereby

ORDERED, that plaintiff's motion (Seq. 3) is GRANTED and plaintiff shall settle an order on notice within thirty (30) days of entry of this order; and it is further

ORDERED, that defendant's cross-motion (Seq. 4) is DENIED; and it is further

ORDERED, that Attorney Julio E Portilla shall, within 14 days of entry of this order (1) show cause why this Court should not impose sanctions and penalties for frivolous conduct within the meaning of 22 NYCRR §130-1.1 (2) advise of the amount of compensation received for his representation of defendant in this matter (3) provide a list of all the fabricated cases and/or holdings misrepresented to the Court, with an explanation of how each such misrepresented holdings or cases were misrepresented and the correct principal of law and (4) provide written confirmation that such conduct has not occurred in other matters before the Court, and if such conduct has occurred, whether and to what extent remedial action has taken place; and it is further

ORDERED, that the failure to strictly and timely comply with the aforementioned order, may result in the imposition of further sanctions and penalities

This constitute the decision and order of the Court.

ENTER:

Hon. Menachem M. Mirocznik J.S.C.