

U.S. Bank Trust N.A. v Gittens
2026 NY Slip Op 30543(U)
January 21, 2026
Supreme Court, Kings County
Docket Number: Index No. 527757/2023
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 21st of January 2026

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

U.S. BANK TRUST NATIONAL ASSOCIATION,
NOT IN ITS INDIVIDUAL CAPACITY, BUT
SOLELY AS TRUSTEE OF LSRMF MH MASTER
PARTICIPATION TRUST II,

Plaintiff,

-against-

CAMILLE GITTENS; SUSTAINABLE
NEIGHBORHOODS; NEW YORK STATE
DEPARTMENT OF TAXATION AND FINANCE;
LAZARO CHAPOTIN-CASTRO; JULES LINGO;
JOHN DOE (REFUSED NAME),

Defendants.

Index No. 527757/2023

Decision and Order
(Motion Seq. 2 and 3)

Papers	Numbered
Notice of Motion	NYSCEF Doc. 81-97
Notice of Cross-Motion/Opposition	NYSCEF Doc. 103-110
Opposition to Cross-Motion/Reply	NYSCEF Doc. 111

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

Relevant Procedural History

This action was commenced on September 25, 2023, seeking to foreclose a mortgage (the "mortgage") executed by defendant Camille Gittens (the "defendant") encumbering the property known as 1322 Herkimer Street, Brooklyn, NY 11233 (the "property").

On April 1, 2024, defendant joined issue with the filing of an answer which asserted various affirmative defenses including that plaintiff lacks standing.

On April 3, 2024, Brooklyn Legal Services filed a limited notice of appearance for defendant limited to appearing for settlement conferences.

Settlement conferences were held on January 23, 2024, February 13, 2024, February 20, 2024, April 4, 2024, May 8, 2024 and June 12, 2024, after which the matter was released from the

settlement part with no settlement having been reached.

On August 7, 2024, plaintiff moved for summary judgment, to strike defendant's answer, for a default judgment against the non-appearing parties and to appoint a referee to compute. Defendant defaulted in opposing the motion.

On November 20, 2024, the Court granted plaintiff's unopposed motion, struck defendant's answer and issued an order of reference.

Plaintiff now moves to confirm the referees report and for a judgment of foreclosure and sale. Plaintiff contends the referee's report should be confirmed in as much as the report is substantially supported by the record and plaintiff otherwise demonstrated entitlement to the issuance of a judgment of foreclosure and sale.

Defendant cross-moves vacate her default in opposing the motion for summary judgment contending she has a reasonable excuse due medical issues and a meritorious defense in as much as plaintiff allegedly lacks standing. Defendant requests the motion for judgment of foreclosure and sale be stayed, that the order granting summary judgment and order of reference be vacate and the matter be remitted back to the settlement conference part because her medical issues have abated and she has additional income supporting a modification.

Plaintiff opposes the cross-motion contending that defendant failed to demonstrate a meritorious defense in as much as standing was demonstrated by annexing the subject note, endorsed in blank to the complaint. Plaintiff contends that referral back to the settlement part is inappropriate as defendant attended several conferences while represented by counsel and even she has additional income supporting a modification the same does not warrant the matter being remitted to the settlement conference part and nothing is preventing defendant from submitting a new modification application. Lastly, plaintiff argues that defendant does not challenge the referee's findings with respect the amounts owed or otherwise challenge plaintiff's entitlement to a judgment of foreclosure and sale and therefore, plaintiff's motion should be granted.

Discussion

"In order to vacate a default in opposing a motion pursuant to CPLR 5015(a)(1), the moving party is required to demonstrate a reasonable excuse for his or her default and a potentially meritorious opposition to the motion...A motion to vacate a default is addressed to the sound discretion of the motion court" *Aurora Loan Services, LLC v Ahmed*, 122 AD3d 557 [2d Dept 2014] "In making that discretionary determination, the court should consider relevant factors, such as the extent of the delay, prejudice or lack of prejudice to the opposing party, whether there has been willfulness, and the strong public policy in favor of resolving cases on the merits" *Bank of New York Mellon v Faragalla*, 174 AD3d 677, 678 [2d Dept 2019]

Here, defendant failed to demonstrate entitlement to vacatur of her default in opposing the motion for summary judgment in as much as she failed to demonstrate a potentially meritorious defense to the motion.

"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 it had standing by annexing a copy of the note to the complaint. Therefore, defendant failed to demonstrate a potentially meritorious opposition to the motion.

CPLR 4403 provides in relevant part that “[u]pon the motion of any party or on his own initiative, the judge required to decide the issue may confirm or reject, in whole or in part...the report of a referee to report; may make new findings with or without taking additional testimony; and may order a new trial or hearing.”

“The report of a referee should be confirmed whenever the findings are substantially supported by the record, and the referee has clearly defined the issues and resolved matters of credibility...The referee’s findings and recommendations are advisory only and have no binding effect on the court, which remains the ultimate arbiter of the dispute.” *Citimortgage, Inc. v Kidd*, 148 AD3d 767 [2d Dept 2017][citations omitted]

Here, defendant does not challenge the findings of the referee or plaintiff’s entitlement to a judgment of foreclosure and sale. However, given defendant claims she has sufficient income to support a modification and plaintiff expressly provided that defendant may submit a modification application, defendant shall be afforded time to do so.

Accordingly, it is hereby

ORDERED, that defendant’s cross-motion to vacate her default in opposing the motion for summary judgment is **DENIED** in its entirety; and it is further

ORDERED, that within ten (10) days of entry of this order, plaintiff shall provide defendant with a loss mitigation application and with a list of any additional documents necessary to complete such application; and it is further

ORDERED, that within thirty (30) days of receipt of the loss-mitigation application from plaintiff, defendant shall complete same and provide any documents reasonably requested by plaintiff for the completion of the application; and it is further

ORDERED, that within ten (10) days of defendant’s submission, plaintiff shall provide a determination on defendant’s loss mitigation request; and it is further


ORDERED, to the extent the matter is not resolved, plaintiff shall settle a judgment on notice to defendant after completion of plaintiff's review of defendant's loss-mitigation application supported by an affirmation detailing the results of the review with a detailed explanation supporting the conclusion; and it is further

ORDERED, that parties shall appear for a conference on April 29, 2026 prepared to discuss results and/or progress on settlement discussions; and it is further

ORDERED, that plaintiff's motion to confirm the referees report and for a judgment of foreclosure and sale shall be held in abeyance pending completion of the aforementioned submissions and the status conference.

This constitutes the decision and order of the Court.

ENTER:



Hon. Menachem M. Mirocznik, JSC

FILED

FEB 11 2026

KINGS COUNTY CLERK'S OFFICE