| **Wilmington Trust, N.A. v Newman** |
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| 2026 NY Slip Op 31248(U) |
| March 31, 2026 |
| Supreme Court, Suffolk County |
| Docket Number: Index No. 601145/2015 |
| Judge: Peter R. McGreevy |
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Short Form Order

SUPREME COURT - STATE OF NEW YORK
**I.A.S. PART LXXVI - SUFFOLK COUNTY**

**PRESENT:**
**HON. PETER R. McGREEVY, A.J.S.C.**

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WILMINGTON TRUST, NATIONAL ASSOCIATION NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE OF MFRA TRUST 2015-1,

Plaintiff,

-against-

JIHAN NEWMAN A/K/A JIHAN T. NEWMAN, DURRON J. NEWMAN, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR SUNTRUST MORTGAGE INC., CLERK OF THE SUFFOLK COUNTY TRAFFIC & PARKING VIOLATIONS AGENCY, CLERK OF THE SUFFOLK COUNTY DISTRICT COURT, "JOHN DOE NAME UNKNOWN" and "JANE DOE NAME UNKNOWN,"

Defendants.

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**INDEX NO.: 601145/2015**

**MOTION SEQ. NO.: 007 MG**
**008 MD**

**CASE DISPOSED: Yes ___ No _X_**

**PLAINTIFF'S ATTORNEYS:**
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**DEFENDANTS' ATTORNEYS:**
Ernest E. Ranalli, Esq.
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Upon the e-filed documents numbered 221 through 228, 231 through 255 for an Order pursuant to CPLR §3212 granting plaintiff summary judgment, dismissing defendants' affirmative defenses, granting default judgment versus the non-appearing defendant pursuant to CPLR §3215, appointing a referee to compute the total sums due and owing to plaintiff pursuant to RPAPL §1321, amending the caption, and for an Order pursuant to CPLR § 3212 granting defendant summary judgment, and upon due deliberation and consideration of the foregoing papers, it is hereby

***ORDERED*** that plaintiff's Motion (Sequence No. 007) for summary judgment and defendants' Motion (Sequence No. 008) for summary judgment are consolidated for the purposes of this determination, and as so consolidated, it is hereby

***ORDERED*** that plaintiff's motion is granted in its entirety; and it is further

***ORDERED*** that defendants' cross-motion is denied.

This residential foreclosure matter was instituted by the electronic filing of a Summons

and Complaint on February 5, 2015. On November 10, 2006, the defendant, Jihan Newman, executed and delivered to SunTrust Mortgage, Inc. a Promissory Note in the principal sum of $264,000.00. On November 10, 2006, the defendants, Jihan Newman and Durron J. Newman, executed and delivered a mortgage which secured the premises located at 40 Naples Avenue, Central Islip, New York 11722. The defendants defaulted in repayment of the mortgage loan in 2008. On November 16, 2018, plaintiff's predecessor, PennyMac, filed a motion for summary judgment which was granted by this Court (QUINLAN, J.) on May 29, 2019. Thereafter, plaintiff filed a motion for a judgment of foreclosure and sale which was granted by this Court (QUINLAN, J.) on February 6, 2020. Defendants moved for vacatur of their default in opposing a prior motion which was denied by this Court (ROUSE, J.) on March 10, 2022. On March 11, 2022, defendants presented an Order to Show Cause to the court seeking, *inter alia*, to vacate the default against the defendants with respect to the judgment of foreclosure and sale, and staying the sale of the real property then scheduled for March 14, 2022. The Court (ROUSE, J.) declined to sign the Order to Show Cause and defendants appealed. On December 20, 2023, the Appellate Division, Second Department reversed the decision and order. On February 9, 2024, defendants filed a motion for leave to amend their answer which was granted by this Court (QUINLAN, J.) on March 6, 2024. On March 12, 2024, plaintiff filed a Reply to defendants' Counterclaims. Plaintiff now moves for an Order pursuant to CPLR §3212 granting plaintiff summary judgment, dismissing defendants' affirmative defenses, granting default judgment versus the non-appearing defendant pursuant to CPLR §3215, appointing a referee to compute the total sums due and owing to plaintiff pursuant to RPAPL §1321, and amending the caption. Defendant cross-moves for summary judgment pursuant to CPLR § 3212.

In support of their cross-motion for summary judgment, defendants contend that the subject loan was a home loan as defined by Banking Law §6-1. Defendants further contend that the costs and fees associated with the loan exceed the threshold limits permitted by Banking Law §6-1(g)(2) which renders the home loan a high-cost home loan. Defendants assert that pursuant to Banking Law §6-1, a warning notice in twelve point-type was required on the legend of the mortgage. Defendants assert that the loan was originated in violation of Banking Law §6-1 which warrants dismissal of the case. Defendants also submit that plaintiff failed to properly comply with the requirements contained in RPAPL §1303. Specifically, defendants assert that the heading of the required notice is smaller than twenty point-type and the text is smaller than fourteen point-type. In support of their application, defendants submit affidavits from defendants, Jihan T. Newman and Durron J. Newman, as well as an affidavit from Jessica Boissard, a purported expert witness in font size.

To establish a *prima facie* case in a foreclosure matter, a plaintiff must produce the mortgage, the unpaid note, and evidence of default (*LNV Corporation v. Almberg*, ___NYS3d___, 2026 WL 452261, 2026 NY Slip Op. 00886; *Deutsche Bank National Trust Company v. Kingsbury*, 171 AD3d 871, 95 NYS3d 893 [2d Dept. 2019]). An affidavit showing due execution of loan documents and default in payment establishes a *prima facie* case entitling plaintiff to summary judgment unless defendant submits evidentiary proof sufficient to raise a

triable issue of fact (*Mariani v. Dyer*, 193 AD2d 456, 597 NYS2d 358 [1st Dept. 1993]; *Metro Distrib. Serv., Inc. v. DiLascio*, 176 AD2d 312, 574 NYS2d 755 [2d Dept. 1991]). Once plaintiff has established its *prima facie* case for summary judgment, it is incumbent upon the answering defendants to submit proof sufficient to raise a genuine question of fact rebutting the plaintiff's prima facie showing or in support of the affirmative defenses asserted in his answer or otherwise available to them (*Flagstar Bank v. Bellafiore*, 94 AD3d 1044, 943 NYS2d 551 [2d Dept. 2012]; *Jessabell Realty Corp v. Gonzales*, 117 AD3d 908, 985 NYS2d 897 [2d Dept. 2014]). "[O]ne opposing a motion for summary judgment must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim...mere conclusions, expressions of hope or unsubstantiated allegation or assertions are insufficient" (*Amatulli v. Delhi Construction Corp.*, 77 NY2d 525, 533, 569 NYS2d 337, 341 [1991]). Where the answering defendant has failed to offer any facts to rebut a *prima facie* evidence showing by plaintiff of entitlement to default judgment, plaintiff is entitled to an order of summary judgment (*See Winegrad v. New York Univ. Med. Center*, 64 NY2d 851, 476 NE2d 642, 487 NYS2d 316 [1985]).

"Although successive motions for summary judgment are disfavored, a subsequent summary judgment motion may be properly entertained when it is substantively valid and the granting of the motion will further the ends of justice and eliminate an unnecessary burden on the resources of the courts" (*Aurora Loan Servs., LLC v. Yogev*, 194 AD3d 996, 997, 144 NYS3d 604 [2d Dept. 2021], quoting *Graham v. City of New York*, 136 AD3d 747, 748 [2016]). Here, plaintiff's motion for summary judgment is valid as it is based upon the Borrower's payment default in 2008.

RPAPL §1303(1)(a) provides that the foreclosing party in a mortgage foreclosure action, involving residential real property, shall provide notice to any mortgagor if the action relates to an owner-occupied one-to-four family dwelling (*U.S. Bank, N.A. v. Nelson*, 169 AD3d 110, 93 NYS3d 138 [2d Dept. 2019]). RPAPL § 1303(2) mandates that the notice be in bold, 14-point type and printed on colored paper that is other than the color of the summons and complaint, and that the title of the notice be in bold, 20-point type (*See Eastern Sav. Bank, FSB v. Tromba*, 148 AD3d 675, 48 NYS3d 499 [2d Dept. 2017]). The RPAPL §1303(1) notice requirement that it must be delivered with the Summons and Compliant in a foreclosure action, is a condition precedent to the commencement of the action which is the plaintiff's burden to meet (*See Aurora Loan Services, LLC v. Weisblum*, 85 AD3d 95, 923 NYS2d 609 [2d Dept. 2011]). As cross-moving parties for summary judgment, the defendants are required to affirmatively demonstrate that the pre-condition was not satisfied (*see Deutsche Bank National Trust Company v. Spanos*, 102 AD3d 909, 961 NYYS2d 200 [2d Dept. 2013]). "[A] defendant still has to meet its burden, on a cross-motion for summary judgment dismissing the complaint, of establishing that [a] condition precedent was not fulfilled" (*Federal National Mortgage Association v. Williams-Jones*, 235 AD3d 953, 954-955 [2d Dept. 2025]). Here, plaintiff submitted the affidavits of service, which established, *prima facie*, that the defendants were served with, *inter alia*, the

RPAPL §1303(1)(a) "Help for Homeowners in Foreclosure" Notice at the mortgaged premises on February 25, 2015 at 6:19 p.m., in accordance with CPLR §§ 308(1) and (2). Accordingly, plaintiff has demonstrated that it satisfied RPAPL § 1303(1) (*see U.S. Bank N.A. v. Ahmed*, 174 AD3d 661, 106 NYS3d 78 [2d Dept. 2019]). In contrast, the defendants' bare and unsubstantiated allegations of non-compliance were patently insufficient to rebut the presumption of proper service created by the affidavits of service because they lack the requisite factual specificity and detail (*HSBC Bank USA, N.A. v. Lopez*, 178 AD3d 679, 111 NYS3d 223 [2d Dept. 2019]).

With respect to defendants' claim that the plaintiff's mortgage loan is in violation of Banking Law §6-1, the court finds this to be without merit. "Banking Law §6-1 imposes limitations and prohibits certain 'practices for high-cost home loans' " *(Lewis v. Wells Fargo Bank, N.A.*, 134 AD3d 777, 778, 22 NYS3d 461 [2d Dept. 2015]). Under Banking Law §6-1(g)(ii), "[a] home loan is a 'high cost home loan' if, among other things, the total points and fees charged exceed five percent of the total loan amount' " (*U.S. Bank Trust N.A. v. Watkins*, 220 AD2d 663, 664, 197 NYS3d 543 [2d Dept. 2023]). Then-applicable Banking Law § 6-1(1)(f)(ii) provided that "[p]oints and fees" include, among other charges and items, "[a]ll charges for [certain items]...only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender; otherwise, the charges are not included within the meaning of the phrase 'points and fees.' "
Banking Law §6-1(1)(a) defined "affiliate" as "any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956. The worksheets prepared by SunTrust in connection with the loan origination reflect the "[p]oints and fee" test that SunTrust used to confirm that the loan was not a "high-cost home loan." The $8,394.68 consists of: (1) $595 administrative fee paid to SunTrust, (2) $325 application fee paid to the mortgage broker, (3) $3,630 broker fee, $14.68 courier fee, (4) $2,640 loan origination fee; $395 processing fee, and (5) a $795 settlement fee paid to a third party attorney. These "[p]oints and fees" are the line items that fall within the scope of Banking Law §6-1(1)(f) as effective on the date of the loan origination. The worksheet and itemization illustrate that the "[p]oints and fees" fell far below the threshold for a "high-cost home loan." Accordingly, defendants' Banking Law §6-1 defense is without merit.

In light of the foregoing, plaintiff's motion for summary judgment is granted and defendants' cross-motion for summary judgment is denied. Defendants' remaining contentions are without merit or need not be addressed. The proposed order, as amended, is being executed simultaneously herewith.

Dated: March 31, 2026

HON. PETER R. McGREEVY, A.J.S.C.