

**Citizens Bank, N.A. v Augustus H. Lawrence & Co  
LLC**

2026 NY Slip Op 31317(U)

March 30, 2026

Supreme Court, New York County

Docket Number: Index No. 850371/2024

Judge: Francis A. Kahn III

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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

-----X

INDEX NO. 850371/2024

CITIZENS BANK, N.A., AS SUCCESSOR-BY-MERGER TO INVESTORS BANK,

MOTION DATE

Plaintiff,

MOTION SEQ. NO. 001

- v -

AUGUSTUS H. LAWRENCE & CO LLC, ROBERT KREMER, ALEXANDER HAMILTON TAVERN, CORP., MG ALEXANDER HAMILTON INC., ALEXANDER HAMILTON TAVERN INC., RESEARCH CENTER OF CUNY, COMPUTER SITE A/C & FIRE PROTECTION INC, RONALD HOLMES, NYC DEPARTMENT OF FINANCE, NYS DEPARTMENT OF TAXATION AND FINANCE, NYC ENVIRONMENTAL CONTROL BOARD, LD TELECOM ASSETCO, LLC, DISH WIRELESS LLC, JOHN/MARY DOE #1-50, XYZ, INC. #1-50, ABC, LLC #1-50,

DECISION + ORDER ON MOTION

Defendant.

-----X

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, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120

were read on this motion to/for SUMMARY JUDGMENT

Upon the foregoing documents, the motion and cross-motion are determined as follows:

This is an action to foreclose on a mortgage encumbering a parcel of real property located at 96 Greenwich Street, New York, New York. The mortgage, dated December 29, 2016, was given by Defendant Augustus H. Lawrence & Co. LLC ("Mortgagor") to non-party Investors Bank, which subsequently merged with Plaintiff Citizens Bank ("Plaintiff"), and secures an indebtedness with an original principal amount of \$8,355,000.00, evidenced by a note of the same date as the mortgage. Along with the note and mortgage, the parties executed a loan agreement. All the loan documents are executed by Defendant Robert Kremer ("Kremer") as Sole Member of Mortgagor. Concomitantly with these documents, Kremer executed a guaranty and suretyship agreement. On June 7, 2024, the parties executed a forbearance agreement wherein Defendants acknowledged the default, the indebtedness and reaffirmed their promise to repay same. The forbearance agreement contained a termination date of August 30, 2024, and could be extended through November 30, 2024, if Defendants met certain defined "milestones".

Plaintiff commenced this action alleging that Defendants defaulted under the forbearance agreement. Defendants answered and pled sixteen affirmative defenses, including lack of standing and noncompliance with RPAPL §1303. Now, Plaintiff moves for summary judgment against Defendants,

to strike their answer, dismiss their affirmative defenses, for default judgment against the non-answering Defendants, to appoint a referee, and to amend the caption. Defendants oppose the motion and cross-move for summary judgment to dismiss the complaint based upon noncompliance with RPAPL §1303.

In moving for summary judgment, a plaintiff is required to establish *prima facie* entitlement to judgment as a matter of law through proof of the mortgage, the note, and evidence of Defendants' default in repayment (*see eg 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]). Based upon Defendants' affirmative defenses, Plaintiff was 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]), as well as its strict compliance with RPAPL §1303 or that this section is inapplicable (*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]).

Proof supporting a *prima facie* case on a motion for summary judgment 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 specific business records must be proffered, provided 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]).

Plaintiff's motion was supported with an affirmation from Andrew Rohmeyer ("Rohmeyer"), a Vice President of Plaintiff's Citizens Restructuring Management Division within the Commercial Real Estate Group. Rohmeyer avers that his affidavit is based on personal knowledge of Plaintiff's record keeping practices as well as a review of those records. Rohmeyer'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 the 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 of other entities, including Investors Bank, were also admissible since Rohmeyer established that those records were received from the makers and incorporated into the records Plaintiff kept and that it routinely relied upon such documents in its business (*see eg U.S. Bank N.A. v Kropp-Somoza*, 191 AD3d 918 [2d Dept 2021]). Further, the records referenced by Rohmeyer were annexed to the moving papers (*cf. Deutsche Bank Natl. Trust Co. v Kirschenbaum*, 187 Add 569 [1st Dept 2020]). Rohmeyer's review of the attached records demonstrated the note and mortgage (*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*).

A defendant's default "is established by (1) an admission made in response to a notice to admit, (2) an affidavit from a person having knowledge of the facts, or (3) other evidence in admissible form" (*Deutsche Bank Natl. Trust Co. v McGann*, 183 AD3d 700, 702 [2d Dept 2020]). Here, Defendants' default under the original loan documents was acknowledged in the forbearance agreement (*see Redrock Kings, LLC v Kings Hotel, Inc.*, 109 AD3d 602 [2d Dept 2013]; *EMC Mortg. Corp. v Stewart*, 2 AD3d

772 [2d Dept 2003]). The conditions for termination of the forbearance agreement are contained in section 20 and include “failure to observe and perform each and every other term, covenant and condition of this Agreement and the other Loan Documents”. Section 9 also provides that failure to provide certain past-due financial reporting by a date certain is a termination event. Here, Rohmeyer’s affidavit and the annexed documents showed, *prima facie*, the occurrence of multiple termination events, including failure to provide financial disclosures, non-compliance with lockbox rent obligations, and the absence of rent rolls.

As to standing in a foreclosure action, it is established in one of three ways: [1] direct privity between mortgagor and mortgagee, [2] holder status via 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] written assignment of the note to the plaintiff prior to commencement of the action (*see eg Wells Fargo Bank, N.A. v Tricario*, 180 AD3d 848 [2d Dept 2020]; *Wells Fargo Bank, NA v Ostiguy*, 127 AD3d 1375 [3d Dept 2015]). Here, Plaintiff demonstrated it was the holder of the note via evidence of its merger with the original lender (*see eg Citimortgage v Goldberg*, 134 AD3d 880 [2d Dept 2015]). Further, “[b]y entering into the [forbearance] agreement and making monthly installment payments thereunder, the defendants expressly acknowledged the plaintiff’s status as the holder of the subject note as of [June 7, 2024]—well before the commencement of this action” (*Wells Fargo Bank, N.A. v Graffioli*, 167 AD3d 969, 971 [2d Dept 2018]). As such “Defendants cannot now be heard to object to the ownership [of Plaintiff] which they embraced when it suited them” (*IRB-Brasil Resseguros S.A. v Portobello Intl. Ltd.*, 84 AD3d 637 [1<sup>st</sup> Dept 2011]).

Proof of compliance with RPAPL §1303 was not required to support Plaintiff’s motion for summary judgment as that defense was not pled by Defendants in their answer (*see One W. Bank, FSB v Rosenberg*, 189 AD3d 1600, 1602 [2d Dept 2020]). Nevertheless, non-compliance with RPAPL §1303 may be raised at any time prior to entry of a judgment (*see eg JPMorgan Chase Bank, N.A. v Lee*, 186 AD3d 685, 687 [2d Dept 2020]). As such, it was Defendants’ burden to establish an issue of fact exists or *prima facie* proof of non-compliance with RPAPL §1303 during the action. Contrary to Defendants’ assertion, RPAPL §1303[1][a] is inapplicable as the subject property was not an “owner-occupied” dwelling as the owner is a limited liability company. In any event, Kremer failed to aver that he resided at the mortgage premises. With respect to notice required by RPAPL §1303[1][b], although Kremer averred that a residential tenant occupies one of the units at the premises, that defense is personal to the tenant (*see Ekelmann Group, LLC v Stuart*, 108 AD3d 1098, 1100 [4<sup>th</sup> Dept 2013]). In any event, Plaintiff proffered an affidavit of mailing which established compliance with RPAPL §1303.

In opposition, Defendants’ claim that Plaintiff failed to lay a proper foundation under CPLR §4518 is ineffective. The affidavit and proffered business documents were all in admissible form. Defendants’ contention that issues of fact exist regarding whether a termination event occurred is inapposite. The contention that termination occurred prematurely fails as Plaintiff relies on termination events not tied to the August 30, 2024, milestone deadline in section 15 of the forbearance agreement. Defendants’ claim of inequitable conduct by Plaintiff in declaring a default is not established as even a default of one day is sufficient to foreclose “and equity will not intervene” (*Home Sav. of Am. v Isaacson*, 240 AD2d 633, 633 [2d Dept 1997], *citing New York Guardian Mortgagee Corp. v Olexa*, 176 AD2d 399 [3d Dept 1991]; *see also L & L Assoc. Holding Corp. v Seventh Day Church of God of the Apostolic Faith*, 188 AD3d 1180 [2d Dept 2020]). the necessity of discovery on defenses of unclean hands, unjust enrichment, estoppel, breach of covenant of good faith and fair dealing, culpable conduct, and failure to mitigate are unavailing. While Defendants argue that Plaintiff terminated the Forbearance

To the extent that no specific legal argument was proffered in support any particular affirmative defense, it was abandoned (*see U.S. Bank N.A. v Gonzalez*, 172 AD3d 1273, 1275 [2d Dept 2019]; *Flagstar Bank v Bellafigliore*, 94 AD3d 1044 [2d Dept 2012]; *Wells Fargo Bank Minnesota, N.A v Perez*, 41 AD3d 590 [2d Dept 2007]).

The assertion that the motion must be denied because no discovery has been conducted is unavailing as Defendants offered nothing to demonstrate Plaintiff is in exclusive possession of facts which would support a viable defense to summary judgment (*see Island Fed. Credit Union v I&D Hacking Corp.*, 194 AD3d 482 [1<sup>st</sup> Dept 2021]).

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 [1<sup>st</sup> 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]).

Accordingly, it is

ORDERED that Plaintiff's motion for summary judgment against the appearing parties and for a default judgment against the non-appearing parties is granted; and it is further

ORDERED that Defendants' cross-motion to dismiss the complaint is denied in its entirety; and it is further

ORDERED that the affirmative defenses pled by all the appearing Defendants are stricken; and it is further

ORDERED that **Matthew D. Hunter III, Esq., 71-01 Austin Street, Forest Hills, NY 11575 (718) 309-1660** is hereby appointed Referee in accordance with RPAPL §1321 to compute the amount due to Plaintiff and to examine whether the property identified in the notice of pendency can be sold in parcels; and it is further

ORDERED that in the discretion of the Referee, a hearing may be held, and testimony taken; and it is further

ORDERED that by accepting this appointment the Referee certifies that he is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2(c) ("Disqualifications from appointment"), and §36.2(d) ("Limitations on appointments based upon compensation"), and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall immediately notify the Appointing Judge; and it if further

ORDERED that, pursuant to CPLR 8003(a), and in the discretion of the court, a fee of \$350 shall be paid to the Referee for the computation of the amount due and upon the filing of his report and the Referee shall not request or accept additional compensation for the computation unless it has been fixed by the court in accordance with CPLR 8003(b); and it is further

ORDERED that the Referee is prohibited from accepting or retaining any funds for himself or paying funds to himself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED that if the Referee holds a hearing, the Referee may seek additional compensation at the Referee’s usual and customary hourly rate; and it is further

ORDERED that Plaintiff shall forward all necessary documents to the Referee and to Defendants who have appeared in this case within 30 days of the date of this order and shall *promptly* respond to every inquiry made by the Referee (promptly means within two business days); and it is further

ORDERED that if Defendant(s) have objections, they must submit them to the Referee within 14 days of the mailing of Plaintiff’s submissions, and include these objections to the Court if opposing the motion for a judgment of foreclosure and sale; and it is further

ORDERED that failure to submit objections to the Referee may be deemed a waiver of objections before the Court on an application for a judgment of foreclosure and sale; and it is further

ORDERED the caption of this action be amended by striking therefrom the remaining Defendants sued herein as “John/Mary Doe #1-50”, “XYZ, Inc. #1-50”, and “ABC, LLC #1-50”, all without prejudice to the proceedings heretofore had herein; and it is further

ORDERED that the caption is amended as follows:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
CITIZENS BANK, N.A., AS SUCCESSOR-BY-MERGER  
TO INVESTORS BANK,

Plaintiff

-against-

AUGUSTUS H. LAWRENCE & CO LLC, ROBERT  
KREMER, ALEXANDER HAMILTON TAVERN,  
CORP. A/K/A MG ALEXANDER HAMILTON TAVERN  
CORP., MG ALEXANDER HAMILTON INC, A/K/A MG  
ALEXANDER HAMILTON TAVERN CORP.,  
ALEXANDER HAMILTON TAVERN INC A/K/A MG  
ALEXANDER HAMILTON TAVERN CORP.,  
RESEARCH CENTER OF CUNY, COMPUTER SITE  
A/C & FIRE PROTECTION INC A/K/A COMPUTER  
SITE AIR CONDITIONING & FIRE PROTECTION, INC.,  
RONALD HOLMES, NYC DEPARTMENT OF FINANCE,  
NYS DEPARTMENT OF TAXATION OF FINANCE, NYC  
ENVIRONMENTAL CONTROL BOARD, LD TELECOM  
ASSETCO, LLC, DISH WIRELESS LLC,

Defendants.

-----X

and it is further

ORDERED that Plaintiff must bring a motion for a judgment of foreclosure and sale within 45 days of receipt of the referee’s report; and it is further

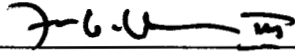
ORDERED that if Plaintiff fails to meet these deadlines, then the Court may *sua sponte* vacate this order and direct Plaintiff to move again for an order of reference and the Court may *sua sponte* toll interest depending on whether the delays are due to Plaintiff’s failure to move this litigation forward; and it is further

ORDERED that counsel for Plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the parties being removed pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address (www.nycourts.gov/supctmanh)); and it is further

ORDERED that Plaintiff shall serve a copy of this Order with notice of entry on all parties and persons entitled to notice, including the Referee appointed herein.

All parties are to appear for a virtual conference via Microsoft Teams on **August 6, 2026 @ 10:20am**. If a motion for judgment of foreclosure and sale has been filed, Plaintiff may contact the Part Clerk (SFC-Part32-Clerk@nycourts.gov) in writing to request that the conference be cancelled. If a motion has not been made, then a conference is required to explore the reasons for the delay.

<u>3/30/2026</u> DATE					 FRANCIS A. KAHN, III, J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input checked="" type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE