

Wells Fargo Bank, N.A. v Williams

2026 NY Slip Op 31449(U)

February 5, 2026

Supreme Court, Kings County

Docket Number: Index No. 523325/2024

Judge: Derefim B. Neckles

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FSMP of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, 11201 on the 5th day of February, 2026.

P R E S E N T:

HON. DEREKIM B. NECKLES,
Justice.

-----X
WELLS FARGO BANK, N.A.,

Plaintiff,

- against -

Index No. 523325/2024

VIRLYN WILLIAMS, ET AL,

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Affidavits (Affirmations) Annexed
Opposition Affirmation to Motion
Reply Affirmation to Opposition

85-90
95-99
100

Upon the foregoing papers in this proceeding, defendant Virlyn Williams moves (under mot. seq. 2) for an order granting defendant leave to reargue pursuant to CPLR §2221(d), and upon reargument, vacating the decision and order dated July 9, 2025.

Background

Plaintiff commenced this action on August 29, 2024, to foreclose on the mortgage encumbering the subject property located at 815 Logan Street, Brooklyn, New York. Defendant Virlyn Williams filed an answer with a counterclaim on September 19, 2024. Thereafter, on January 15, 2025, plaintiff moved for summary judgment. Defendant opposed this motion on the grounds that the action was barred by the doctrine of laches,

plaintiff failed to comply with RPAPL §1304 and §1306, and the servicer affidavit is insufficient. By order dated July 9, 2025, the court granted plaintiff's motion finding that plaintiff has shown strict compliance with RPAPL §1304 and §1306, the servicer affidavit does comply with the business records exception to the hearsay rule, defendant waived their defense of the doctrine of laches by failing to raise it in their answer, and defendant failed to raise a triable issue of fact to defeat summary judgment by failing to submit an affirmation by someone with personal knowledge of the facts.

Defendant now files the instant motion to reargue the July 9, 2025 decision, on the grounds that the court overlooked the fact that the action is time-barred, and the plaintiff's evidence for compliance with RPAPL §1304 and §1306 contains different mailing dates.

Discussion

“A motion for leave to reargue ‘shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion’ ” (*Grimm v. Bailey*, 105 A.D.3d 703, 704, quoting CPLR 2221[d][2]; see *Matter of American Alternative Ins. Corp. v. Pelszynski*, 85 A.D.3d 1157, 1158). “While the determination to grant leave to reargue a motion lies within the sound discretion of the court, a motion for leave to reargue is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented” (*Matter of Anthony J. Carter, DDS, P.C. v. Carter*, 81 A.D.3d 819, 820).

Defendant argues that the court overlooked plaintiff's compliance with RPAPL §1304 because there is a discrepancy with the mailing date and the §1304 notice was mailed

out by a third-party servicer. In opposition to the prior motion, defendant only argued that the mailing log submitted by plaintiff was not insufficient to prove compliance with RPAPL §1304. The instant arguments were not raised by defendant. Furthermore, defendant's arguments fail as plaintiff has shown its strict compliance with RPAPL §1304 as they proffered proof of a standard office mailing procedure designed to ensure that items are properly addressed and mailed, and sworn to by someone with personal knowledge of the procedure (*Citibank, N.A. v. Conti-Scheurer*, 172 A.D.3d 17, 21 [2d Dept 2019]). Defendant also misreads plaintiff's mailing log entry for May 5, 2024 as the mailing date for the §1304 notice, however plaintiff's mailing log clearly states that the notice was mailed out on April 30, 2024, and then was out for delivery on May 5, 2024.

Similarly, defendant asserts that the court overlooked plaintiff's compliance with RPAPL §1306 because the filing was premature and contained an incorrect mailing date. However, in the prior motion, defendant's only argument to plaintiff's compliance with RPAPL §1306, was that plaintiff omitted the number of days the loan was delinquent. Defendant's instant arguments were not raised in the prior motion, and even if they were, defendant misreads plaintiff's mailing log.

Defendant contends that the court overlooked that the action is time-barred pursuant to CPLR §205-a, because plaintiff did not "complete service" within six months of dismissal of the prior action. Under CPLR 205-a, where an action is timely commenced and is terminated for any reason other than those specified in the statute, "the plaintiff... may commence a new action upon the same transaction or occurrence ... within six months after the termination provided that the new action would have been timely commenced at

the time of commencement of the prior action and that service upon defendant is effected within such six-month period” (*Deutsche Bank Nat'l Tr. Co. as trustee for New Century Home Equity Loan Tr., Series 2005-D, Asset Backed Pass-Through Certificates v. Pena*, 240 A.D.3d 475, 477 [2d Dept 2025]).

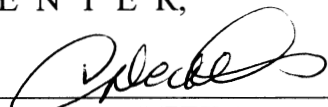
Here, the prior action was dismissed by order dated April 15, 2024, thus the deadline to commence a new action and effectuate service was October 15, 2024. In the instant action, plaintiff asserts that defendant was served by “nail and mail” service on October 14, 2024. However pursuant to CPLR §308(4), service in this manner is not complete until ten days thereafter. Thus, service upon defendant was not effectuated until October 24, 2024, more than six months after dismissal of the prior action.

Accordingly, it is

ORDERED that defendant’s motion to reargue (mot. seq. 2) is granted, and upon reargument the court order dated July 9, 2025 is hereby vacated, and plaintiff’s motion (mot. seq. 1) for summary judgment is denied.

This constitutes the decision and order of the court.

E N T E R,



HON. DEREFIM B. NECKLES
J. S. C.

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