

U.S. Bank Trust Co., N.A. v Pearl-Nwabueze
2026 NY Slip Op 31463(U)
January 23, 2026
Supreme Court, Kings County
Docket Number: Index No. 537647/2023
Judge: Derefim B. Neckles
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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 23rd day of January, 2026.

P R E S E N T:

HON. DEREKIM B. NECKLES,
Justice.

-----X
U.S. BANK TRUST COMPANY, N.A.,

Plaintiff,

- against -

Index No. 537647/2023

URSULA PEARL-NWABUEZE; ET AL,
Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Affidavits (Affirmations) Annexed	<u>41-49</u>
Notice of Cross-Motion/Affidavits (Affirmations) Annexed	<u>52-82</u>
Opposition Affirmation to Cross-Motion	<u>84-86</u>
Reply Affirmation to Opposition	<u>87-89</u>

Upon the foregoing papers in this proceeding, defendant Kechipetronilla M. Simon-Ebughu (“defendant”) moves (under mot. seq. 2) for an order dismissing plaintiff’s complaint. Plaintiff cross-moves (under mot. seq. 3) for an order granting summary judgment in plaintiff’s favor.

Background

On May 16, 2008, plaintiff commenced an action to foreclose on the subject mortgage encumbering the subject property located at 224 Madison Street, Brooklyn, New York. By order dated October 21, 2011, the court dismissed the 2008 action for plaintiff’s lack of standing. Plaintiff then commenced another foreclosure action on April 23, 2018.

By order dated May 2, 2022, the court denied plaintiff's motion for a judgment of foreclosure and sale, finding that plaintiff failed to demonstrate compliance with RPAPL 1303 and 1304. By order dated March 9, 2023, the court granted defendant's motion to dismiss based on plaintiff's failure to comply with RPAPL 1303 and 1304. By order dated July 26, 2023, the Appellate Division held that the 2008 action was not validly accelerated because the plaintiff in that action lacked standing.

Plaintiff then commenced the instant action on December 6, 2023, to foreclose on the same mortgage. Defendant now moves to dismiss this action asserting that it is time-barred by the Foreclosure Abuse Prevention Act ("FAPA"), plaintiff lacks standing, and plaintiff failed to comply with RPAPL 1304. Plaintiff cross-moves for summary judgment in its favor.

Discussion

I. Statute of Limitations

An action to foreclose a mortgage is subject to a six-year statute of limitations (CPLR 213 [4]; *MTGLQ Invs., L.P. v Singh*, 216 AD3d 1087, 1088 [2d Dept 2023]). "The statute of limitations in a mortgage foreclosure action begins to run six years from the due date for each unpaid installment or the time the mortgagee is entitled to demand full payment, or when the mortgage debt has been accelerated" (*Zinker v Makler*, 298 AD2d 516, 517 [2d Dept 2002]). "Acceleration occurs, inter alia, by the commencement of a foreclosure action wherein the holder of the note elects in the complaint to call due the entire amount secured by the mortgage" (*MTGLQ Invs., L.P. v Singh*, 216 AD3d 1087, 1088 [2d Dept 2023]).

Here, the date of acceleration occurs from the commencement of the 2018 action, because the Appellate Division found that the 2008 action was not validly accelerated. Thus, this action is timely because it was commenced within six years of the 2018 action's commencement.

II. Plaintiff's Standing

A plaintiff has standing in a mortgage foreclosure action where it is the holder or assignee of the underlying note at the time the action is commenced. "Either a written assignment of the underlying note or the physical delivery of the note prior to the commencement of the foreclosure action is sufficient to transfer the obligation, and the mortgage passes with the debt as an inseparable incident" *Deutsche Bank Nat. Tr. Co. v. Brewton*, 142 A.D.3d 683, 684 [2d Dept 2016]).

Here, plaintiff offers the affidavit of Benjamin M. Verdooren, the Senior Loan Analyst of plaintiff's servicer, PHH Mortgage. Verdooren attests that he is familiar with PHH's record keeping practices and procedures and has reviewed the servicing records for the subject mortgage. According to the servicing records, plaintiff had physical delivery of the original note on November 10, 2014, prior to commencement of the instant action, and remained in possession of the original note. Verdooren also refers to business logs, which recorded that plaintiff received the original note on November 10, 2014. Plaintiff also attaches a copy of the note, with an endorsement to plaintiff. Thus, plaintiff has established it had possession of the note prior to commencement of this action.

III. RPAPL 1304

RPAPL §1304(2) provides that the notice must be sent by registered or certified mail and also by first-class mail to the last known address of the borrower (*Citibank, N.A. v. Conti-Scheurer*, 172 A.D.3d 17, 20 [2d Dept 2019]). Plaintiff' compliance with the statute can be demonstrated "with proof of the actual mailings, such as affidavits of mailing or domestic return receipts with attendant signatures, or proof of a standard office mailing procedure designed to ensure that items are properly addressed and mailed, sworn to by someone with personal knowledge of the procedure" *Id.* at 21. However, "[t]here 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" (*U.S. Bank Tr., N.A. v. Ateghi*, 236 A.D.3d 707, 710 [2d Dept 2025]).

Here, Verdooren's affidavit is sufficient to prove that plaintiff complied with RPAPL 1304, as Verdooren made the requisite showing that he is personally familiar with the mailing practices of PHH Mortgage and its mailing servicer, Walz. Annexed to Verdooren's affidavit were copies of record logs from Walz, which indicated that notices required by RPAPL 1304 were sent by certified and first-class mail. Additionally, plaintiff submitted copies of envelopes addressed to defendants bearing first-class mail and certified mail barcodes and tracking numbers, along with copies of the RPAPL 1304 notices. These submissions are sufficient to establish, prima facie, that the notices required by RPAPL 1304 were sent by certified and first-class mail.

Accordingly, it is

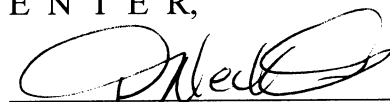
ORDERED that defendant's motion to dismiss (mot seq. 2) is denied in all respects;

and it is further

ORDERED that plaintiff's cross-motion for summary judgment (mot. seq. 3) is granted in all respects. Long form order to follow.

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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KINGS COUNTY CLERK
FILED