

Pentagon Fed. Credit Union v Fried
2026 NY Slip Op 31531(U)
April 10, 2026
Supreme Court, Kings County
Docket Number: Index No. 521661/2024
Judge: Carolyn Walker-Diallo
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At an IAS Term, Part FRP4, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 320 Jay Street, Brooklyn, New York, on the 10th day of April 2026.

PRESENT:

HON. CAROLYN WALKER-DIALLO, J.S.C.

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_____ x

PENTAGON FEDERAL CREDIT UNION,

Plaintiff,

DECISION AND ORDER

-against-

SHIMON Y. FRIED, et al.,

Defendants.

_____ x

Recitation, as required by CPLR 2219 (a), of the papers considered in the review of this Motion:

Papers

Motion, Affirmation in Support, and Exhibits
Affirmation in Opposition
Affirmation in Reply

Numbered

NYSCEF Doc. Nos. 25-42
NYSCEF Doc. Nos. 47-48
NYSCEF Doc. No. 55

Motion Sequence #1

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

Plaintiff moves for an Order granting an order of reference, amending the caption, and default judgment. Defendant Shimon Fried (“Defendant Fried”) opposes, arguing that Plaintiff: (1) failed to meet its prima facie burden; (2) failed to comply with RPAPL 1303, 1304 and 1306; (3) lacks standing; and (4) failed to establish Defendant Fried’s default. Plaintiff submits reply papers. For the foregoing reasons, Plaintiff’s motion is GRANTED.

DISCUSSION

It is well established that “[i]n a residential mortgage foreclosure action, a plaintiff establishes its prima facie entitlement to judgment as a matter of law by producing the mortgage and the unpaid note, and evidence of the default.” *Onewest Bank v. Wellington Roy Mahoney*, 154 A.D.3d 770, 771 (2d Dep’t 2017); *Loancare v. Firshing*, 130 A.D.3d 787 (2d Dep’t 2015). “To demonstrate the facts constituting the cause of action, the plaintiff need only submit sufficient proof to enable a court to determine if the cause of action is viable.” *Clarke v. Liberty Mut. Fire Ins. Co.*, 150 A.D.3d 1192, 1194 (2d Dep’t 2017).

Further, “[w]here, as here, a foreclosure complaint is not verified, CPLR 3215 (f) states, among other things, that upon any application for a judgment by default, proof of the facts constituting the claim, the default, and the amount due are to be set forth in an affidavit ‘made by the party.’” *HSBC Bank USA, N.A. v. Betts*, 67 A.D.3d 735, 736 (2d Dep’t 2009). “In this regard, it should be kept in mind that a court does not have a mandatory, ministerial duty to grant a motion for leave to enter a default judgment, and retains the discretionary obligation to determine whether the movant has met the burden of stating a viable cause of action.” *Paulus v. Christopher Vacirca, Inc.*, 128 A.D.3d 116, 126 (2d Dep’t 2015).

Here, Plaintiff proffers the subject HELOC, mortgage, proof of service of the summons and complaint, proof that Defendant Fried did not timely answer or appear in this action, and proof of the facts constituting the claim. Plaintiff’s affiant, Terri J. King, an FC Analyst of Plaintiff, attests to Defendant Fried’s default under the subject agreements. Business records, including a payment history, are provided. *See* Affidavit of Merit and Amounts Due, NYSCEF Doc. No. 40. Therefore, Plaintiff has established its prima facie entitlement to default judgment and an order of reference.

In opposition, Defendant Fried fails to establish a reason to deny Plaintiff's motion. "To defeat a facially adequate CPLR 3215 motion, a defendant must show either that there was no default, or that it has a reasonable excuse for its delay and a potentially meritorious defense. Here, in opposition to the plaintiff's motion, the defendant failed to demonstrate that he did not default or that he had a reasonable excuse for his default." *HSBC Bank US, N.A. v. Traore*, 139 A.D.3d 1009, 1011 (2d Dep't 2016) (Internal citations and quotation marks omitted).

Additionally, "where, as here, the plaintiff has demonstrated, prima facie, that a defendant is in default because he failed to appear within the meaning of CPLR 3215 (a), that defendant is generally precluded from raising any nonjurisdictional defense without first rebutting the prima facie showing of default, and obtaining leave to serve a late answer. This is true, even if the nonjurisdictional defense may be raised at any time and regardless of whether it is exempt from the waiver provisions of CPLR 3211 (e). Since, here, the defendant failed to demonstrate a reasonable excuse for his default, he is precluded from raising lack of standing . . . as [a] defense [] to this action." *HSBC Bank USA, N.A. v. Diallo*, 190 A.D.3d 959, 960 (2d Dep't 2021) (Internal citations and quotation marks omitted).

As Defendant Fried has defaulted in timely filing an answer in this case and has not moved to vacate this default, he is precluded from challenging Plaintiff's standing and compliance with its notice provisions of the mortgage and RPAPL 1304 and 1306 obligations, as well as standing.

CONCLUSION

Accordingly, Plaintiff's motion is GRANTED, accompanying order to follow. The Court has considered the additional contentions of the parties not specifically addressed herein. To the extent that any relief requested was not addressed by the Court, it is hereby DENIED. Plaintiff

shall serve notice of entry of these orders within ten (10) days of upload to NYSCEF upon Defendants and all parties in this action, with those not participating in e-filing to be noticed via first-class mail.

This constitutes the Decision and Order of the Court.

ENTER:

A handwritten signature in black ink, consisting of a large, stylized 'W' followed by a horizontal line extending to the right.

Hon. Carolyn Walker-Diallo, J.S.C.