SHORT FORM ORDER

NEW YORK SUPREME COURT - QUEENS COUNTY IAS PART 21

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U.S. BANK TRUST NATIONAL ASSOCIATION, AS TRUSTEE OF IGLOO SERIES V TRUST,

Plaintiff,

-against-

PICKLE REALTY, LLC, DAVID ZELOUF, JOHN DOE AND JANE DOE SAID NAMES BEING FICTITIOUS, IT BEING THE INTENTION OF PLAINTIFF TO DESIGNATE ANY AND ALL OCCUPANTS OF PREMISES BEING FORECLOSED HEREIN,

Defendants.

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Index No. 724564/2022
Motion Submitted: 9/8/25
Motion Seq. No. 2

The following numbered papers were read on this motion by Plaintiff for summary judgment against Defendants Pickle Realty, LLC and David Zelouf and default judgment against all other non-appearing defendants, striking and dismissing the affirmative defenses in the Answer of Defendants Pickle Realty, LLC and David Zelouf, appointing a Referee to compute the total sums due and owing to Plaintiff, and amending the caption, and cross-motion by defendants Pickle Realty LLC and David Zelouf for summary judgment dismissing the causes of action in the Summons and Complaint and cancelling the Notice of Pendency pursuant to CPLR 6514 for the subject premises.

	Papers Numbered
Notice of Motion, Affirmation, Exhibits.....	EF 52-70
Notice of Cross-Motion, Affirmation, Exhibits.....	EF 74-77
Affirmation in Opposition to Cross-Motion.....	EF 78
Affirmation in Further Support of Cross-Motion.....	EF 81-82

Upon the foregoing papers, the motion and cross-motion are decided as follows:

BACKGROUND

On February 11, 2020, defendant Pickle Realty, LLC through David Zelouf as sole member ("Defendants") executed a Note for $575,000. As security for the Note, Defendants executed a mortgage in favor of Mortgage Electronic Registration Systems, Inc., as nominee for Family First Funding, LLC, secured by the property known as 33-29 108th Street, Corona, NY 11368 and Block 1723 Lot 37 ("Premises"), dated February 11, 2020 and recorded in the Queens County Office of the City Register on February 28, 2020 in CRFN 2020000077038 ("Mortgage"). Defendant David Zelouf then executed a Guaranty dated February 11, 2020 which guaranteed due and prompt payment and performance in full of the debt when due. The mortgage was then assigned from Mortgage Electronic Registration Systems, Inc., as nominee for Family First Funding, LLC, to U.S. Bank Trust National Association, as Trustee of Igloo Series V Trust, on November 12, 2020, recorded on July 23, 2021 at CRFN 2021000283728.

On April 1, 2020, Defendants allegedly breached the terms of the Note and Mortgage by failing to tender payment. On November 21, 2022, U.S. Bank Trust National Association, as Trustee of Igloo Series V Trust, commenced a foreclosure action to foreclose the mortgage held by Plaintiff against Defendants.

On May 23, 2025, Plaintiff filed a motion pursuant to CPLR 3212 seeking summary judgment against Defendants Pickle Realty, LLC and David Zelouf. Plaintiff further moves for default judgment against all other non-appearing defendants, as well as other relief.

Defendant cross moves pursuant to CPLR 3212 seeking summary judgment dismissing the causes of action in the Summons and Complaint and cancelling the Notice of Pendency for the subject premises.

Plaintiff opposes Defendants' cross-motion, asserting three primary arguments: (1) Plaintiff properly complied with RPAPL § 1303, (2) Plaintiff established its standing; and (3) Plaintiff successfully established Defendant's default.

Defendants replied to Plaintiff's opposition, asserting that Plaintiff failed to strictly comply with RPAPL § 1303.

Discussion

A party moving for summary judgment must make a prima facie showing that it is entitled to judgment as a matter of law (*see Alvarez v Prospect Hosp*, 68 NY2d 320 [1986]). Once a showing has been made, the burden shifts to the parties opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). In the presence of a genuine issue of material fact, a motion for summary judgment must be denied (*see Wells Fargo Bank, N.A. v Gizzo*, 191 AD3d 826, 827 [2d Dept 2021]). Moreover, conclusory and unsubstantiated allegations are insufficient to raise a triable issue of fact (*see id.*).

RPAPL § 1303

Defendants claim that Plaintiff failed to strictly comply with RPAPL §1303, as (1) Plaintiff did not serve the tenants with the RPAPL §1303 notice within 10 days of serving the summons and complaint upon the mortgagor, and (2) Plaintiff did not deliver the RPAPL §1303 notice upon tenants by both certified mail, return receipt requested, and by first-class mail to tenants.

Plaintiff contends that (1) Defendants lack standing to challenge service of the RPAPL §1303 notice upon the Plaintiff as they do not reside at the mortgaged premises, (2) Plaintiff's delivery of the RPAPL §1303 notice was timely, as the statute requires the RPAPL §1303 to be

sent to tenants within 10 days of serving the summons and complaint on the tenant, not the mortgagor, and (3) Plaintiff did deliver the RPAPL §1303 notice upon tenants by both certified mail, return receipt requested, and by first-class mail to tenants as evidenced by a process server's affidavit.

Defendant further argues that (1) Defendants have standing to raise a RPAPL §1303 defense, and (2) RPAPL § 1303's statute requires service of the RPAPL §1303 notice to be sent to mortgagor and tenants within 10 days of each other.

"'RPAPL 1303 requires the foreclosing party to deliver, along with the summons and complaint, a notice titled "Help for Homeowners in Foreclosure" in residential foreclosure actions involving owner-occupied, one-to-four family dwellings.'" (*Tri-State III, LLC v. Litkowski*, 239 A.D.3d 911, 913-14 [2d Dept. 2025], *quoting PNC Bank, N.A. v Mone*, 231 A.D.3d 977, 978-979 [2d Dep't 2024], *quoting US Bank N.A. v Bamba*, 189 A.D.3d 1116, 1116-1117 [2d Dep't 2020]). "[T]he failure to comply [with RPAPL 1303] is a basis for dismissal of a complaint which may be raised at any time while the action is pending." (*Tri-State III, LLC v. Litkowski*, 239 A.D.3d at 914, *quoting Nationstar Mtge., LLC v Gayle*, 191 A.D.3d 1003, 1006 [2d Dep't 2021]).

Plaintiff argue that Defendants cannot properly bring this RPAPL §1303 defense, as the purported mailing issue was in relation to mailing the notice to the tenants rather than upon the mortgagor. Defendants respond that previous actions have been properly brought under similar circumstances by defendant mortgagors on behalf of tenants.

First, RPAPL §1303 governs notice requirements for parties "in a mortgage foreclosure action, involving residential real property," rather than a commercial foreclosure. (RPAPL §1303; *see Mendel Group, Inc. v Prince*, 114 A.D.3d 732, 733 [2d Dep't 2014]; *see Deutsche Bank Natl.*

Trust Co. v. Spanos, 241 A.D.3d 502, 505 [2d Dep't 2025]; *see Nasrin Chowdhury v. Priv. Cap. Funding Co.,* LLC, 2024 N.Y. Misc. LEXIS 17586 [Queens S. Ct. March 27, 2024] *see Aurora Bank FSB v ERA Intl.*, LLC, 2011 NY Slip Op 31351(U) [Queens Sup. Ct. May 16, 2011]). Therefore, as this is a commercial foreclosure action rather than a residential foreclosure, the requirements of RPAPL §1303 do not apply to this case.

However, even if RPAPL 1303 applies and this were a residential foreclosure, Plaintiff has demonstrated compliance with RPAPL §1303. Here, Plaintiff successfully proves that it complied with the mailing requirement of RPAPL §1303. RPAPL §1303 requires that notice must be delivered "by certified mail, return receipt requested, and by first-class mail . . . ." to the tenant. (RPAPL §1303[4]). Plaintiff submitted an Affidavit of Mailing of RPAPL 1303 Notice to Tenant dated January 4, 2023 affirming that the applicable RPAPL §1303 notice was mailed to tenant "by certified mail, return receipt requested, and by first class mail." Defendants' conclusory denial that the RPAPL § 1303 notice was served on Tenants by first-class mail is not enough to "rebut the presumption of proper service created by the process server's affidavit[] of service." (*US Bank N.A. v Nelson*, 169 A.D.3d 110, 119 [2d Dep't 2019]) ("The conclusory and unsubstantiated denials of service by the [defendants] in their affidavits lacked the factual specificity and detail required to rebut the presumption of proper service created by the process server's affidavits of service . . . and warranted the denial of that branch of their cross motion on this basis.") Even if Defendants cannot properly bring a RPAPL §1303 claim on behalf of Tenants, Plaintiff has proven it complied with the requirements of RPAPL §1303.

Next, the Court does not find Defendants' argument that the text of RPAPL §1303[4] stating "[t]he notice to any tenant required by paragraph (b) of subdivision one of this section shall be delivered within ten days of the service of the summons and complaint" refers to within ten

days of the service of the summons and complaint on the mortgagor rather than on the tenants persuasive. RPAPL §1303 covers required notices to both mortgagors and tenants. However, nothing in RPAPL §1303 indicates that the ten-day requirement is in regard to the mortgagor. Rather, the plain language reading of the statute indicates that, as the section only discusses the tenant with absolutely no mention of the mortgagor, the ten-day requirement refers to serving the RPAPL § 1303 notice upon the tenant within ten days of the service of the summons and complaint on the tenant, not on the mortgagor.

Under this interpretation, Plaintiff demonstrates compliance with RPAPL §1303[4]. The Affidavit of Mailing of RPAPL 1303 Notice to Tenant dated January 4, 2023, establishes service of the RPAPL §1303 notice on January 3, 2023, one day after the service of the summons and complaint upon the tenants on January 2, 2023 and within the ten day requirement establishes by RPAPL §1303.

Therefore, Plaintiff properly complied with RPAPL §1303.

Defendant's Alleged Default

Next, Defendants argue that the Affirmation submitted by Jordan Kahoalii (The "Kahoalii Affirmation"), Asset Manager of SN Servicing Corporation ("SNSC"), on behalf of Plaintiff fails to establish Defendants' default, as (1) SNSC is acting pursuant to a Limited Power of Attorney, therefore Plaintiff is required to submit with the Limited Power of Attorney "documents that define the scope of [SNSC and Mr. Kahoalii's] authority to speak," which in this case are the "related servicing agreements" referenced in the Limited Power of Attorney; and (2) the loan history provided through the Kahoalii Affirmation is not admissible as a business record, as SNSC was not the servicer of the loan when the alleged default occurred. Plaintiff contends that (1) The

Limited Power of Attorney is not limited by the "related servicing agreements" as Defendants claim, and since there is "no language in the POA restricting or conditioning SNSC's authority on the terms of the servicing agreement or any other agreement," the Defendant's argument fails; and (2) Mr. Kahoalii properly introduces the loan history as a business record, as he affirms that the "records of prior servicers had been integrated into SNSC's records and are kept and relied upon as a regular business practice and in the ordinary course of business conducted by SNSC, and that he has personal knowledge of the procedures for integrating prior servicer records."

Limited Power of Attorney

To prove that an agent may act on behalf of a plaintiff, there must be evidence on the record demonstrating an "agent's authority to act on behalf of the plaintiff . . . [i.e.] presentation of an affidavit . . . of a person acting with a valid power of attorney from the plaintiff, with personal knowledge of the relevant facts constituting the claim, the default, and the amount due." (*HSBC Bank USA, N.A. v Betts*, 67 A.D.3d 735, 736 [2d Dep't 2009]). The Appellate Division, Second Department has held that a Limited Power of Attorney which "restricted and conditioned its authority based on the terms of other agreements" is insufficient to demonstrate an agent's authority to act on behalf of a plaintiff when those other agreements are not also provided by the Plaintiff. (*U.S. Bank N.A. v. Tesoriero*, 204 A.D.3d 1066, 1068 [2d Dep't 2022]).

Defendants argue that the Limited Power of Attorney submitted with the Kahoalii Affirmation states that it is limited by language stating "the documents described below may only be executed and delivered by such Attorneys-In-Fact if such documents are required or permitted under the terms of the related servicing agreements," but failed to produce the documents the Limited Power of Attorney is allegedly restricted by, rendering the Limited Power of Attorney

insufficient to establish Mr. Kahoalii's authority to speak on behalf of the Plaintiff. Plaintiff argues that that the quoted language Defendants refer to requiring Plaintiff to produce servicing agreements was not included in the Limited Power of Attorney, and as the Limited Power of Attorney is not restricted by any other agreements, copies of such servicing agreements are not required to prove Mr. Kahoalii's authority to speak on behalf of Plaintiff.

Here, the quoted language referenced by Defendants is not present in the Limited Power of Attorney attached to the Kahoalii Affirmation. The Limited Power of Attorney is not "restricted and conditioned" by the terms of another servicing agreement. (*See id.*) Therefore, Plaintiff is not required to attach any such servicing agreement to its papers, and Defendant failed to prove that Plaintiff did not properly establish Mr. Kahoalii's authority to speak its behalf.

Business Records

The Appellate Division, Second Department has repeatedly found that affidavits, such as the Kahoalii Affidavit, sufficiently establishes personal knowledge of compliance (*see Bank of New York Mellon v Gordon*, 171 A.D.3d 197, 208 [2d Dep't 2019]; *Citigroup v. Kopelowitz,* 147 A.D.3d 1014 [2d Dep't 2017] [holding that "[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)]).

"A default is established by (1) an admission made in response to a notice to admit, (2) an affidavit from a person having personal knowledge of the facts, or (3) other evidence in admissible form" (*JPMorgan Chase Bank, N.A. v Deblinger*, 201 AD3d 900, 901 [2d Dep't 2022], quoting *Deutsche Bank Natl. Tr. Co. v McGann*, 183 AD3d 700, 702 [2d Dep't 2020]).

Here, Plaintiff relies on the Kahoalii Affidavit, which affirms that:

> SNSC maintains business records for the subject loan on behalf of the Plaintiff and [Mr. Kahoalii is] familiar with SNSC's record-keeping practices. As part of [Mr. Kahoalii's] job responsibilities for SNSC, [Mr. Kahoalii is] personally familiar with the types of records maintained by SNSC on Plaintiff's behalf. The information contained in this affirmation is taken from SNSC's business records, including the exhibits annexed hereto. [Mr. Kahoalii has] personal knowledge of SNSC's procedures for creating and maintaining these records. These records are made at the time of the act, transaction, occurrence, or event, or within a reasonable time thereafter, by persons with knowledge and a business duty to ensure their accuracy and are routinely made and relied upon in the course of business activity conducted regularly by SNSC . . . The business records . . . that were created by prior holders and/or servicers of the loan or other entities have been integrated into SNSC's business records and are kept and routinely relied upon as a regular business practice and in the ordinary course of business conducted by SNSC. [Mr. Kahoalii has] personal knowledge of these procedures for integrating these records.

Defendants argue that, even if Mr. Kahoalii has authority to act on Plaintiff's behalf, the Kahoalii Affirmation is defective as a matter of law, as the alleged default occurred on April 1, 2020 and SNSC was not the servicer of the loan until the Limited Power of Attorney dated April 5, 2023. Defendants further assert that when "a proffered power of attorney is only effective after the date of the alleged default, the servicer must, among other things, allege that the prior servicer's records are incorporated into its own in order to establish a defendant's default through admissible evidence," and cite *U.S. Bank N.A. v Winnie Realty Group*, LLC, 237 A.D.3d 871[2d Dep't 2025] in support. Defendants further contend that Plaintiff did not properly establish personal knowledge since the Kahoalii Affirmation did not specifically "allege who the prior servicer whose records he is purportedly relying upon actually is." Plaintiff argues that the Kahoalii Affirmation properly testified to the records of SNSC's predecessor, as the Kahoalii Affirmation "affirmed that the records of prior servicers had been integrated into SNSC's records and are kept and relied upon as a regular business practice and in the ordinary course of business conducted by SNSC, and that he has personal knowledge of the procedures for integrating prior servicer records." Plaintiff further

argues that the requirement proffered by Defendants to allege the identity of the prior servicer is not a requirement of proving personal knowledge of the records of prior servicers.

"[A]s a general rule, the mere filing of papers received from other entities, even if they are retained in the regular course of business, is insufficient to qualify the documents as business records." (*U.S. Bank N.A. v Adams*, 202 A.D.3d 867, 869 [2d Dep't 2022], quoting *Gordon*, 171 AD3d at 209). "However, such records may be admitted into evidence if the recipient can establish personal knowledge of the maker's business practices and procedures, or establish that the records provided by the maker were incorporated into the recipient's own records and routinely relied upon by the recipient in its own business" (*U.S. Bank N.A. v Adams*, 202 A.D.3d at 869, quoting *Gordon*, 171 AD3d at 209*; see also Citibank, N.A. v. Potente,* 210 A.D.3d 861 [2d Dep't 2022]).

Here, the Kahoalii Affirmation states:

> The business records . . . that were created by prior holders and/or servicers of the loan or other entities have been integrated into SNSC's business records and are kept and routinely relied upon as a regular business practice and in the ordinary course of business conducted by SNSC. I have personal knowledge of these procedures for integrating these records.

Here, the Kahoalii Affirmation sufficiently establishes personal knowledge of SNSC's predecessor's record-keeping practices. Defendants claim that there is a requirement for Mr. Kahoalii's Affirmation to allege the name of the prior servicer in order for the affirmation to sufficiently establish personal knowledge. However, this is not a requirement as per the Second Department. The cases cited by Defendants all denied that the affirmations at issue sufficiently established personal knowledge, not because the affirmations did not allege the name of the prior servicer in their affirmations, but rather because none of the affirmations established that the affiant had personal knowledge of the business practices and procedures of the prior servicer, that the servicer incorporated the records provided by the previous servicer, or that the records were

routinely relied on in the current servicer's own business, as Mr. Kahoalii's affirmation does. (*See U.S. Bank N.A. v. Winnie Realty Group, LLC*, 237 A.D.3d 871, 873-74 [2d Dep't 2025]; *See CitiBank, N.A. v. Milord-Jean-Gille*, 233 A.D.3d 750, 751 [2d Dep't 2024]; *See Bank of N.Y. Mellon v. Demasco*, 226 A.D.3d 855, 857-58 [2d Dep't 2024]). *Wells Fargo Bank, N.A. v. Pane*, which Defendants reference to establish alleging the name of the prior servicer as a requirement, is not applicable to this situation. Where, in this case, the Kahoalii Affirmation properly establishes personal knowledge of the prior loan servicer's record-keeping practices through the precedent discussed above, Plaintiff's loan servicer's affidavit in *Wells Fargo Bank, N.A. v. Pane* did not demonstrate personal knowledge or attest that she was familiar with the prior loan servicer's record-keeping practices and procedures, and "[m]oreover, she failed to identify the entity whose business records she reviewed," not that they "establish[ed] personal knowledge of the maker's business practices and procedures, or establish[d] that the records provided by the maker were incorporated into the recipient's own records and routinely relied upon by the recipient in its own business," but did not allege the name of the prior servicer so the argument fails. (*Wells Fargo Bank, N.A. v. Pane*, 210 A.D.3d 934, 935-36 [2d Dep't 2022]; *See U.S. Bank N.A v Adams*, 202 A.D.3d at 869). As such, Defendants' argument that the Kahoalii Affirmation does not sufficiently establish personal knowledge is not persuasive.

Therefore, under these circumstances, the Kahoalii Affidavit properly lays the foundation for the admission of business records related to the foreclosure.

Standing

Finally, Defendants argue that (1) Plaintiff lacked standing to bring this action due to defects with the allonges attached to the Note submitted with the summons and complaint in this

action; (2) The Note and mortgage were assigned to two different entities, "Sprout" and "US Bank;" and (3) Plaintiff alleges that the Note and Mortgage were assigned to it as part of a securitization/pooling and servicing agreement, however no proper proof was provided that the subject loan is included in the trust. Plaintiff in its opposition avers that (1) Plaintiff properly established its standing to foreclose by attaching the Note and its allonges to the summons and complaint and the allonges attached are not defective and therefore establish standing; (2) The Note is the dispositive instrument to convey standing in a foreclosure action rather than the mortgage, and a discrepancy as to the holder of the mortgage is irrelevant to the Plaintiff's lack of standing once the Note endorsed in blank is attached; and (3) Since Plaintiff established its standing by attaching the Note to the summons and complaint, Plaintiff does not need to provide separate proof that the subject loan is included in the pooling trust. Defendants' Reply does not further argue the issue of standing.

"A plaintiff has standing where it is the holder or assignee of both the subject mortgage and of the underlying note at the time the action is commenced." (*Deutsche Bank Nat'l Trust Co. v. Barnett*, 88 A.D.3d 636, 637 [2d Dep't 2011]) Further, a Plaintiff can establish that it "had physical possession of the note prior to the commencement of the action . . . by its attachment of the note to the summons and complaint at the time the action was commenced." (*Deutsche Bank Natl. Trust Co. v Logan*, 146 A.D.3d 861, 862-63 [2d Dep't 2017]). Here, Plaintiff attached the Note and two undated allonges to the Note to the summons and complaint submitted on November 21, 2022, demonstrating it had physical possession of the Note prior to the commencement of the action and establishing that Plaintiff has standing to commence this action.

Defendants argue that the first allonge names the wrong Mortgagor, as the allonge lists the Mortgagor as David Zelouf while the correct Mortgagor is Pickle Realty. Defendants claim that,

as the Mortgagor's name is incorrect, the allonge does not properly establish chain of title and raises a question of fact as to standing. Plaintiff avers that the incorrect name was an "obvious typographical error" and does not make the allonge defective, so there is no question of fact as to standing.

However, a typographical error is not enough to defeat Plaintiff's prima facie showing of standing by attaching the Note and its two allonges to the summons and complaint at the commencement of the action. (*see Deutsche Bank Natl. Trust Co. v Romano*, 147 A.D.3d 1021, 1022-23 [2d Dep't 2017][holding that a typographical error in the assignment with respect to the name of a beneficiary did not vitiate the plaintiff's standing to enforce the note and mortgage]; *see Barnaba Realty Group, LLC v Solomon*, 121 A.D.3d 730, 731 [2d Dep't 2014]; *see Colombos v. Rams Bottled Water & Coolers, Inc.*, 203 A.D.3d 798, 799 [2d Dep't 2022]). As a result, Plaintiff has established that they have standing to commence this action.

Defendant's Remaining Affirmative Defenses

Defendants submitted five affirmative defenses in Defendant's Answer. Defendant's affirmative defenses numbered 1, 3-5 were not raised or argued in Defendant's Opposition. Affirmative defenses asserted in an answer which are not raised or argued in Defendant's opposition are deemed abandoned and therefore waived. (*Wells Fargo Bank, N.A. v. Carrington*, 221 A.D.3d 746, 749 [2d Dep't 2023]) ("[T]he Supreme Court properly granted those branches of the plaintiff's motion which were to strike his affirmative defenses . . . since the defendant abandoned those affirmative defenses and that counterclaim by failing to address them in opposition to the plaintiff's motion for summary judgment.") As such, Defendant's affirmative defenses numbered 1, 3-5 are deemed waived.

Default Judgment Against Non-Answering Defendants

Plaintiff moves pursuant to Civil Practice and Rules ("CPLR") §3215 for an Order granting default judgment against non-answering defendants upon the ground that non-answering defendants have failed to answer, move or otherwise respond to the verified complaint and, as a result, they are in default. Affidavits have been presented showing that proper service has been made on the defendants, and all defendants besides Defendants Pickle Realty, LLC and David Zelouf are in default. Accordingly, Plaintiff's motion for default judgment against non-answering defendants is granted.

Conclusion

Accordingly, it is

ORDERED that Plaintiff's motion for summary judgment, appointing a referee to report and compute the amount due, default judgment against all non-appearing defendants and amending the caption are granted, and Plaintiff's motion striking Defendants' Answer and affirmative defenses is granted to the extent that Defendant's affirmative defenses numbered 1, 3-5 are deemed waived; and it is further

ORDERED that Defendants' cross-motion for summary judgment and cancelling the Notice of Pendency is denied.

This is the Decision and Order of the Court.

Dated: April 20, 2026
Queens, New York

Hon. Alan J. Schiff, J.S.C.