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| Rushmore Loan Mgt. Services LLC v Dennis |
| 2026 NY Slip Op 31663(U) |
| April 15, 2026 |
| Supreme Court, Kings County |
| Docket Number: Index No. 16597/2009 |
| 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 15th day of April 2026.

PRESENT:

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

RUSHMORE LOAN MANAGEMENT SERVICES LLC,

Plaintiff,

Index No.: 16597/2009

DECISION/ORDER

– against –

PAUL DENNIS, et al.,

Defendants.
----- X

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

Papers

Numbered

Notice of Motion, Affirmation in Support, and Exhibits

NYSCEF Doc. Nos. 47-55

Motion Sequence #15

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

Plaintiff moves for an Order granting default judgment, an order of reference, and substituting NewRez LLC d/b/a Shellpoint Mortgage Servicing f/k/a Specialized Loan Servicing LLC (“NewRez”) as Plaintiff. Paul Dennis (“Defendant Dennis”) does not submit opposition papers. For the foregoing reasons, Plaintiff’s motion is DENIED.

RELEVANT FACTUAL AND PROCEDURAL HISTORY

This residential mortgage foreclosure proceeding was commenced on July 2, 2009, with the filing of a Summons and Complaint and Notice of Pendency. See Kings County Clerk’s

Minutes. Plaintiff filed the action seeking to foreclose upon the mortgage for 1254 East 80th Street, Unit #4, Garage Unit #9, Brooklyn, New York 11236, due to Hortense and Paul Dennis' alleged failure to pay the mortgage. By Order of the Honorable Larry Martin dated October 6, 2023, *inter alia*, Hortense Dennis was discontinued from the action. *See* Order of the Hon. Larry D. Martin dated October 6, 2023, NYSCEF Doc. No. 33. Plaintiff's first motion for default judgment and an order of reference was denied by the court as abandoned on May 3, 2010. *See* Kings County Clerk's Minutes Prior to Conversion. On March 22, 2013, Plaintiff's second motion for this relief was marked off. On November 19, 2024, this Court denied Plaintiff's third motion for this relief for Plaintiff's failure to properly serve the motion. Plaintiff now filed for the same relief for the fourth time, and the following order issues.

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).

Additionally, “[u]pon any transfer of interest, the action may be continued by or against the original parties unless the court directs the person to whom the interest is transferred to be substituted or joined in the action’ (CPLR 1018). ‘A motion for substitution may be made by the successors or representatives of a party or by any party’ (CPLR 1021).” *U.S. Bank, N.A. v. Duran*, 174 A.D.3d 768, 769 (2d Dep’t 2019), citing CPLR 1018 and 1021. *See U.S. Bank N.A. v. Medina*, 230 A.D.3d 1371, 1376-77 (2d Dep’t 2024) (Internal citations omitted) (“U.S. Bank also failed to establish that the caption should be amended to substitute U.S. Bank as the plaintiff. Leave to amend a caption to substitute an assignee for the plaintiff may properly be granted upon evidence that the mortgage and underlying debt were assigned to the assignee Here, Bennett stated in his affidavit that after the commencement of the action, ‘the original Note endorsed in blank was transferred and delivered to Plaintiff’s assignee, [U.S. Bank], and they have maintained possession of the Note since that time.’ However, since Bennett failed to annex to his affidavit the business records on which he relied for that statement, his statement was inadmissible hearsay. Therefore, U.S. Bank failed to establish that it is now the real party in interest.”)

Here, NewRez has not produced the note as part of its prima facie burden. NewRez submits the affidavit of Robert Harrell, a Document Verification Specialist of NewRez, to demonstrate its possession of the subject note. *See* Affidavit in Support and Amounts Due of Robert Harrell dated June 25, 2024, NYSCEF Doc. No. 53. However, Mr. Harrell asserts that “the original Note is currently and has been physically held by Plaintiff, or Plaintiff’s agent, prior to commencement of this action.” *Id.* at ¶5. There is no assertion that NewRez possesses the note, no records are annexed to Plaintiff’s motion papers to establish its location and holder, and the note attached is a mere


copy. *Id.* at 9. Accordingly, Plaintiff fails to establish substitution of NewRez as the proper plaintiff in this action. Finally, NewRez fails to demonstrate its authority to act on behalf of Plaintiff, as no such authorization is proffered. *See Citibank, N.A. v. Herman*, 215 A.D.3d 626 (2d Dep't 2023). Therefore, Plaintiff's motion must be DENIED without regard to the sufficiency of the opposition papers. *See Winegrad v. N.Y. Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985) ("Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers").

CONCLUSION

Accordingly, Plaintiff's motion is DENIED. 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. The parties shall proceed to trial. 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:



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