

Webster Bank, N.A. v Meisels
2026 NY Slip Op 31665(U)
March 20, 2026
Supreme Court, Kings County
Docket Number: Index No. 504704/2023
Judge: Menachem M. Mirocznik
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At IAS Part FRP5 of the Supreme Court of the State of New York, County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, NY 11201, on the 20th of March 2026

PRESENT: HON. MENACHEM M. MIROCZNIK
JUSTICE OF THE SUPREME COURT

WEBSTER BANK, N.A., SUCCESSOR BY MERGER TO STERLING NATIONAL BANK AS SUCCESSOR BY MERGER TO ASTORIA FEDERAL SAVINGS AND LOAN ASSOCIATION,

Plaintiff,

-against-

JOSEPH MEISELS; SARA E. MEISELS A/K/A SARA MEISELS A/K/A SARAH ESTHER MEISELS A/K/A SARAH MEISELS; NEW YORK CITY ENVIRONMENTAL CONTROL BOARD; NEW YORK CITY PARKING VIOLATIONS BUREAU; "JOHN DOES" and "JANE DOES", said names being fictitious, parties intended being possible tenants or occupants of premises, and corporations, other entities or persons who claim, or may claim, a lien against the premises,

Defendants.

Index No. 504704/2023

**Decision and Order
(Motion Seq. 1)**

Papers	Numbered
Notice of Motion	NYSCEF Doc. 36-59
Opposition Papers	NYSCEF Doc. 62-65
Reply Papers	NYSCEF Doc. 66-67

Upon the foregoing papers, the motion(s) is/are determined in accordance with this Decision and Order as follows:

Relevant Procedural and Factual History

This action was commenced on February 13, 2023, seeking to foreclose a mortgage (the "mortgage") executed by defendant Joseph Meisels (the "defendant") which encumbers the property known as 1365 52nd Street, Brooklyn, NY 11219 (the "property").

On March 14, 2023, defendants Joseph Meisels and Sara Meisels joined issue by filing an answer asserting various affirmative defenses including non-compliance with RPAPL 1303, and RPAPL 1304.

Settlement conferences were held on July 18, 2023, August 2, 2023, August 15, 2023, September 19, 2023, November 29, 2023, February 1, 2024, March 7, 2024, and May 1, 2024, after which the matter was released from the settlement part.

Plaintiff now moves for summary judgment, to strike defendants' answer and affirmative defenses, to deem the answer an appearance and waiver in foreclosure, for a default judgment against all non-appearing defendants, to appoint a referee to compute, to amend the caption, and for other relief. The motion is supported, inter alia, by (1) the affirmation of Courtney Rivkin ("Ms. Rivkin" or "Rivkin Affirmation"), Managing Director of Webster Bank, N.A. ("Webster Bank"), and (2) the affidavit of Matt Byun ("Mr. Byun" or "Byun Affidavit"), a "Collector" for Webster Bank. Various alleged business records are attached to the aforementioned affirmation and affidavit including, inter alia, payment histories, copies of the RPAPL 1304 notices, a proof of filing statement, and the underlying loan documents.

Defendants oppose the motion contending that plaintiff failed to establish prima facie entitlement to judgment as a matter of law. Specifically, defendants contend plaintiff failed to demonstrate strict compliance with RPAPL 1304, standing, and default.

In reply, plaintiff contends it demonstrated prima facie entitlement to judgment as a matter of law and that defendants failed to raise an issue of fact.

Discussion

"Summary judgment is a "drastic remedy" that should be granted only where the moving party has tender[ed] sufficient evidence to demonstrate the absence of any material issue of fact...Even then, summary judgment should be granted only if, upon the moving party's meeting this burden, the non-moving party fails to establish the existence of material issues of fact which require a trial of the action...Thus, [w]here the court entertains any doubt as to whether a triable issue of fact exists, summary judgment should be denied" *U.S. Bank N.A. v DLJ Mtge. Capital, Inc.*, 38 NY3d 169 [2022][internal citations and quotation marks omitted]; See also *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Zuckerman v. New York*, 49 NY2d 557 [1980]

"Generally, in moving for summary judgment in an action to foreclose a mortgage, a plaintiff establishes its prima facie case through the production of the mortgage, the unpaid note, and evidence of default" *Hudson City Sav. Bank v Genuth*, 148 AD3d 687 [2d Dept 2017]

"[W]here, as here, a defendant raises the issue of compliance with RPAPL 1304 as an affirmative defense, the moving party is also required to make a prima facie showing of strict compliance with RPAPL 1304...RPAPL 1304(1) provides that, 'at least ninety days before a lender, an assignee or a mortgage loan servicer commences legal action against the borrower, ... including mortgage foreclosure, such lender, assignee or mortgage loan servicer shall give notice to the borrower'...RPAPL 1304 requires that the notice be sent by registered or certified mail, and also by first-class mail to the last known address of the...Strict compliance with RPAPL 1304 notice to the borrower is a condition precedent to the commencement of a foreclosure action, and the plaintiff has the burden of establishing satisfaction of the condition precedent...Proof of the requisite mailings of the RPAPL 1304 notices may be established 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” *Deutsche Bank Natl. Tr. Co. v Bucicchia*, 193 AD3d 682 [2d Dept 2021][internal citations and quotation marks omitted]

“Where, as here, the plaintiff’s standing has been placed in issue by the defendant’s answer, the plaintiff must prove its standing as part of its prima facie showing on a motion for summary judgment” *U.S. Bank N.A. v Moulton*, 179 AD3d 734, 736 [2d Dept 2020]

Additionally, a plaintiff can establish prima facie that it had standing to commence the action by annexing a copy of the subject note endorsed in blank to the complaint. *U.S. Bank N.A. v Auguste*, 173 AD3d 930 [2d Dept 2019]; *Bank of New York Mellon v Swift*, 213 AD3d 624 [2d Dept 2023]

Here, plaintiff established prima facie it had standing to commence the action. Plaintiff is the successor by merger to the original lender, Astoria Federal Savings and Loan Association, through a chain of mergers documented by certificates from the Delaware Secretary of State. Moreover, the subject note, endorsed in blank, was annexed to the complaint at commencement.

“Strict compliance with RPAPL 1304 notice to the borrower is a condition precedent to the commencement of a foreclosure action.” *Deutsche Bank Natl. Tr. Co. v Bucicchia*, 193 AD3d 682 [2d Dept 2021]

“By requiring the lender or mortgage loan servicer to send the RPAPL 1304 notice by registered or certified mail and also by first-class mail, the Legislature implicitly provided the means for the plaintiff to demonstrate its compliance with the statute, i.e., by proof of the requisite mailing, which can be established 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.” *US Bank N.A. v Pierre*, 189 AD3d 1309 [2d Dept 2020]

Here, plaintiff demonstrated strict compliance with RPAPL 1304 through proof of the actual mailing. Mr. Byun, a Collector for Webster Bank, submitted a contemporaneous affidavit, sworn on July 26, 2022, attesting that he personally mailed the RPAPL 1304 ninety-day pre-foreclosure notice to defendant. This constitutes “proof of the actual mailings, such as affidavits of mailing” as recognized in *US Bank N.A. v Pierre*, 189 AD3d 1309 [2d Dept 2020]. Additionally, Ms. Rivkin’s affirmation further attests to the mailing of the notices.

The Court considered defendant’s remaining contentions and finds them to be without merit.

Accordingly, it is hereby

ORDERED, that plaintiff’s motion (Seq. 1) is GRANTED; and it is further

ORDERED, that plaintiff is awarded a default judgment against the non-appearing defendants; and it is further

ORDERED that the caption shall be amended to add Daniel Meisels s/h/a John Doe 1, Adam Doe, Last Name Refused s/h/a John Doe 2, Jacob Doe, Last Name Refused, s/h/a John Doe 3, Eliana Meisels s/h/a Jane Doe 1, Maya Meisels s/h/a Jane Doe 2, Ruth Doe, Last Name Refused, s/h/a Jane Doe 3 to the caption and remove "JOHN DOES" and "JANE DOES", said names being fictitious, parties intended being possible tenants or occupants of premises, and corporations, other entities or persons who claim, or may claim, a lien against the premises; and it is further

ORDERED, that the caption is hereby amended and hereinafter shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No. 504704/2023

WEBSTER BANK, N.A., SUCCESSOR BY MERGER
TO STERLING NATIONAL BANK AS SUCCESSOR
BY MERGER TO ASTORIA FEDERAL SAVINGS AND
LOAN ASSOCIATION,

Plaintiff,

-against-

JOSEPH MEISELS; SARA E. MEISELS A/K/A SARA
MEISELS A/K/A SARAH ESTHER MEISELS A/K/A
SARAH MEISELS; NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD; NEW YORK
CITY PARKING VIOLATIONS BUREAU; DANIEL
MEISELS S/H/A JOHN DOE 1; ADAM DOE, LAST
NAME REFUSED S/H/A JOHN DOE 2; JACOB DOE,
LAST NAME REFUSED, S/H/A JOHN DOE 3; ELIANA
MEISELS S/H/A JANE DOE 1, MAYA MEISELS S/H/A
JANE DOE 2; RUTH DOE, LAST NAME REFUSED,
S/H/A JANE DOE 3

Defendant.

and it is further

ORDERED, that this action be and the same is hereby referred to Erin E. Wietecha, Esq., as Referee, with an address at 67 West St, Ste. 401, Brooklyn, New York 11222 and with phone number (347) 305-1766 and email address Erin@wietecha.law.com, to ascertain and compute the amount due to the Plaintiff herein for principal, interest, and other disbursements advanced as provided for in the note and mortgage, to examine and report whether or not the mortgaged premises can be sold in parcels, and that the Referee complete his/her report with all convenient speed date and that, except for good cause shown, that Plaintiff shall move for judgment no later than 60 days of the date of the Referee's report; and it is further

ORDERED, that upon his filing of the Referee's Report, the Referee shall make an application for compensation which shall detail the hours expended and costs incurred for the services directed herein and the basis for determination of the hourly rate to charged; it further

ORDERED, that by accepting this appointment, the Referee certifies that the Referee is in compliance with 22 NYCRR Part 36, including but not limited to Section 36.2(c)

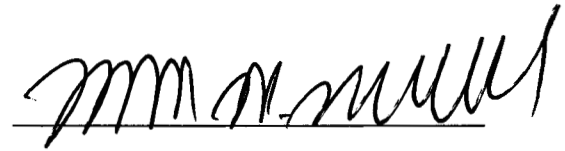
("Disqualifications from Appointment") and Section 36.2(d) ("Limitations on appointments based on compensation"); and it is further

ORDERED, that pursuant to CPLR 8003 (a) the statutory fee of \$350.00, shall be paid to the Referee for the computation stage and upon the filing of her report; and it is further

ORDERED, that a copy of this Order with Notice of Entry shall be served upon the owner of the equity of redemption, any tenants named in this action and any other party entitled to notice.

This constitutes the decision and order of the Court.

ENTER:



Hon. Menachem M. Mirocznik, JSC

KINGS COUNTY CLERK
FILED
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