

JPMorgan Chase Bank, N.A. v 452-53rd St. Realty Corp.

2026 NY Slip Op 31739(U)

April 22, 2026

Supreme Court, Kings County

Docket Number: Index No. 522053/2024

Judge: Genine D. Edwards

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This opinion is uncorrected and not selected for official publication.

At Comm-6 of the Supreme Court held in and for the County of Kings, at the County Courthouse, 360 Adams Street, Brooklyn, New York 11201, on the 22nd day of April 2026.

P R E S E N T :

Hon. Genine D. Edwards, Justice

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JPMORGAN CHASE BANK, N.A.,

Index No. 522053/2024

Plaintiff,

- against -

DECISION & ORDER

452-53RD ST. REALTY CORP., a New York Corporation; NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE; NEW YORK CITY DEPARTMENT OF FINANCE; NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION & DEVELOPMENT; and NEW YORK CITY ENVIRONMENTAL CONTROL BOARD,

Defendants.

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The following e-filed papers read herein:

NYSCEF Nos.:

Notice of Motion, Affirmations in Support and Exhibits Annexed	58-61, 63-87
Affirmation in Opposition.....	90
Affirmation in Reply.....	94

In this commercial mortgage foreclosure action, plaintiff moved for an order (1) striking the affirmative defenses of 452-53rd St. Realty Corp., (“defendant”), (2) granting summary judgment, and (3) referring the matter to a referee to ascertain and compute the total amount due to plaintiff, and to examine and report if the property should be sold in one parcel or in multiple parcels. Defendant opposed the motion.

This action pertains to the commercial premises located at 452 and 456 53rd Street, Brooklyn, New York 11220 (“premises”). On December 23, 2005, Washington Mutual Bank

("WAMU") conveyed a mortgage loan to defendant. Plaintiff's mortgage includes several encumbered mortgages on the premises, which were all consolidated into a single first lien in the principal amount of \$1,495,000.00. On January 10, 2018, the Federal Deposit Insurance Corporation ("FDIC"), as receiver for WAMU, assigned the mortgage and note to plaintiff.

Defendant's Affirmative Defenses

It has been repeatedly held that courts, in reviewing a motion to strike or dismiss affirmative defenses, must "liberally construe the pleadings in favor of the party asserting the defense and give that party the benefit of every reasonable inference." *Janover LLC v. Smith*, 245 A.D.3d 907, 247 N.Y.S.3d 263 (2d Dept. 2026). "...[P]laintiff bears the burden of demonstrating that the affirmative defense is without merit as a matter of law." *Blachowicz v. City of New York*, 241 A.D.3d 1513, 242 N.Y.S.3d 720 (2d Dept. 2025). "If there is any doubt as to the availability of a defense, it should not be dismissed." *Gonzalez v. Wingate at Beacon*, 137 A.D.3d 747, 26 N.Y.S.3d 562 (2d Dept. 2016).

"In a foreclosure action, a plaintiff has standing if it is the holder, or the assignee, of the underlying note at the time the action is commenced." *Central Mortgage Co. v. Davis*, 149 A.D.3d 898, 53 N.Y.S.3d 325 (2d Dept. 2017). "Where a defendant raises the issue of standing in a mortgage foreclosure action, the plaintiff has the burden of proving its standing and entitlement to relief." *Wells Fargo Bank, N.A. v. Parker*, 125 A.D.3d 848, 5 N.Y.S.3d 130 (2d Dept. 2015). "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." *Id.*; *U.S. Bank, N.A. v. Collymore*, 68 A.D.3d 752, 890 N.Y.S.2d 578 (2d Dept. 2009). When an indorsement of a negotiation occurs, the Uniform Commercial Code § 3-202(2) requires the indorsement to be

“written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof.”

In the instant matter, plaintiff argued that defendant’s first affirmative defense alleging plaintiff’s lack of standing is without merit. Plaintiff averred that its standing is evidenced by the FDIC’s assignment of the mortgage to plaintiff and its indorsement of the note to plaintiff via the allonge, which occurred prior to commencement of this instant action. Furthermore, plaintiff’s counsel affirmed that Chase “has inspected and confirmed the existence of the original Note and Allonge, and reviewed the copy of the Mortgage contained in Plaintiff’s file... [confirming] that [plaintiff] is the holder of the Note and has standing to foreclose on the mortgage.”

In opposition, defendant argued that plaintiff failed to establish its position as holder or assignee of the consolidated note. Although Chase’s Special Credits Director, L. Jeffrey Washington (“Washington”) swore that plaintiff was in possession of the note, Washington failed to establish that the note was a bearer instrument, and that it was a bearer instrument on the day this action was commenced. Defendant asserted that Washington’s statement regarding the affixation of the allonge is hearsay, since Washington did not indicate that he viewed the original note or that any records indicated that the allonge was affixed to the note. Defendant contended that plaintiff also failed to establish its status as assignee of the note since the assignment only assigned the mortgage and documents evidencing the note, rather than the note itself.

Despite defendant’s contention of hearsay, this Court finds that Washington’s affidavit is supported by the note, the mortgage, the consolidated mortgage, the assignment of the note and mortgage, and the allonge containing an indorsement in blank, indicating the executed negotiation. Thus, plaintiff has shouldered its prima facie burden of establishing standing. As

such, the striking of defendant's affirmative defense of lack of standing is warranted. *Central Mortgage Co. v. Davis*, 149 A.D.3d 898, 53 N.Y.S.3d 325 (2d Dept. 2017).

Defendant's second affirmative defense alleged, *inter alia*, that plaintiff failed to deliver a notice of default prior to the commencement of this action and/or failed to deliver a contractually compliant notice of default prior to the commencement of this action. Plaintiff argued that no such condition precedent is indicated in the mortgage. In fact, Clause 5.3 of the mortgage expressed: "[u]pon the occurrence of any Event of Default all sums secured hereby shall become immediately due and payable, without notice or demand, at the option of the Lender..." The clear terms of an agreement between sophisticated businesspeople entered into at arm's length are entitled to deference. *410 Lefferts LLC v. 408 Lefferts LLC*, 229 A.D.3d 439, 215 N.Y.S.3d 127 (2d Dept. 2024); *M & R Rockaway LLC v. SK Rockaway Real Estate Co. LLC*, 74 A.D.3d 759, 902 N.Y.S.2d 621 (2d Dept. 2010). Moreover, a default notice was sent.

The third affirmative defense stated that "[p]laintiff has failed to meet the legal requirements that are conditions precedent to bringing a foreclosure action by, amongst other things, failing to provide the notices required pursuant to RPAPL § 1303." Plaintiff countered that the affidavits of service and pictures of notices to the tenants evidenced that service was indeed compliant and effectuated. Likewise, plaintiff's notice of the foreclosure, as exhibited, met statutory requirements.

Defendant's fourth affirmative defense alleged that "plaintiff's causes of action are barred by defenses founded upon documentary evidence." Plaintiff's argument that defendant executed the note and mortgage and thus it is entitled to the relief sought, fails to demonstrate that defendant's affirmative defense is without merit as a matter of law.

Defendant's fifth affirmative defense alleged that plaintiff "failed to state a cause of action upon which relief may be granted." Plaintiff proffers its note, mortgage, consolidated

mortgage, assignment of the note and mortgage, and the allonge containing an indorsement in blank to establish that there is a viable cause of action.

Defendant's sixth affirmative defense alleged that "[t]he instant action is barred by applicable statute of limitations. This Court has already ruled on the validity of this affirmative defense in its December 16, 2024 Order, which indicated that the Second Department, Appellate Division has repeatedly held that Governor Andrew Cuomo's COVID-19 Executive Orders, tolled all statute of limitations during the pandemic.

Lastly, defendant's seventh affirmative defense alleged that the action is barred by RPAPL § 1301(3). Plaintiff indicated that on the contrary, there is no other pending action. Defendant failed to substantiate this affirmative defense by providing this Court with the other pending action(s) that would bar plaintiff's action.

Summary Judgment

Summary judgment is appropriate when there are no issues of triable fact, particularly after the movant tenders sufficient evidence to establish prima facie entitlement to judgment as matter of law. *McAllister v. Wayside Out-Reach*, 241 A.D.3d 539, 20 N.Y.S.3d 738 (2d Dept. 2025). Where plaintiff relies on out-of-court documents, such as business records, to substantiate its claim, "the business record exception to the hearsay rule applies to a writing or record... and it is the business record itself, not the foundational affidavit that serves as proof of the matter asserted. *Deutsche Bank Nat'l Trust Co. v. Amoah*, 244 A.D.3d 812, 247 N.Y.S.3d 171 (2d Dept. 2025). "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." *Id.* Plaintiff's affiant failed to proffer a business record that established defendant's default. The "Statement of Indebtedness Compiled

from Strategy” does not appear to be a record made in the ordinary course of business. Plaintiff missed the mark for summary judgment. *U.S. Bank Nat’l Assn. v. Kochhar*, 176 A.D.3d 1010, 110 NY.S.3d 728 (2d Dept. 2019).

Accordingly, it is

ORDERED that plaintiff’s motion is granted solely to the extent of striking the defendant’s first, second, third, fifth, sixth and seventh affirmative defenses, and it is further

ORDERED that defendant is directed to electronically serve a copy of this Decision and Order with notice of entry on counsel for plaintiff and to electronically file an affidavit of service thereof with the Kings County Clerk.

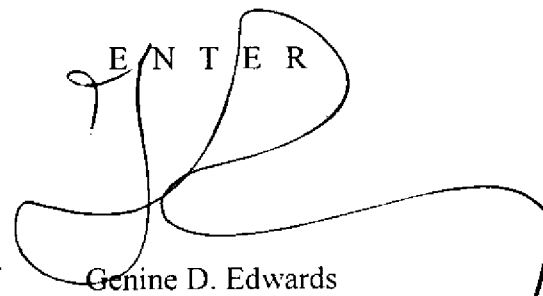
This constitutes the Decision and Order of the Court.

For Clerks use only

MG _____

MD _____

Motion Seq. #: 3

E N T E R

Genine D. Edwards
J.S.C