

<b>HSBC Bank USA, N.A. v Nicholas</b>
2026 NY Slip Op 31886(U)
April 10, 2026
Supreme Court, New York County
Docket Number: Index No. 850043/2018
Judge: Francis A. Kahn III
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. FRANCIS A. KAHN, III PART 32

Justice

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INDEX NO. 850043/2018

HSBC BANK USA, N.A. AS INDENTURE TRUSTEE FOR THE REGISTERED NOTEHOLDERS OF RENAISSANCE HOME EQUITY LOAN TRUST 2006-2,

MOTION DATE

MOTION SEQ. NO. 004

Plaintiff,

- v -

NICOLA NICHOLAS AS ADMINISTRATOR OF THE ESTATE OF CECILIA V. MCDOWELL A/K/A CECILIA MCDOWELL, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, ENVIRONMENTAL CONTROL BOARD, PARKING VIOLATIONS BUREAU, JOHN DOE #1 THROUGH JOHN DOE #12

AMENDED DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 183, 184

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, the motion and cross-motions are determined as follows:

In this action, Plaintiff seeks to foreclose on a consolidated, extended and modified mortgage ("CEMA") encumbering real property identified as 530 West 142nd Street, New York, New York. The CEMA mortgage, dated April 28, 2006, was given by Defendant Cecilia V. McDowell a/k/a Cecilia McDowell ("McDowell"), now deceased, to non-party Mortgage Electronic Registration Systems ("MERS") as nominee for Delta Funding Corporation ("Delta"). The mortgage secures a loan with an original principal amount of \$650,000.00 which is evidenced by two prior notes.

Plaintiff alleges Mortgagor initially defaulted in repayment of the loan on or about December 1, 2007. Non-party HSBC Bank USA, N.A., as Indenture Trustee for the registered Noteholders of Renaissance Home Equity Loan Trust 2006-2, the alleged noteholder at the time, commenced an action to foreclose the mortgage on July 25, 2008 (see HSBC v E/O McDowell, et al., NY Cty Index No 110214/2008). In that complaint, the Plaintiff pled it elected to declare the entire principal balance due and owing. By stipulation dated order dated May 4, 2011, the parties agreed to discontinue the action pursuant to CPLR §3217. The stipulation contained, among other things, the following language: "IT IS FURTHER AGREED that the statute of limitations for any claims of plaintiff or defendant against the other is hereby tolled from July 22, 2008, the date of the summons herein, until June 1, 2013, whether or not they have been previously pled."

Plaintiff commenced this action on February 16, 2018, again seeking foreclosure of the mortgage based on the 2008 default. The fiduciary of the estate of the deceased Mortgagor initially answered *pro se* and pled no cognizable affirmative defenses. By order dated April 8, 2019, Justice Arlene Bluth granted Plaintiff's motion to, *inter alia*, file an amended complaint. The present fiduciary of Mortgagor's estate, Nicola Nicholas ("Nicholas") answered via counsel and pled twenty-nine affirmative defenses, including expiration of the statute of limitations.

Plaintiff moved for summary judgment against Defendant Nicholas, to the answer and affirmative defenses, for a default judgment against the non-appearing parties, for an order of reference and to amend the caption. Defendant Nicholas opposed the motion and cross-moved pursuant to CPLR §3212 for summary judgment dismissing Plaintiff's complaint as time barred, relying on the amendments made to the applicable statutes under the Foreclosure Abuse Prevention Act ("FAPA") (L 2022, ch 821 [eff Dec. 30, 2022]). By order dated April 1, 2024, Plaintiff's motion was denied, Defendant's cross-motion granted, and Plaintiff's complaint was dismissed. By decision dated March 17, 2026, the Appellate Division, First Department reversed the decision and remanded the matter for determination of the motions on the merits (NYSCEF Doc No 189).

On the branches of the motion for summary judgment and a default judgment and appointment of a referee, Plaintiff established the mortgage, note, and evidence of Mortgagor's default in repayment via the affidavit of Kevin Flannigan ("Flannigan"), a Senior Loan Analyst by Ocwen Financial Corporation, Plaintiff's loan servicer, which was sufficiently supported by admissible business records annexed thereto (*see eg Bank of NY v Knowles*, 151 AD3d 596 [1<sup>st</sup> Dept 2017]; *Fortress Credit Corp. v Hudson Yards, LLC*, 78 AD3d 577 [1<sup>st</sup> Dept 2010]). As to standing, the assignment of the CEMA mortgage, dated March 21, 2008, long before the action was commenced, evidences a transfer from MERS to Plaintiff "TOGETHER with the bond or note(s) or obligation(s) described or referred to, in said mortgage". This document established Plaintiff's standing and rendered any claims irregularity with the allonge to the note irrelevant (*see U.S. Bank N.A. v 1226 Evergreen Bapaz LLC*, 227 AD3d 429 [1<sup>st</sup> Dept 2024]; *Broome Lender LLC v Empire Broome LLC*, 220 AD3d 611 [1<sup>st</sup> Dept 2023]). Additionally, the submissions proved that all the statutory and contractual pre-foreclosure requisites were fulfilled (*see generally United States Bank Trust, N.A. v Mehl*, 195 AD3d 1054 [2d Dept 2021]; *Citimortgage, Inc. v Ustick*, 188 AD3d 793, 794 [2d Dept 2020]).

Accordingly, Plaintiff established its *prima facie* case on its foreclosure cause of action, including its standing. Thus, the burden shifts to Defendants to raise a bona fide issue of fact as to one of their affirmative defenses to foreclosure (*see Bernstein v Dubrovsky*, 169 AD3d 692 [1<sup>st</sup> Dept 2019]).

In opposition, Defendants' claim that Plaintiff failed to demonstrate all the elements of a cause of action to foreclosure is without merit. The affidavit and proffered business documents were all in admissible form. Indeed, as the validity of the loan documents and the installment default were not contradicted, those facts "deemed to be admitted" (*Bank of Am NA v Brannon*, 156 AD3d, 1, 6 [1<sup>st</sup> Dept 2017]). Defendant's claim Ocwen failed to demonstrate its authority to act for Plaintiff is without merit. The power of attorney given by Plaintiff to PHH Mortgage Corporation, dated August 19, 2019, is not expressly "restricted" or "conditioned" on other documents (*cf. US Bank NA v Tesoriero*, 204 AD3d 1066 [2d Dept 2022]). Further the merger between PHH and Ocwen was sufficiently corroborated by admissible documentation (*see eg Citimortgage, Inc. v Goldberg*, 134 AD3d 880 [2d Dept 2015]).

On the issue of interest, "[i]n 'an action of an equitable nature, the recovery of interest is within the court's discretion. The exercise of that discretion will be governed by particular facts in each case,'

including wrongful conduct by either party” (*U.S. Bank N.A. v Beymer*, 190 AD3d 445 [1<sup>st</sup> Dept 2021], citing *South Shore Fed. Sav. & Loan Assn. v Shore Club Holding Corp.*, 54 AD2d 978, [2d Dept 1976]). Generally, lengthy unexplained delays and “egregious” wrongful conduct must exist for the Court to assess an interest toll (*see eg U.S. Bank, N.A. v Gendelman*, 214 AD3d 928 [2d Dept 2023]; *Wells Fargo Bank, N.A. v Lee*, 208 AD3d 1384 [2d Dept 2022]; *Prompt Mtge. Providers of N. Am., LLC v Zarour*, 155 AD3d 912, 915 [2d Dept 2017]). Defendant has not established the existence of significant delays in this matter solely attributable to Plaintiff.

All the affirmative defenses and counterclaims are entirely conclusory and unsupported by any facts in the answer or by the papers submitted in opposition. As such, these affirmative defenses are nothing more than an unsubstantiated legal conclusion which is insufficiently pled as a matter of law (*see Board of Mgrs. of Ruppert Yorkville Towers Condominium v Hayden*, 169 AD3d 569 [1<sup>st</sup> Dept 2019]; *see also Bosco Credit V Trust Series 2012-1 v. Johnson*, 177 AD3d 561 [1<sup>st</sup> Dept 2020]; *170 W. Vil. Assoc. v G & E Realty, Inc.*, 56 AD3d 372 [1st Dept 2008]; *see also Becher v Feller*, 64 AD3d 672 [2d Dept 2009]; *Cohen Fashion Opt., Inc. v V & M Opt., Inc.*, 51 AD3d 619 [2d Dept 2008]). Further, to the extent that no specific legal argument was proffered in support of a particular affirmative defense or claim, they were abandoned (*see U.S. Bank N.A. v Gonzalez*, 172 AD3d 1273, 1275 [2d Dept 2019]; *Flagstar Bank v Bellafore*, 94 AD3d 1044 [2d Dept 2012]; *Wells Fargo Bank Minnesota, N.A v Perez*, 41 AD3d 590 [2d Dept 2007]).

The branch of Plaintiff’s motion for a default judgment against the non-appearing parties is granted without opposition (*see CPLR §3215; SRMOF II 2012-I Trust v Tella*, 139 AD3d 599, 600 [1<sup>st</sup> Dept 2016]).

The branch of Plaintiff’s motion to amend the caption is granted without opposition (*see generally CPLR §3025; JP Morgan Chase Bank, N.A. v Laszio*, 169 AD3d 885, 887 [2d Dept 2019]).

Accordingly, it is

ORDERED that the motion for summary judgment against the answering parties, a default judgment against the non-appearing parties and the appointment of a referee to compute is granted without opposition; and it is further

ORDERED that Defendant’s cross-motion is denied in its entirety; and it is further

ORDERED that **Roberta Ashkin, Esq., 400 East 70th Street New York New York 10021, (646) 779-8520** is hereby appointed Referee in accordance with RPAPL § 1321 to compute the amount due to Plaintiff and examine whether the tax parcel can be sold in parcels; and it is further

ORDERED that if a Defendant appears and contests the amount due, in the discretion of the Referee, a hearing may be held, and testimony taken, otherwise the Referee shall hold no hearing and take no testimony or evidence other than by written submission; and it is further

ORDERED that by accepting this appointment the Referee certifies that he is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2 (c) (“Disqualifications from appointment”), and §36.2 (d) (“Limitations on appointments based upon compensation”), and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall immediately notify the Appointing Judge; and it is further

ORDERED that, pursuant to CPLR 8003(a), and in the discretion of the court, a fee of \$350 shall be paid to the Referee for the computation of the amount due and upon the filing of his report and the Referee shall not request or accept additional compensation for the computation unless it has been fixed by the court in accordance with CPLR 8003(b); and it is further

ORDERED that the Referee is prohibited from accepting or retaining any funds for himself or paying funds to himself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED that if the Referee holds a hearing or is required to perform other significant services in issuing the report, the Referee may seek additional compensation at the Referee’s usual and customary hourly rate; and it is further

ORDERED that plaintiff shall forward all necessary documents to the Referee and to defendants who have appeared in this case within 30 days of the date of this order and shall promptly respond to every inquiry made by the referee (promptly means within two business days); and it is further

ORDERED that if defendant(s) have objections, they must submit them to the referee within 14 days of the mailing of plaintiff’s submissions; and include these objections to the Court if opposing the motion for a judgment of foreclosure and sale; and it is further

ORDERED that the failure by defendants to submit objections to the referee shall be deemed a waiver of objections before the Court on an application for a judgment of foreclosure and sale; and it is further

ORDERED that plaintiff must bring a motion for a judgment of foreclosure and sale within 30 days of receipt of the referee’s report; and it is further

ORDERED that if plaintiff fails to meet these deadlines, then the Court may sua sponte vacate this order and direct plaintiff to move again for an order of reference and the Court may sua sponte toll interest depending on whether the delays are due to plaintiff’s failure to move this litigation forward; and it further

ORDERED that the branch of the motion to retain any “JOHN DOE” as a Defendant is denied as the New York County Clerk will not accept any judgment with a “Doe” Defendant in the caption; and it is further

ORDERED that the caption is amended by deleting “JOHN DOE #1” through “JOHN DOE #12” and shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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HSBC BANK USA, N.A. AS INDENTURE TRUSTEE  
FOR THE REGISTERED NOTEHOLDERS OF  
RENAISSANCE HOME EQUITY LOAN TRUST  
2006-2,

Plaintiff,

-against-

LYDIA ANDERSON AS EXECUTRIX OF THE ESTATE OF CECILIA V. MCDOWELL A/K/A CECILIA MCDOWELL, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, ENVIORNMENTAL CONTROL BOARD, PARKING VIOLATIONS BUREAU;

Defendants.

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and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the parties being removed pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website at the address (www.nycourts.gov/suptmanh)]; and it is further

ORDERED that Plaintiff shall serve a copy of this Order with notice of entry on all parties and persons entitled to notice, including the Referee appointed herein.

All parties are to appear for a virtual conference via Microsoft Teams on August 13, 2026, at 10:40 a.m. If a motion for judgment of foreclosure and sale has been filed Plaintiff may contact the Part Clerk (SFC-Part32-Clerk@nycourts.gov) in writing to request that the conference be cancelled. If a motion has not been made, then a conference is required to explore the reasons for the delay.

Mortgage Servicer: PHH Mortgage Corporation -- Phone: (855) 442-2531

4/10/2026 DATE

*[Signature]*

FRANCIS KAHN, III, A.J.S.C.

HON. FRANCIS A. KAHN III J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  OTHER  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT  REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: