

Metro City Bank v Xiu Juan Wu
2026 NY Slip Op 31887(U)
April 10, 2026
Supreme Court, New York County
Docket Number: Index No. 850637/2023
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. 850637/2023

METRO CITY BANK,

MOTION DATE

Plaintiff,

MOTION SEQ. NO. 002

- v -

XIU JUAN WU, BO JIN ZHU AKA BO ZHU, WEN WEI ZHU, YU CHENG ZHANG, STANFIELD SHEK, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD, CITY OF NEW YORK DEPARTMENT OF FINANCE PARKING VIOLATIONS BUREAU PAYMENT AND ADJUDICATION CENTER OF QUEENS, JIANYUAN YANG, GOLDEN URBAN PROPERTY MANAGEMENT LLC, GOLDBERG ZONIO & ASSOCIATES OF NEW YORK PC DBA ENVIRONMENTAL OF NEW YORK, BOARD OF MANAGERS OF HONTO 88 CONDOMINIUMS, JOHN DOE,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106 were read on this motion to/for JUDGMENT - SUMMARY

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

This is an action to foreclose on a mortgage encumbering a parcel of real property located at 60 Henry Street, Unit 14C2, New York, New York 10002. The mortgage secures a loan in the original principal amount of \$600,000.00 given by Defendant Xiu Juan Wu ("Wu") to Plaintiff Metro City Bank ("Bank") and is memorialized by a note the same date as the mortgage. The note and mortgage are dated December 8, 2016, and were executed by Defendant Bo Jin Zhu ("Bo") pursuant to a power of attorney dated December 2, 2016. Plaintiff commenced this action and pled, inter alia, that Defendants defaulted in repayment of the loan. Wu answered and pled fifteen affirmative defenses, including lack of standing and failure to comply with RPAPL §1304 and §1306.

Now, Plaintiff moves for inter alia summary judgment against Defendant Wu, to strike Wu's answer and dismiss the affirmative defenses, a default judgment against the non-answering Defendants, and to appoint a referee to compute. Defendant Wu opposes the motion and cross-moves for summary judgment dismissing the complaint pursuant to CPLR §3211[a][3]. Plaintiff opposes the cross-motion.

In moving for summary judgment, Plaintiff was required to establish prima facie entitlement to judgment as a matter of law though proof of the mortgage, the note, and evidence of Defendants' default in repayment (see U.S. Bank, N.A. v James, 180 AD3d 594 [1st Dept 2020]; Bank of NY v Knowles, 151

AD3d 596 [1st Dept 2017]; *Fortress Credit Corp. v Hudson Yards, LLC*, 78 AD3d 577 [1st Dept 2010]). Also, based on the affirmative defenses pled, Plaintiff was required to demonstrate its standing (*see eg Wells Fargo Bank, N.A. v Tricario*, 180 AD3d 848 [2nd Dept 2020]), and its compliance with RPAPL §§ 1304 and 1306 (*see U.S. Bank, NA v Nathan*, 173 AD3d 1112 [2d Dept 2019]; *HSBC Bank USA, N.A. v Bermudez*, 175 AD3d 667, 669 [2d Dept 2019]). Proof supporting a *prima facie* case on a motion for summary judgment must be in admissible form (*see CPLR §3212[b]*; *Tri-State Loan Acquisitions III, LLC v Litkowski*, 172 AD3d 780 [1st Dept 2019]). A plaintiff may rely on evidence from persons with personal knowledge of the facts, documents in admissible form and/or persons with knowledge derived from produced admissible records (*see eg U.S. Bank N.A. v Moulton*, 179 AD3d 734, 738 [2d Dept 2020]). No precise set of business records must be proffered, so long as the admissibility requirements of CPLR 4518[a] are fulfilled and the records evince the facts for which they are relied upon (*see eg Citigroup v Kopelowitz*, 147 AD3d 1014, 1015 [2d Dept 2017]).

Plaintiff's motion is supported by an affidavit from Farid Tan ("Tan"), the CEO of Plaintiff. Tan avers that his submission was based upon a review of Plaintiff's records. Tan's affidavit laid a proper foundation for the admission of the records of Plaintiff into evidence under CPLR §4518 by sufficiently showing that the records relied upon "reflect[ed] a routine, regularly conducted business activity, and that it needed and relied upon in the performance of the functions of the business", "that the record [was] made pursuant to established procedures for the routine, habitual, systematic making of such a record" and "that the record [was] made at or about the time of the event being recorded" (*Bank of N.Y. Mellon v Gordon*, 171 AD3d 197, 204 [2d Dept 2019]; *see also Bank of Am v Brannon*, 156 AD3d 1 [1st Dept 2017]). Accordingly, proof of the loan documents, including the note and mortgage, was established in the first instance through the affirmation of Tan and the annexed documents (*see Bernstein v Dubrovsky*, 169 AD3d 410 [1st Dept 2019]). In opposition, Wu's assertion that her signature on a power of attorney, dated December 2, 2016, which authorized her husband Bo to execute the mortgage on her behalf was forged fails. Wu proffered no evidence beyond her conclusory statement that the signature on the power of attorney was forged which is insufficient to rebut the presumption of due execution, as established by the document's notarization (*see Lucky's Real Estate Group, LLC v Powell*, 189 AD3d 1202 [2d Dept 2020]; *Oro v Figeroa*, 208 AD3d 1338 [2d Dept 2022]).

A defendant's default "is established by (1) an admission made in response to a notice to admit, (2) an affidavit from a person having knowledge of the facts, or (3) other evidence in admissible form" (*Deutsche Bank Natl. Trust Co. v McGann*, 183 AD3d 700, 702 [2d Dept 2020]). Here, Where, as here, proof of a default is based on records, the documents evidencing the default (ie. an account ledger or similar), must be proffered and annexed to the affiants' affidavit (*see 938 St. Nicholas Ave. Lender LLC v 936-938 Cliffcrest Hous. Dev. Fund Corp.*, 218 AD3d 417 [1st Dept 2023]; *Nationstar Mortgage LLC v Konitz I, LLC*, 208 AD3d 500 [2d Dept 2022]; *US Bank v Rowe*, 194 AD3d 978 [2d Dept 2021]). In this case, no records were proffered to support Tan's assertion of a payment default. The purported default notices submitted are, in and of themselves, insufficient to establish a default in repayment (*see Bank of N.Y. Mellon v Mannino*, 209 AD3d 707 [2d Dept 2022]). As such, Plaintiff failed to demonstrate *prima facie* Defendant's default in repayment.

As to standing in a foreclosure action, it is established in one of three ways: [1] direct privity between mortgagor and mortgagee, [2] physical possession of the note prior to commencement of the action that contains an indorsement in blank or bears a special indorsement payable to the order of the plaintiff either on its face or by allonge, and [3] assignment of the note to Plaintiff prior to the commencement of the action (*see Wells Fargo Bank, N.A. v Tricario*, 180 AD3d 848 [2d Dept 2020]; *Wells Fargo Bank, NA v Ostiguy*, 127 AD3d 1375 [3d Dept 2015]). Here, since Plaintiff was lender

under when the note and mortgage were given, it was in direct privity with the mortgagors when the action was commenced and, therefore, unquestionably had standing (*see generally Wilmington Sav. Fund Socy., FSB v Matamoro*, 200 AD3d 79, 90-91 [2d Dept 2021]).

Plaintiff was also required to proffer “sufficient evidence demonstrating the absence of material issues as to its strict compliance with RPAPL 1304” (*Aurora Loan Servs., LLC v Weisblum*, 85 AD3d 95, 106 [2d Dept 2011]). While RPAPL §1304 does not specify the proof necessary to demonstrate compliance therewith, the Court of Appeals “has long recognized a party can establish that a notice or other document was sent through evidence of actual mailing . . . or . . . by proof of a sender's routine business practice with respect to the creation, addressing, and mailing of documents of that nature” (*Cit Bank N.A. v Schiffman*, 36 NY3d 550, 556 [2020][internal citations omitted]). “In other words, there are two methods by which a plaintiff can demonstrate the requisite mailings” (*U.S. Bank N.A. v Romano*, 231 AD3d 1079, 1080 [2d Dept 2024]). Proof of actual mailing may be shown with a contemporaneous affidavit of mailing or other admissible evidence, including loan service documentation or postal records, which evidence the required mailings (*see eg U.S. Bank N.A. v Romano*, supra at 1083; *US Bank v Zientek*, 192 AD3d 1189, 1191 [2d Dept 2021]). Alternatively, a plaintiff may proffer evidence of a satisfactory office practice which can raise a rebuttable presumption that the required notice was sent and received by the addressee (*Cit Bank N.A. v Schiffman*, supra).

Here, Plaintiff submits an affirmation of mailing from Yun Kyung Lee (“Lee”), a Legal Assistant for Plaintiff’s counsel, who attested that she personally mailed the notices in accordance with RPAPL §1304. Lee’s affidavit, along with copies of the notices sent to Wu and Bo, established Plaintiff’s compliance with the statute (*see Wilmington Sav. Fund Socy., FSB v. Blum*, 241 AD3d 857 [2d Dept 2025]; *U.S. Bank Trust, N.A. v Solomon*, 241 AD3d 749 [2d Dept 2025]; *Emigrant Bank v Cohen*, 205 AD3d 103, 107-108 [2d Dept 2022]). In opposition, Wu’s conclusory statement that she never received the notice is insufficient to rebut the presumption of proper mailing in this case (*see AS Helios LLC v Chauhan*, ___AD3d___, 2026 NY Slip Op 01592 [1st Dept 2026]). Further, Wu’s complaints as to the substance of the RPAPL §1304 notice are unavailing. A copy of the notice was provided which facially revealed the notice contains the requisite font size (*cf. Tuthill Fin., a Ltd. Partnership v Candlin*, 129 AD3d 1375 [3d Dept 2015]) as well as the required language of the notice (*see RPAPL §1304*).

Concerning RPAPL §1306, that section provides, in pertinent part “that within three business days of the mailing of the foreclosure notice pursuant to RPAPL 1304(1), every lender or assignee ‘shall file’ certain information with the superintendent of financial services, including ‘at a minimum, the name, address, last known telephone number of the borrower, and the amount claimed as due and owing on the mortgage, and such other information as will enable the superintendent to ascertain the type of loan at issue’” (*HSBC Bank USA, N.A. v Bermudez*, supra; quoting RPAPL §§1306[1][2]). Compliance with RPAPL §1306 is a condition precedent to the commencement of a foreclosure action and failure to fulfill its requisites is fatal to the action (*see Bank of N.Y. Mellon v Peralta*, 239 AD3d 932 [2d Dept 2025]). Tan’s affirmation in support of the motion is silent on this issue and Plaintiff’s counsel proffers a single conclusory sentence which fails to explain why, whether pursuant to Banking Law §590[1][e] or to any other basis, it is exempt from complying with the requisites of RPAPL §1306.

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 [1st Dept 2016]).

Turing to the cross-motion, “[e]ven in the face of a plaintiff’s failure to establish, prima facie, that a notice was properly mailed on a motion for summary judgment on the complaint, ... a defendant still has to meet its burden, on a cross motion for summary judgment dismissing the complaint, of establishing that the condition precedent was not fulfilled” (Citibank, N.A. v Conti-Scheurer, 172 AD3d 17 [2d Dept 2019]). In support of the cross-motion, Wu failed to demonstrate, as a matter of law, that the notices were facially deficient or not appropriately mailed (see U.S. Bank N.A. v Cambardella, 214 AD3d 925 [2d Dept 2023]), or that either was not appropriately served (see Wells Fargo Bank NA v Tricario, supra). Regarding RPAPL §1306, “defendant failed to demonstrate, prima facie, that the plaintiff did not comply with RPAPL 1306, and simply pointed to claimed deficiencies in the plaintiff’s proof. Thus, the burden never shifted to the plaintiff to raise a triable issue of fact” (Prof-2013-S3 Legal Title Trust V v Johnson, 214 AD3d 745, 748 [2d Dept 2025]).

Except as to RPAPL §1306, all the other affirmative defenses are entirely conclusory and unsupported by any facts in the answer or by the papers submitted in opposition. As such, these affirmative defenses and claims 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 [1st Dept 2019]; see also Bosco Credit V Trust Series 2012-1 v. Johnson, 177 AD3d 561 [1st 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 Bellafigiore, 94 AD3d 1044 [2d Dept 2012]; Wells Fargo Bank Minnesota, N.A v Perez, 41 AD3d 590 [2d Dept 2007]).

Accordingly, it is

ORDERED that Plaintiff’s motion for summary judgment against the appearing Defendant is denied; and it is further

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

ORDERED that Plaintiff’s motion for a default judgment against the non-appearing parties is granted; and it is further

ORDERED that this matter is set down for a status conference on **June 17, 2026, 2026 @ 11:20 am** via Microsoft Teams.

4/10/2026

DATE

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

APPLICATION:

CHECK IF APPROPRIATE:


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

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE