

U.S. Bank Trust N.A. v Giuffre
2026 NY Slip Op 31963(U)
May 12, 2026
Supreme Court, Richmond County
Docket Number: Index No. 135125/2024
Judge: Raymond Rodriguez
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND: PART RFP

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U.S. BANK TRUST NATIONAL ASSOCIATION AS
TRUSTEE OF THE CABANA SERIES IV TRUST,

Plaintiff,

- v -

IGNAZIO GIUFFRE A/K/A IGNAZIO R. GIUFFRE
A/K/A IGNAZIO P. GIUFFRE; GINA GIUFFRE
A/K/A GINA M. GIUFFRE; CAPITAL ONE BANK
USA, NA; UNITED STATES OF AMERICA
(SOUTHERN DISTRICT); NEW YORK CITY
PARKING VIOLATIONS BUREAU; "JOHN DOE"
AND "JANE DOE" said names being fictitious, it
being the intention of Plaintiff to designate any and all
occupants of premises being foreclosed herein,

Defendants.
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Present:
Hon. Raymond Rodriguez

Index No.: 135125/2024

Motion Seq. No.: 001

DECISION AND ORDER

The Court considered the following e-filed documents associated with motion sequences #001:

	E-Filed Document #
Notice of Motion for Summary Judgment, Default Judgment and Appointment of a Referee to Compute (Motion # 001) By Plaintiff, with Supporting Papers and Exhibits (dated January 21, 2026)	50-72
Attorney Affirmation in Opposition to Defendants' Motion for Summary Judgment (Motion # 001) By Defendants, Ignazio Giuffre and Gina Giuffre (dated January 7, 2026)	76
Attorney Affirmation in Reply (Motion # 001) By Plaintiff (dated January 9, 2026)	77

Upon the foregoing papers, the motion by plaintiff U.S. Bank Trust National Association as Trustee of The Cabana Series IV Trust for summary judgment, striking of affirmative defenses and counterclaims, entry of default judgment against non-appearing defendants, correction of caption, and appointment of a referee is granted.

FACTUAL BACKGROUND

On October 6, 2006, Ignazio Giuffre and Gina Giuffre, (hereinafter defendants) executed a promissory note in the amount of \$285,000 to New Century Mortgage Corporation, which was secured by a mortgage on real property located at 95 Gaynor Street, Staten Island, New York.

On or about April 2006, New Century Mortgage Corporation assigned said loan documents to Mortgage Electronic Registration Systems, Inc.

On or about May 2006, Mortgage Electronic Registration Systems, Inc. assigned said loan documents to Option One Mortgage Corporation. A lost note affidavit and accompanying note, endorsed in blank, was provided.

On or about June 2006, defendants executed a promissory note (Gap Mortgage) in the amount of \$46,381.15 to Option One Mortgage Corporation. Defendants contemporaneously executed a consolidation, extension, and modification agreement (CEMA) with Option One Mortgage Corporation to consolidate, extend, and modify certain terms and conditions of the underlying promissory notes and mortgages to form a single lien of \$330,000.

On or about February 13, 2008, defendants and Option One Mortgage Corporation, amended and supplemented the CEMA by execution of a loan modification agreement, which capitalized all arrears to form a total unpaid principal balance of \$374,998.83.

In October 2008, Option One Mortgage Corporation assigned said loan documents to Green Tree Servicing LLC.

On or about August 28, 2015, defendants and Green Tree Servicing, LLC, amended and supplemented the CEMA by execution of a loan modification agreement which capitalized all arrears to form a total unpaid principal balance of \$539,852.79.

On November 13, 2018, Ditech Financial LLC fka Green Tree Servicing LLC sometimes known as Green Tree Services LLC assigned said loan documents to MTGLQ Investors, L.P.

On February 24, 2020, MTGLQ Investors, L.P assigned said mortgage and note to US Bank Trust National Association as Trustee of the Tiki Series IV Trust.

On March 27, 2020, US Bank Trust National Association as Trustee of the Tiki Series IV Trust assigned the mortgage and note to US Bank Trust National Association as Trustee of the Cabana Series IV Trust.

In July 2022, defendants executed a consolidation, extension, and modification agreement with plaintiff, US Bank Trust National Association as Trustee of the Cabana Series IV Trust, to consolidate, extend, and modify certain terms and conditions of the underlying promissory notes and mortgages to form a total single lien of \$878,775.19.

Defendants defaulted under the terms of the loan documents by failing to make the monthly installment due on October 1, 2022.

Required Notices of Default and RPAPL §1304 ninety-day pre-foreclosure notices were duly mailed, and mailing proofs were filed.

Plaintiff submitted a motion for, *inter alia*, an order for (a) summary judgment and default judgment against all non-appearing defendants; (b) striking the affirmative defenses and

counterclaims of Ignazio Giuffre and Gina Giuffre; (c) appointing a Referee to compute the total sums due and owing to Plaintiff; and (d) amending the case caption.

Defendants opposed plaintiff's motion contending that plaintiff fails to make a prima facie case as it failed to submit proof that it had the original note at the time of the commencement of the action and the lost note affidavit submitted by plaintiff fails to qualify as a business record.

DISCUSSION

A motion for summary judgment may be granted only if the movant tenders sufficient evidence in admissible form demonstrating, *prima facie*, the absence of triable issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). If that burden is met, the burden shifts to the party opposing the motion to produce evidentiary proof in an admissible form establishing the existence of material issues of fact requiring trial (*Zuckerman*, 49 NY2d at 562).

“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” (*IndyMac Venture, LLC v Amus*, 164 AD3d 883, 884 [2d Dept 2018] quoting *Plaza Equities, LLC v. Lamberti*, 118 AD3d 688, 689 [2d Dept 2014]). “Where, as here, a plaintiff's standing to commence a foreclosure action is placed in issue by the defendant, it is incumbent upon the plaintiff to prove its standing to be entitled to relief” (*Wells Fargo Bank, N.A. v Arias*, 121 AD3d 973, 973-974 [2d Dept 2014]), quoting *Citimortgage, Inc. v Stossel*, 89 AD3d 887, 888, 934 NYS2d 182 [2d Dept 2011]).

A plaintiff may establish standing in a residential mortgage foreclosure action in one of three ways (*Wilmington Sav. Fund Socy., FSB v Matamoro*, 200 AD3d 79, 90 [2d Dept 2021]).

The first is where the plaintiff is the original lender in direct privity with the defendant; the second is where the plaintiff is a holder in physical possession of the note, with an allonge or indorsement in blank, prior to commencement of the action; and the third is when the note underlying the action was assigned to the plaintiff prior to the commencement of the action (*Id.* at 91).

The Second Department has held that a plaintiff may establish standing by producing the modification agreement. “[T]he plaintiff established that the modification agreement created a direct contractual relationship between the plaintiff and the defendants relating specifically to the subject promissory note and mortgage. By entering into the modification agreement and making monthly installment payments thereunder, the defendants expressly acknowledged the plaintiff’s status at the holder of the note [as of the date of the modification agreement] —well before the commencement of this action” (*Wells Fargo Bank, N.A. v Graffioli*, 167 AD3d 969, 971 [2d Dept 2018]).

Here, the plaintiff demonstrated direct privity with the defendants because the defendants executed the modification agreement with the plaintiff. The defendants entered into a modification agreement with plaintiff in July 2022 and made payments to plaintiff from the date of the modification agreement until their default in October 2022. Thus, the plaintiff established that it had standing to foreclose (*Id.* at 971).

In opposition, the plaintiff has failed to raise any triable issues of fact.

The Court has reviewed the remaining arguments and finds them to be unavailing.

Accordingly, it is hereby

ORDERED that Plaintiff’s motion for summary judgment is granted; and it is further

ORDERED that default judgment shall be entered against all non-appearing defendants;

and it is further

ORDERED that the affirmative defenses and counterclaims of Ignazio Giuffre and Gina Giuffre are stricken; and it is further

ORDERED that a Referee shall be appointed to compute the total sums due and owing to Plaintiff; and it is further

ORDERED that the caption shall be amended by substituting “JOHN DOE” and “JANE DOE” with “JAMES MEYERS”; and it is further

ORDERED, that the Clerk shall enter judgment accordingly.

This constitutes the Decision and Order of the Court.

ENTER,



Hon. Raymond Rodriguez

Dated: **May 12, 2026**