LoanDepot.com, LLC v Walcott
2026 NY Slip Op 32025(U)
May 9, 2026
Supreme Court, Kings County
Docket Number: Index No. 503731/2016
Judge: Carolyn Walker-Diallo
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At an IAS Term, Part FRP4, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 320 Jay Street, Brooklyn, New York, on the 9th day of May 2026.

PRESENT:

HON. CAROLYN WALKER-DIALLO, J.S.C.

Index No.: 503731/2016

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LOANDEPOT.COM, LLC,

Plaintiff,

-against-

GLENROY WALCOTT as administrator of the ESTATE OF HATTIE PICKETT, et al.,

Defendants.

____ x

DECISION AND ORDER

Recitation, as required by CPLR 2219 (a), of the papers considered in the review of these Motions:

Papers	**Numbered**
Motion, Affirmation in Support, and Exhibits	NYSCEF Doc. Nos. 144-186
Cross-Motion, Affirmation in Support, and Exhibits	NYSCEF Doc. Nos. 190-195
Affirmation in Opposition	NYSCEF Doc. No. 197
Affirmation in Reply	NYSCEF Doc. No. 201

Motion Sequence #8 & 9

Upon the foregoing cited papers, the Decision/Order on these Motions is as follows:

Plaintiff moves for an Order: (1) amending the caption to substitute Gordon[1] Pickett as alleged sole heir to the Estate of Hattie Pickett, as defendant and occupant in place of John Doe #1 and Gordon Ellis Pickett as defendant and occupant in place of John Doe #2; (2) deeming the

[1] Although Plaintiff's notice of motion requests that "Glenroy Pickett" be added, this name appears to be a typographical error for Gordon Pickett.

answer served by Defendant Glenroy Walcott As Administrator of the Estate of Hattie Pickett and Gordon Pickett[2] as sole heir to the Estate of Hattie Pickett ("Defendants") to have been filed on behalf of Walcott and Pickett; (3) granting summary judgment as against Defendants and striking their answers and affirmative defenses and counterclaims; (4) granting an order of reference; and (5) granting default judgment[3]. Defendant Glenroy Walcott ("Defendant Walcott") cross-moves[4] for an Order denying Plaintiff's motion for summary judgment and granting summary judgment. Plaintiff submits opposition papers and Defendant Walcott submits reply papers. For the foregoing reasons, both motions are DENIED.

DISCUSSION

I. PLAINTIFF'S MOTION IS DENIED IN ITS ENTIRETY.

A. PLAINTIFF HAS FAILED TO DEMONSTRATE ITS PRIMA FACIE BURDEN IN THIS ACTION, AND ITS MOTION IS DENIED.

It is well established that "[i]n a residential mortgage foreclosure action, a plaintiff establishes its prima facie entitlement to judgment as a matter of law by producing the mortgage and the unpaid note, and evidence of the default." *Onewest Bank v. Wellington Roy Mahoney*, 154 A.D.3d 770, 771 (2d Dep't 2017); *Loancare v. Firshing*, 130 A.D.3d 787 (2d Dep't 2015). "To demonstrate the facts constituting the cause of action, the plaintiff need only submit sufficient proof to enable a court to determine if the cause of action is viable." *Clarke v. Liberty Mut. Fire*

[2] Although Plaintiff's notice of motion notes that the answer was verified by "Glenroy Pickett,", this name appears to be a typographical error for Gordon Pickett.

[3] Plaintiff's motion papers additionally request that a substitution for Plaintiff be granted. *See* Affirmation of Jordan W. Schur, Esq., in Support of Motion dated November 22, 2024, NYSCEF Doc. No. 145 at 22. Such relief is not properly requested in the notice of motion. Notwithstanding, as discussed below, this relief is DENIED, as discussed below.

[4] Gordon Pickett joins Defendant Walcott's opposition, but not the reply papers. *See* Affirmation of Gordon Pickett dated February 4, 2025, NYSCEF Doc. No. 192.

Ins. Co., 150 A.D.3d 1192, 1194 (2d Dep't 2017). Further, "[w]here, as here, a foreclosure complaint is not verified, CPLR 3215 (f) states, among other things, that upon any application for a judgment by default, proof of the facts constituting the claim, the default, and the amount due are to be set forth in an affidavit 'made by the party.'" *HSBC Bank USA, N.A. v. Betts*, 67 A.D.3d 735, 736 (2d Dep't 2009). "In this regard, it should be kept in mind that a court does not have a mandatory, ministerial duty to grant a motion for leave to enter a default judgment, and retains the discretionary obligation to determine whether the movant has met the burden of stating a viable cause of action." *Paulus v. Christopher Vacirca, Inc.*, 128 A.D.3d 116, 126 (2d Dep't 2015).

Additionally, "a motion for summary judgment will not be granted if it depends on proof that would be inadmissible at the trial under some exclusionary rule of evidence. Records made in the regular course of business are hearsay when offered for the truth of their contents. When a party relies upon the business records exception to the hearsay rule in attempting to establish its prima facie case, [a] proper foundation for the admission of a business record must be provided by someone with personal knowledge of the maker's business practices and procedures." *HSBC Bank USA, N.A. v. Vasishta*, 241 A.D.3d 1299, 1300 (2d Dep't 2025) (Internal quotations and citations omitted).

"Accordingly, to establish a foundation for the admission of a business record, the proponent of the record must satisfy the requirements identified in the statute (*see* CPLR 4518[a]). First, the proponent must establish that the record be made in the regular course of business—essentially, that it reflect a routine, regularly conducted business activity, and that it be needed and relied on in the performance of functions of the business. Second, the proponent must also demonstrate that it be the regular course of such business to make the record . . . essentially, that the record be made pursuant to established procedures for the routine, habitual, systematic making

of such a record. Third, the proponent must establish that the record be made at or about the time of the event being recorded—essentially, that recollection be fairly accurate and the habit or routine of making the entries assured." *Bank of N.Y. Mellon v. Gordon*, 171 A.D.3d 197, 205 (2d Dep't 2019) (Internal quotations marks and citations omitted).

Here, Plaintiff submits an affirmation by Scott Drosdick, General Counsel of Statebridge Company ("Statebridge"), as Attorney-in-Fact for National Cooperative Bank ("NCB"), successor to Plaintiff, in support of its motion and to establish admissibility of the included exhibits. *See* Affirmation in Support by Scott Drosdick ("Drosdick Aff. in Support") dated October 16, 2024, NYSCEF Doc. Nos. 161. As Plaintiff's alleged agent, Statebridge must provide its authority to act on Plaintiff's behalf. While Mr. Drosdick provides that he is authorized pursuant to a Power of Attorney, the Limited Power of Attorney provided is not accompanied by the underlying Servicing Agreement which grants Statebridge the authority to act. *See* Limited Power of Attorney, NYSCEF Doc. No. 162. Therefore, the affiant's purported authority to make representations on Plaintiff's behalf is not established. *U.S. Bank N.A. v. Tesoriero*, 204 A.D.3d 1066 (2d Dep't 2022). As such, the Court cannot consider the exhibits annexed as business records admissible under CPLR 4518 (a) given the insufficient foundation laid, and the underlying exhibits are inadmissible to establish Plaintiff's prima facie case and RPAPL 1304 obligations.

Therefore, Plaintiff's motion must be DENIED without regard to the sufficiency of the opposition papers. *See Winegrad v. N.Y. Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985) ("Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers").

B. PLAINTIFF DOES NOT ESTABLISH ITS SUCCESSOR IN INTEREST IN THIS ACTION.

Further, Plaintiff's motion papers, but not its notice of motion, request that a substitution for Plaintiff be granted as NCB and the caption amended accordingly. *See* Affirmation of Jordan W. Schur, Esq., in Support of Motion ("Schur Aff.") dated November 22, 2024, NYSCEF Doc. No. 145 at ¶76. However, Plaintiff does not support its motion papers with admissible business records to establish that NCB is Plaintiff's successor in interest. The records annexed to the motion papers as various exhibits, while voluminous, do not provide sufficient basis for the Court to extrapolate the relationships between the entities therein. Specifically, in the affirmation provided, Mr. Drosdick states, without any support, that "NCB purchased the subject loan from Plaintiff." *See* Drosdick Aff. in Support, NYSCEF Doc. No. 161 at ¶2. *See Citicorp Mtge. v. Adams*, 153 A.D.3d 779 (2d Dep't 2017). Attaching the assignment of mortgage is of no import. *See U.S. Bank N.A. v. Dellarmo*, 94 A.D.3d 746 (2d Dep't 2012); Assignment of Mortgage, NYSCEF Doc. No. 166. Accordingly, Plaintiff's request for substitution is DENIED.

C. PLAINTIFF DOES NOT ESTABLISH ITS 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 . . . 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 borrower. 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. Trust Co. v. Bucicchia*, 193 A.D.3d 682, 684-85 (2d Dep't 2021) (Internal quotation marks and citations omitted). Further, "in order for the presumption to arise, [the] office practice must be geared so as to ensure the likelihood that [the] notice . . . is always properly addressed and mailed." *Wells Fargo Bank, N.A. v. Shields*, 201 A.D.3d 1007, 1009 (2d Dep't 2022).

"Alternatively, the plaintiff bears the burden of establishing, prima facie, that RPAPL 1304 is inapplicable and, therefore, that the loan is not subject to the notice requirements . . . 'Home loan' is defined as a loan, inter alia, that is secured by a mortgage on real estate which is or will be occupied by the borrower as the borrower's principal dwelling." *Bank of Am., N.A. v. Reed*, 239 A.D.3d 800, 803-04 (2d Dep't 2025) (Internal quotation marks and citations omitted).

Here, Plaintiff has failed to establish compliance with RPAPL 1304. The affirmation proffered by Mr. Drosdick is insufficient, as detailed above regarding his authority, and in that he does not provide that he has personal knowledge of the RPAPL 1304 mailings (having been employed with Statebridge only since 2023). He only avers that he has knowledge of the mailing practices and procedures of Statebridge, that the notices were allegedly sent on October 5, 2015, and that "upon review, it was also the procedure of Cenlar." *See* Drosdick Aff. in Support, NYSCEF Doc. No. 161 at ¶18. What was reviewed is not provided. A review of the notices themselves provides that these notices contain the letterhead of LoanDepot. *See* Notices dated October 5, 2015, NYSCEF Doc. No. 169. The affiant does not attest to any familiarity with the mailing practices and procedures of Cenlar or LoanDepot. Additionally, the attached proof of mailing provided from the United States Postal Service reflects mailing for a single RPAPL 1304 notice on October 8, 2015, which conflicts with the letter log providing for mailing on October 5,

2015. *See* Letter Log, USPS Tracking, NYSCEF Doc. Nos. 170, 171. Finally, RPAPL 1304 compliance regarding the second mailing, is not established, as the Letter Log only contains one entry. Therefore, Plaintiff fails to demonstrate prima facie compliance with its RPAPL 1304 obligation. *See US Bank N.A. v. Okoye-Oyibo*, 213 A.D.3d 718, 720, 720-721 (2d Dep't 2023).

While Plaintiff contends that Defendants may not assert RPAPL 1304 noncompliance as a defense because neither is the borrower, the Court disagrees. Firstly, the subject note expressly defines "Borrower" as each signor on the note, "and the person's successors and assigns." Additionally, EPTL 11-3.1 provides that an estate representative may asserts decedents' rights as they existed at the time of the decedent's death. Finally, Hattie Pickett died post-commencement and there is no allegation that she did not reside at the subject premises. Thus, Plaintiff was obligated to comply with its RPAPL 1304 obligation as a condition precedent of filing the instant matter. Plaintiff's citations to *HSBC Bank USA, N.A. v. Shah*, 185 A.D.3d 794 (2d Dep't 2020) and *Bank of N.Y. Mellon Trust Co., NA v. Obadia*, 176 A.D.3d 1020 (2d Dep't 2019) are inapposite. In *Shah*, the borrower died years prior to commencement of the action and was not named. The defendant was named solely in his capacity as executor of the decedent's estate and attempted to raise RPAPL 1304 compliance as a defense. In *Obadia*, a purchaser of the property prior to commencement attempted to assert the defense.

"Moreover, an RPAPL 1304 notice is a notice pursuant to the Home Equity Theft Prevention Act (Real Property Law § 265-a [hereinafter HETPA]), the underlying purpose of which is "to afford greater protections to homeowners confronted with foreclosure. HETPA defines a "homeowner" as "any or all record title owners of the residential real property in foreclosure. The content of the RPAPL 1304 notice furthers the legislative intent "to provide a homeowner with information necessary . . . to preserve and protect home equity. The manifest

purpose [of the RPAPL 1304 notice] is to aid the homeowner in an attempt to avoid litigation." *Bank of N.Y. Mellon v. Forman*, 176 A.D.3d 663, 665-66 (2d Dep't 2019) (Internal quotation marks and citations omitted). Here, as Hattie Pickett died post-commencement, Defendant Walcott, who was substituted for her as administrator of her estate, is entitled to assert any of Decedents' defenses. Mr. Pickett has the same entitlement as her heir. This remains true even if the note and mortgage did not define "Borrower" as including Ms. Pickett's successors. Notwithstanding, Defendants are both her successors as defined under the terms of the subject agreements and are entitled to assert the RPAPL 1304 defense.

II. DEFENDANTS' CROSS-MOTION IS DENIED.

Finally, turning to Defendants' cross-motion, the submissions provided do not demonstrate the absence of issues of fact regarding Hattie Pickett's alleged incompetency, do not establish that Plaintiff acted with unclean hands, or that this action should be dismissed on equitable grounds.

CONCLUSION

Accordingly, Plaintiff's motion and Defendants' cross-motion are both DENIED. The Court has considered the additional contentions of the parties not specifically addressed herein. To the extent that any relief requested was not addressed by the Court, it is hereby DENIED. The parties shall proceed to trial. Plaintiff shall serve notice of entry of this order within ten (10) days of upload to NYSCEF upon Movants, Defendants, and all parties in this action, with those not participating in e-filing to be noticed via first-class mail.

This constitutes the Decision and Order of the Court.

ENTER:

Hon. Carolyn Walker-Diallo, J.S.C.