

Wells Fargo Bank NA v Turner
2026 NY Slip Op 32027(U)
May 5, 2026
Supreme Court, Kings County
Docket Number: Index No. 512258/14
Judge: Cenceria P. Edwards
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At an IAS Term, Part FRP1, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 5th day of May, 2026.

P R E S E N T:

HON. CENCERIA P EDWARDS, Justice.

-----X
WELLS FARGO BANK NA,

Plaintiff,

-against-

MANDISSA TURNER et al,

Defendant,
-----X

Index No.: 512258/14
Mot. Seq. No.: 5+6
Calendar Date: 7/21/2022
Calendar No.: 60+61

The following e-filed papers read herein:

NYSCEF Nos.:

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and Affidavits (Affirmations)

Annexed _____

104-111 120-134

Opposing Affidavits (Affirmations) _____

113-118 136-138

Affidavits/ Affirmations in Reply _____

135 139

Upon the foregoing papers in this action to foreclose a mortgage encumbering the residential property located at 601 Mac Donough Street in Brooklyn (Block 1496, Lot 66), Plaintiff Wells Fargo Bank NA moves for an order extending its time to conduct a foreclosure sale. Defendant Mandissa Turner opposes and separately cross-moves for renewal of Plaintiff’s motion for summary judgment and, thereupon, grant of summary judgment in her favor dismissing this action for Plaintiff’s failure to comply with RPAPL 1304. Plaintiff opposes.

Background Facts and Procedural History

Plaintiff commenced the instant foreclosure action on December 26, 2014. All defendants defaulted in answering and in appearing at two Pre-Settlement Conferences.

On October 12, 2015, Plaintiff filed an ex parte motion for an order of reference. By order dated May 31, 2016, the Honorable Noach Dear denied the motion without prejudice to Plaintiff seeking the same relief on notice, noting that “[a] number of the Defendants in the instant action were served over 120 days after the filing of the summons and complaint.”

Plaintiff filed a motion for an order of reference on July 6, 2016. Defendant failed to appear or oppose and the requested relief was granted on October 27, 2016. Likewise, Plaintiff's subsequent motion for judgment of foreclosure and sale was granted on default by order dated June 8, 2017.

Having not yet held the sale, Plaintiff filed an ex parte motion on February 14, 2018 seeking an extension of time to do so which was granted later that month.

On March 20, 2018, Defendant appeared through counsel and moved by order to show cause to stay the auction and either dismiss the action pursuant to CPLR 306-b or vacate her default and allow her to answer the complaint. The motion was granted over Plaintiff's opposition to the extent of setting the matter down for a traverse hearing. On March 8, 2019, the parties agreed via so-ordered stipulation to vacate the order of reference and judgment of foreclosure and sale as to Defendant only, cancel the hearing, and accept Defendant's proposed answer.

Plaintiff sought summary judgment and an order of reference by motion filed on July 9, 2019. The motion further sought to have Defendant again bound by the already-extant judgment of foreclosure and sale. Defendant opposed, alleging that Plaintiff violated RESPA in filing this action and that Plaintiff failed to demonstrate its standing. After Plaintiff replied, the motion was granted by order dated November 14, 2019.

Plaintiff's Motion for an Extension of Time [MS 5]

On September 17, 2021, Plaintiff filed the instant motion for an extension of time to hold the foreclosure sale. Therein, it argues that its initially scheduled auction was cancelled in 2017 when Defendant filed bankruptcy, that after she filed appeared in this action and moved for dismissal the parties stipulated to vacate her default, and that the auction it scheduled after again getting judgment against her was cancelled due to the COVID-19 moratoria. Thus, it argues, its delay was excusable and an extension of time is warranted.

In opposition, Defendant notes that she filed a Hardship Declaration and argues that, thus, the action is stayed. Noting that the judgment of foreclosure and sale issued in 2017 and the

motion to extend time was being made in 2021, Defendant also asserts that a new calculation and judgment are necessary.

Plaintiff counters that the stay has already expired. It also notes that Defendant is relying on a single Kings County Supreme Court decision from 2007 in suggesting that the judgment became stale – and that the weight of the precedents state that a judgment of foreclosure and sale need not be renewed or updated.

Defendant's Cross-Motion [MS 6]

On June 21, 2022, Defendant cross-moved for renewal of Plaintiff's motion for summary judgment and, thereupon, summary judgment in her favor. Citing to the Second Department's (then-)recent decision in *Bank of America v Kessler*, 202 AD3d 10 (2d Dept 2021), Defendant argues that the additional disclosures within the ninety-day notices proffered by Plaintiff demonstrate that violated the single envelope rule and, thus, did not strictly comply with RPAPL 1304.

Noting that Defendant's time to appeal from the order granting summary judgment has already expired, Plaintiff argues (and cites precedents) that her time to move for renewal due to a change in law also has passed and her request for relief cannot be considered.

Defendant, noting that *Kessler* was only recently handed down, responds that she has a reasonable excuse for failing to raise the issue previously. As such, she argues that renewal should be granted.

Analysis

The Appellate Division, Second Department has consistently held that a motion to renew based upon change in law made after judgment was entered and the time to appeal had expired must be denied as untimely absent circumstances set forth in CPLR 5015 (*Wells Fargo Bank v Paz*, 241 AD3d 1602, 1604 [2d Dept 2025]; *Opalinski v City of NY*, 205 AD3d 917, 919 [2d Dept 2022]; *Dinallo v DAL Elec*, 60 AD3d 620, 621 [2d Dept 2009]; *Glicksman v Bd of Ed*, 278 AD2d 364, 366 [2d Dept 2000]). As such, Plaintiff is correct that renewal is unavailable.

Even were that not so, Defendant's RPAPL 1304 arguments are unavailing . On February 14, 2023, *Kessler* was reversed by the Court of Appeals (39 NY3d 317). It is undisputed that the alleged notices included all of the required language. The additional information included – the so-called “mini-Miranda”, etc – consists of “accurate statements that further the underlying statutory purpose of providing information to borrowers that is or may become relevant to avoiding foreclosure” and, thus, does not violate the “separate envelope” requirement (see, *id* at 326; see also, *Deutsche Bank Nat'l Trust v Pirozzi*, 230 AD3d 736, 740 [2d Dept 2024]).

Plaintiff has provided sufficient justification for the requested extension of time. It has not unduly delayed seeking to schedule an auction but was prevented from selling the property by circumstances beyond its control. To the extent that Defendant suggests that an updated judgment of foreclosure and sale is necessary, that is legally inaccurate.

Conclusion

Accordingly, it is

ORDERED that Plaintiff's motion for an extension of time to hold a foreclosure sale (MS 5) is granted and Plaintiff's time to do so is extended until 180 days following entry of the instant order; and it is further

ORDERED that Defendant's cross-motion (MS 6) to renew and dismiss is denied in its entirety.

This constitutes the decision and order of the Court.

ENTER:



Hon. Cenceria P. Edwards, J.S.C., CPA