

Wilmington Sav. Fund Socy., FSB v Richartz
2026 NY Slip Op 32049(U)
April 27, 2026
Supreme Court, Nassau County
Docket Number: Index No. 620789/2023
Judge: Carolyn Mazzu Genovesi
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**SUPREME COURT OF THE STATE OF NEW YORK
NASSAU COUNTY**

PRESENT: HON. CAROLYN MAZZU GENOVESI PART 35

Acting Justice

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INDEX NO. 620789/2023

WILMINGTON SAVINGS FUND SOCIETY, FSB, NOT IN ITS
INDIVIDUAL CAPACITY, BUT SOLELY AS OWNER
TRUSTEE FOR CSMC 2018-RPL6 TRUST,

MOTION SEQ. NO. 003

Plaintiff,

- v -

ALAN RICHARTZ, BANK OF AMERICA, N.A., CITIBANK,
N.A., PARKER HART LIMITED PARTNERSHIP, BUILDERS
FIRST SOURCE F/K/A PROBUILD COMPANY LLC,
DISCOVER BANK, M&T BANK, ISLAND PROPERTY TAX
REDUCTION SERVICE INC., CAPITAL ONE, NA, JOHN DOE
AND JANE DOE, CRYSTAL BROWN, NAQUARN
HUGHLETT, BIANCA LAMBERT, EDDIE MYRIEE,
THERESA WILLIAMS, BULBUL BODUR, BAKEY
HUGHLETT, DARRELL DOE (REFUSED LAST NAME),

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 109, 110, 111, 112, 113, 114, 115, 118

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

In an action to foreclose a mortgage, defendant Alan Richartz Jr. (“defendant”) moves, by Order to Show Cause, to vacate the Judgment of Foreclosure and Sale; vacate the Order appointing a referee; and vacate the referee’s report on the ground that plaintiff failed to comply with Tax Law 258 (MS # 3).

Defendant defaulted in answering the complaint, and a default judgment was entered against him, by Order dated December 3, 2024, and entered January 8, 2025. When “a defendant is in default because he or she ‘failed to appear’ within the meaning of CPLR 3215(a), that defendant is generally precluded from raising any nonjurisdictional defense without first rebutting the prima facie showing of default... and obtaining leave to serve a late answer.” *Deutsche Bank*

National Trust Company v. Hall, 185 A.D.3d 1006, 1011 (2d Dep't 2020). Here, defendant has not moved to vacate his default or for leave to file a late answer. Moreover, a Judgment of Foreclosure and Sale was issued on July 21, 2025, and entered on September 24, 2025. "A judgment of foreclosure and sale... against a defendant is final as to all questions at issue between the parties, and concludes all matters of defense which were or might have been litigated in the foreclosure action." *NYCTL 1998--2 Trust v. AngelDocs, Inc.*, 237 A.D.3d 1210, 1211 (2d Dep't 2025) quoting *Nationstar Mtge., LLC v. Coglietta*, 189 A.D.3d 1435, 1436 (2d Dep't 2020). Accordingly, defendant cannot raise Tax Law 258 as a defense at this juncture.

Even if defendant could raise Tax Law 258 as a defense, defendant's contention that the plaintiff's failure to pay the recording tax precludes this foreclosure action is without merit. Tax Law 258 states in relevant part:

No mortgage of real property shall be recorded by any county clerk or register, unless there shall be paid the taxes imposed by and as in this article provided. No mortgage of real property which is subject to the taxes imposed by this article shall be released, discharged of record or received in evidence in any action or proceeding, nor shall any assignment of or agreement extending any such mortgage be recorded unless the taxes imposed thereon by this article shall have been paid as provided in this article. Provided, however, except as otherwise provided in subdivision two of this section, in order to obtain a release or discharge of record where the mortgagor is not liable for the special additional tax imposed under subdivision one-a of section two hundred fifty-three of this chapter, such mortgagor or any subsequent owner of the mortgaged property or a part thereof may pay the tax imposed under such subdivision one-a and penalty, and may either apply for the credit allowable under this chapter for payment of such additional tax or may maintain an action to recover the amounts so paid against any person liable for payment of the tax or any subsequent assignees or owners of such mortgage or consolidated mortgage of which such mortgage is a part, as if such amounts of tax and penalty were a debt personally owed by such persons to the mortgagor or subsequent owner. No judgment or final order in any action or proceeding shall be made for the foreclosure or the enforcement of any mortgage which is subject to any tax imposed by this article or of any debt or obligation secured by any such mortgage, unless the taxes imposed by this article shall have been paid as provided in this article...

In the present case, there is no indication that a mortgage tax was chargeable for recording the loan modification in question. The Court notes that under the terms of the Loan Modification Agreement, defendant was not required to proffer an upfront payment to the lender. “Since there is no evidence that any new monies were advanced at the Modification closing, and the Modification Agreement did nothing more than alter the interest and payment terms of the mortgage, the recording of the Modification Agreement did not constitute a taxable event, and thus, no mortgage tax was due at that time.” *Home Sav. of America v. Weingrad*, 248 A.D.2d 253, 254 (1st Dep’t 1998); see Tax Law 255.

Furthermore, even assuming a recording tax was chargeable to the loan modification, it would not be a defense to this foreclosure action. In *Rathe v. Adirondack Concepts, Inc.*, the Appellate Division, Third Department held that the failure to pay the recording tax, under Tax Law 258 is not a defense to a foreclosure action. 131 A.D.2d 81, 85 (3d Dep’t 1987). Furthermore, in *Matter of Downtown Athletic Club of N.Y. City, Inc. v. State Tax Commn.*, the Third Department determined that the tax envisaged by Tax Law 258 “imposes the tax on the recording of the instrument and not on the making or existence of it.” 280 A.D. 363, 365 (3d Dep’t 1952). The *Downtown Athletic Club* Court reasoned that if Tax Law 258 imposed a tax on creating a mortgage, rather than recording it, it would amount to a tax on intangible personal property in violation of the New York State Constitution (art. XVI, § 3). *Id.* Therefore, the *Downtown Athletic Club* Court held that a failure to pay the recording tax does not render the mortgage unenforceable, but required the lender to pay the recording tax before the mortgage is “released, discharged of record or received in evidence in any action or proceeding.” The Appellate Division, First Department also held that a failure to pay the recording tax required by Tax Law 258 is not a defense to a foreclosure action. The First Department reasoned that “[s]ince Section 258 of the Tax Law does not create

the obligation to record a mortgage, the failure to record the mortgage and pay the tax does not render the mortgage and note unenforceable.” *Commonwealth Land Title Ins. Co. v. Lituchy*, 161 A.D.2d 517, 518 (1st Dep’t 1990). The *Lituchy* Court further reasoned that the plaintiff “may be entitled to obtain a judgment on the debt simply by paying the required tax any time prior to judgment or final order.” *Id.* This Court is unaware of any precedent from the Appellate Division Second Department on this issue. “[T]he doctrine of stare decisis requires trial courts in this department to follow precedents set by the Appellate Division of another department until the Court of Appeals or this court pronounces a contrary rule.” *Mountain View Coach Lines, Inc. v. Storms*, 102 A.D.2d 663, 664 (2d Dep’t 1984). Accordingly, this Court is bound by the rulings of the First and Third Departments. For the foregoing reasons, it is

ORDERED that defendant’s motion (MS # 3) is DENIED in all respects; and it is further

ORDERED that the time to conduct the foreclosure sale is extended to 120 days from the date of entry of this Decision and Order.

This constitutes the Decision and Order of the Court.

ENTER

Date 4/27/24


Hon. Carolyn Mazza Genovesi

ENTERED

May 13 2026

NASSAU COUNTY
COUNTY CLERK’S OFFICE