Wilmington Sav. Fund Socy., FSB v Khan
2026 NY Slip Op 32079(U)
May 28, 2026
Supreme Court, Nassau County
Docket Number: Index No. 610934/2024
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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WILMINGTON SAVINGS FUND SOCIETY, FSB, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS OWNER TRUSTEE FOR VERUS SECURITIZATION TRUST 2022-4,

Plaintiff,

- v -

MOHAMMAD KHAN, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, UNITED STATES OF AMERICA - INTERNAL REVENUE SERVICE, THE PEOPLE OF THE STATE OF NEW YORK, INCORPORATED VILLAGE OF LYNBROOK, UNIFUND CCR LLC, LVNV FUNDING LLC, NASSAU COUNTY DEPARTMENT OF SOCIAL SERVICES, TOYOTA MOTOR CREDIT CORPORATION, MAIDENBAUM PROPERTY TAX REDUCTION GROUP, LLC, BANK OF AMERICA NA, LAUNDRYLUX FUNDING SERVICES LLC, A.M. TITLE AGENCY, INC, SHANIEZA JUMAN, MIDLAND FUNDING LLC, ATLANTIC CREDIT AND FINANCE INC, CHARLES COX INC, JOHN DOE #1 THROUGH JOHN DOE #12, THE LAST TWELVE NAMES BEING FICTITIOUS AND UNKNOWN TO PLAINTIFF, THE PERSONS OR PARTIES INTENDED BEING THE TENANTS, OCCUPANTS, PERSONS OR CORPORATIONS, IF ANY, HAVING OR CLAIMING AN INTEREST IN OR LIEN UPON THE PREMISES, DESCRIBED IN THE COMPLAINT,

Defendants.

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INDEX NO. 610934/2024

MOTION SEQ. NO. 002 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 87, 88, 89, 90, 91, 92, 93, 95, 99, 103

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 96, 97, 98, 104

were read on this motion to/for DISMISS.

In an action to foreclose the mortgage, plaintiff moves (MS # 2) to renew and reargue this Court's Decision and Order dated November 5, 2025, and entered November 13, 2025. Defendant Bank of America, N.A. ("Bank of America") cross-moves (MS # 3) to dismiss the complaint as asserted against it.

In its prior Decision and Order dated November 5, 2025, and entered November 13, 2025, this Court denied plaintiff's motion for summary judgment, to appoint a referee, *inter alia* (MS # 1). The Court found that while plaintiff made out a prima facie foreclosure case, and demonstrated it had standing to commence this action, plaintiff failed to comply with RPAPL 1304. Specifically, RPAPL 1304(2) requires that a notice be sent to borrowers which "shall contain a current list of at least five housing counseling agencies serving the county where the property is located from the most recent listing available from department of financial services." RPAPL 1304. However, the RPAPL 1304 notice plaintiff sent to defendant Mohammad Khan listed several housing counseling agencies that purportedly service Nassau County, but only four of the entities, Community Development Corporation of Long Island, Hispanic Brotherhood of Rockville Centre, Inc., La Feruza Unida, Inc., and LIFE, Inc. are actually located in Nassau County. The balance of the entities listed under Nassau County are located in Suffolk County.

Pursuant to CPLR 2221(d), a motion for leave to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion." "Motions for reargument are addressed to the sound discretion of the court which decided the prior motion and may be granted upon a showing that the court overlooked or misapprehended the facts or law or for some [other] reason mistakenly arrived at its earlier decision." *LaSalle Bank National Association* v. *Lawrence,* 186 A.D.3d 1507, 1508 (2d Dep't 2020) quoting *E.W. Howell Co., Inc.* v. *S.A.F. La Sala Corp.,* 36 A.D.3d 653, 654 (2d Dep't 2007); *see* CPLR 2221(d)(2). "[A] motion for leave to reargue 'is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented.' "

Wells Fargo Bank, N.A. v. *Weiss,* 237 A.D.3d 1003, 1005 (2d Dep't 2025) quoting *McGill* v. *Goldman,* 261 A.D.2d 593, 594 (2d Dep't 1999).

Under CPLR 2221(e)(2), a motion to renew "shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination." "The new or additional facts either must have not been known to the party seeking renewal or may, in the Supreme Court's discretion, be based on facts known to the party seeking renewal at the time of the original motion." *Chong v. Scheelje,* 218 A.D.3d 691, 692 (2d Dep't 2023) quoting *Carmike Holding I, LLC v. Smith*, 180 A.D.3d 744, 747 (2d Dep't 2020).

The branch of plaintiff's motion (MS #2) to reargue is GRANTED.

Upon reargument, the Court finds that it misapprehended the law in determining that plaintiff did not comply with RPAPL 1304. While RPAPL 1304(2) requires that the notice contain at least five housing counseling agencies that serve the county where the property is located, there is no requirement that agencies be located within the county. Moreover, the RPAPL 1304 notice that plaintiff sent contains six entities which are located in neighboring Suffolk County. Furthermore, two of the agencies located in Suffolk County, Long Island Housing Partnership, Inc. and Long Island Housing Services, Inc., have the term "Long Island" in their title and ostensibly provide services to Nassau County residents. Additionally, defendant does not establish that the housing counseling agencies located outside of Nassau County would not provide services for the subject property. Accordingly, the Court finds that plaintiff complied with RPAPL 1304.

Defendant also opposed the underlying motion on the ground that plaintiff violated dual tracking by filing this motion after defendant applied for a loan modification. *See* 12 CFR 1024.41(g). The Court did not initially address this defense in its prior Decision and Order.

However, upon consideration, this defense is unavailing. Defendant did not submit admissible proof that he completed an application for a loan modification. The Court reviewed the emails defendant proffered as evidence that a complete loan modification application was submitted to plaintiff and finds the submission inconclusive. Accordingly, upon reargument, the motion for summary judgment (MS # 1) is granted.

Turning now to the cross-motion, defendant Bank of America moves to dismiss the complaint as asserted against it on the ground that it holds no mortgage encumbering the subject property. Specifically, the subject property in this action is 128 5th Avenue, Hicksville, NY 11801. Bank of America claims it holds a mortgage encumbering 128 5th Street, Hicksville, NY 11801, which is a different property. However, since Bank of America defaulted in answering the complaint, it waived any defense sounding in lack of standing or documentary evidence. *See* CPLR 3211(e). Moreover, Bank of America did not submit any documentary evidence to support its contention. To the extent that Bank of America seeks to dismiss the complaint for failure to state a cause of action, "[i]n considering a motion to dismiss pursuant to CPLR 3211(a)(7), the court is required to accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory." *Weiss v. Vacca*, 219 A.D.3d 1375, 1376 (2d Dep't 2023). In the complaint, plaintiff alleges that each of the defendants have a lien upon the mortgaged property or some part of it. Thus, plaintiff has stated a cause of action. Accordingly, Bank of America's cross-motion (MS # 2) is denied. For the foregoing reasons, it is

ORDERED that plaintiff's motion (MS # 2) is granted to the extent of reargument; and it is further

ORDERED that upon reargument, plaintiff's prior motion (MS # 1) is granted; and it is further

ORDERED that Bank of America's cross-motion (MS # 3) is denied; and it is further

ORDERED that the Proposed Order annexed to the moving papers shall be forwarded to the Foreclosure Department of this Court, and should it be consistent with the terms of this and prior Orders, it shall be executed upon completion of such review.

This constitutes the Decision and Order of the Court.

ENTER

Date: 5/08/24

Carolyn Mazzu Genovesi

Hon. Carolyn Mazzu Genovesi