Wilmington Sav. Fund Socy., FSB v Griffith
2026 NY Slip Op 32080(U)
June 5, 2026
Supreme Court, Nassau County
Docket Number: Index No. 617698/2024
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, AS OWNER TRUSTEE OF THE RESIDENTIAL CREDIT OPPORTUNITIES TRUST VIII-A,

Plaintiff,

- v -

LUSTRIE GRIFFITH, NASSAU COUNTY CLERK'S OFFICE, JOHN DOE AND JANE DOE,

Defendants.

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INDEX NO. 617698/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 59, 60, 61, 62, 63, 64

were read on this motion to/for ORDER OF REFERENCE/REFERENCE TO COMPUTE.

Plaintiff's motion (MS # 1) for summary judgment and to appoint a Referee, *inter alia*, is GRANTED. "[P]laintiff establishe[d] its prima facie case through the production of the mortgage, the unpaid note, and evidence of default." *U.S. Bank, N.A. v. Zientek*, 192 A.D.3d 1189, 1190 (2d Dep't 2021) quoting *Deutsche Bank Natl. Trust Co. v. Bowens*, 181 A.D.3d 871, 873 (2d Dep't 2020). Additionally, plaintiff demonstrated its standing "through proof that it was in possession of the subject note endorsed in blank… at the time of commencement of the action." *Wells Fargo Bank, N.A. v. Mitselmakher*, 216 A.D.3d 1056, 1057, (2d Dep't 2023) quoting *US Bank Trust, N.A. v. Loring*, 193 A.D.3d 1101, 1103 (2d Dep't 2021).

Contrary to the contention of defendant Lustrie Griffith ("defendant"), plaintiff's motion is not predicated upon inadmissibly hearsay. Plaintiff submits the affirmation of Tom French, the loan servicer's Director of Assent Management to support the motion. French attested that he had personal knowledge of the loan servicer's record keeping procedures, that the records relied upon were made and kept in the regular course of the loan servicer's business, and that the records were made at or near the time of events by persons with actual knowledge of transactions. The affiant further avers that business records from prior loan servicers were integrated into the current loan servicer's records. Moreover, while plaintiff did not produce the limited power of attorney, which authorized the loan servicer to act, with its initial motion papers, plaintiff provided the limited power of attorney with its reply affirmation. Since the production of the limited power of attorney addresses an argument raised by defendant in opposition to the motion, this Court may consider the limited power of attorney as evidence that the loan servicer was authorized to service the loan. *See Deutsche Bank National Trust Company v. Rudman*, 170 A.D.3d 950, 952 (2d Dep't 2019). Accordingly, the Court finds the business records in question are admissible under the business record exception to hearsay. *See Bank of New York Mellon v. Gordon*, 171 A.D.3d 197 (2d Dep't 2019).

Contrary to defendant's argument, plaintiff demonstrated that it complied with RPAPL 1304. Proof of compliance with RPAPL 1304 "can 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.' " *Bank of Am., N.A. v. Bittle,* 168 A.D.3d 656, 658 (2d Dep't 2019) quoting *Wells Fargo Bank, NA v. Mandrin*, 160 A.D.3d 1014, 1016 (2d Dep't 2018). Here, plaintiff proffered the affidavit of mailing of Tristan Villanueva to prove that it complied with the statute. Villanueva attests that he sent the notice via certified and first-class mail. Furthermore, defendant's contention that the RPAPL 1304 notice was defective, because the housing counseling agencies it lists are insufficient, is unavailing. The RPAPL 1304 notice contains more than five agencies that service Nassau County. *See* RPAPL

1304(2); *HSBC Bank USA, N.A. v. Cardona*, 193 A.D.3d 696, 698 (2d Dep't 2021). Plaintiff therefore proved that it complied with the statute's notice requirement.

To the extent that defendant opposes the motion on the ground that the contractual notice required by the mortgage was untimely and did not provide plaintiff with adequate time to cure the default, this argument is without merit. The RPAPL 1304 90-day notice satisfies a mortgage provision that requires a separate notice. *See Wachovia Bank, N.A. v Carcano,* 106 A.D.3d 724, 725 (2d Dep't 2013); *Federal Natl. Mtge. Assn. v Ambrosio*, 197 A.D.3d 560, 563 (2d Dep't 2021). Accordingly, even if the contractual notice was deficient, the RPAPL 1304 notice that was sent on June 14, 2024, provided defendant with sufficient time to cure the default and satisfied the contractual notice requirement.

Defendant further alleges that plaintiff failed to comply with RPAPL 1306. Specifically, defendant claims that the RPAPL 1306 filing indicates there was no loan modification when there was one and redacts the borrower's phone number. Under RPAPL 1306(2), "[e]ach filing delivered to the superintendent shall be on such form as the superintendent shall prescribe, and shall include at a minimum, the name, address, last known telephone number of the borrower, and the amount claimed as due and owing on the mortgage…" "[C]ompliance with RPAPL 1306 is a condition precedent to the commencement of a foreclosure action." *PROF-2013-S3 Legal Title Trust V v. Johnson*, 214 A.D.3d 745, 747 (2d Dep't 2023) quoting *Citibank, N.A. v. Conti–Scheurer*, 172 A.D.3d 17, 20 (2d Dep't 2019). As for plaintiff's omission of the loan modification, "[t]he plaintiff's failure to indicate that the loan was modified does not render the filing insufficient to satisfy the requirements of RPAPL 1306." *U.S. Bank National Association v. Adams,* 202 A.D.3d 867, 870 (2d Dep't 2022).

Defendant also claims the RPAPL 1306 filing is deficient because it redacts defendant's last known telephone number. This Court previously held that a RPAPL 1306 filing which omitted the borrower's last known telephone number is defective. *Bank of New York Mellon v. Gargiulo*, 244 N.Y.S.3d 681 (Nassau County Sup. Ct. 2025). However, in *AS Helios LLC v. Chauhan*, 247 A.D.3d 561, 562 (1st Dep't March 19, 2026), the Appellate Division, First Department held "purported omissions in the section 1306 filing of defendants' last known phone number, which is redacted in the record" are insufficient to "show that plaintiff did not comply with the requirements of RPAPL 1306." Additionally, the 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 [the Second Department] pronounces a contrary rule." *Mountain View Coach Lines, Inc. v. Storms*, 102 A.D.2d 663, 664 (2d Dep't 1984). Accordingly, the Court finds the redaction of defendant's last known telephone number inconsequential. Plaintiff has therefore demonstrated compliance with RPAPL 1306.

Defendant's allegation that plaintiff engaged in bad faith negotiations, in violation of CPLR 3408, is unavailing. Defendant claims plaintiff sent a letter indicating that it would not issue any further modifications. However, this communication does not constitute bad faith in contravention of CPLR 3408. "CPLR 3408 requires the parties in a residential foreclosure action to attend settlement conferences at an early stage of the litigation, at which they must negotiate in good faith to reach a mutually agreeable resolution, including a loan modification, if possible." *Wells Fargo Bank, N.A. v. Mancilla*, 221 A.D.3d 637, 638 (2d Dep't 2023). "However, it is obvious that the parties cannot be forced to reach an agreement, CPLR 3408 does not purport to require them to, and the courts may not endeavor to force an agreement upon the parties." *Id* at 639 quoting *Wells*

Fargo Bank, N.A. v. Meyers, 108 A.D.3d 9, 20 (2d Dep't 2013). Thus "even assuming, without deciding, the provisions of CPLR 3408 are applicable after mandatory settlement conferences have concluded, the defendant failed to establish that the plaintiff acted in bad faith." *U.S. Bank N.A. v. Ramirez,* 212 A.D.3d 749, 751 (2d Dep't 2023).

Defendant further alleges that plaintiff failed to comply with the Real Estate Settlement Procedures Act and 12 C.F.R. 1024.39. However, defendant provide no authority to support the claim that non-compliance with the statute or the regulation is a defense to a mortgage foreclosure action. In any event, defendant "failed to plead sufficient facts or offer any evidence in support" of the contention that plaintiff failed to comply with its statutory or regulatory requirements. *Gresham v. Wells Fargo Bank, N.A.,* 642 Fed.Appx. 355, 359 (5th Cir. 2016).

Defendant also opposes the motion on the basis that plaintiff, as a foreign company, failed to prove its capacity to bring this action, under Business Corporation Law § 1312. The Court rejects this argument. "Business Corporation Law § 1312(a) constitutes a bar to the maintenance of an action by a foreign corporation found to be doing business in New York without ... the required authorization to do business there." *JPMorgan Chase Bank, N.A. v. Didato,* 185 A.D.3d 801, 803 (2d Dep't 2020) quoting *Airline Exch. v. Bag*, 266 A.D.2d 414, 415 (2d Dep't 1999). "[T]he party relying upon this statutory barrier bears the burden of proving that the corporation's business activities in New York were not just casual or occasional, but so systematic and regular as to manifest continuity of activity in the jurisdiction." *Id* at 803-804 quoting *S & T Bank v. Spectrum Cabinet Sales*, 247 A.D.2d 373, 373 (2d Dep't 1998). Here, defendant failed to meet the burden, as defendant did not submit any evidence to prove that plaintiff did business in New York for the purpose of the statute. Furthermore, under Banking Law § 200, a foreign banking corporation is authorized to commence actions in New York to enforce mortgages and notes that it acquires. *See Flat Rock Mortgage Inv. Trust v. Lott*, 214 A.D.3d 1221 (3d Dep't 2023).

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: 6/5/24

Carolyn Mazzu Genovesi

Hon. Carolyn Mazzu Genovesi