Wilmington Trust, N.A. v Camarda
2026 NY Slip Op 32094(U)
June 30, 2026
Supreme Court, Suffolk County
Docket Number: Index No. 603158/2023
Judge: Aletha V. Fields
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Mot Seq 8 - MD

State Of New York – Supreme Court
Suffolk County – Part 81

WILMINGTON TRUST, N.A., Plaintiff, -against- JOSEPH CAMARDA, et al., Defendants.	Index Number : 603158/2023 Hon. Aletha V. Fields, AJSC Order on Motion

Upon the motion papers (NY St Cts Elec Filing [NYSCEF] Doc Nos. 188-201) and any efiled documents cited therein (CPLR 2214 [c]) considered on the motion of Joseph Camarda (defendant) (A) to reopen the trial record to admit certain evidence that will require dismissal of the action, or (B) to toll interest if dismissal is not granted, both as set forth in the notice of motion (NYSCEF Doc No. 188), and (C) to direct a settlement conference as set forth in the attorney affirmation (NYSCEF Doc No. 189, affirmation, ¶ 3), and (D) for such other further and/or different relief as may be just and proper, it is hereby

ORDERED that defendant's motion be, and hereby is, DENIED with one bill of motion costs in the amount of one hundred dollars awarded to plaintiff (CPLR 8202).

I. Background Facts and Procedure

This is a residential mortgage foreclosure action that was the subject of a bench trial; thereafter, the parties engaged in considerable negotiations trying to resolve this action. This Court was involved and offered what it could. But, in the end, this Court's role is not nor can it be to "endeavor to force an agreement on the parties" (***Wells Fargo Bank, N.A., v Meyers***, 108 AD3d 9, 20 [2d Dept 2013]); *see*, ***Pavia v State Farm Mut. Auto Ins. Co.***, 82 NY2d 445 [1993] [a rule of law may not compel settlement]). This Court sees no way to add value other than to rule on this motion.

II. RPAPL § 1304/Reopen Trial Record

One branch of substantive relief defendant seeks is not merely to raise an RPAPL § 1304 defense; it is permission to reopen the trial record and add proof, and, thereupon to dismiss the action for RPAPL § 1304 noncompliance. That distinction matters. Defendant argues—and plaintiff does not dispute—that the motion is timely. However, The cases defendant cites (***Citimortgage v Dente***, 200 AD3d 1025 [2d Dept 2021] and ***U.S. Bank, N.A. v Krakoff***, 199 AD3d 859 [2d Dept 2021]) do not support the correct proposition. They hold only that noncompliance with RPAPL § 1304 may be raised at any time before entry of judgment. They do not hold that a party may, after trial, supplement the record with new evidence in support of what is functionally a summary judgment motion. The difference between raising an issue and reopening a closed trial record to prove it is not technical.

Unless the court otherwise orders, motions for summary judgment are due within 120 days after the note of issue is filed (CPLR 3212 [a]), so defendant's motion is untimely under that rule. Defendant's motion cannot be characterized as a motion at the close of the evidence during because the motion seeks to add evidence, and defendant moves after trial (*see*, CPLR 4401). Nor may this Court deemed this to be a motion to set aside a decision or judgment (*see*, CPLR 4404 [b] [no judgment or decision has been entered]). So much of defendant's motion that seeks a ruling on whether plaintiff complied with RPAPL § 1304 is denied as untimely. That neither resolves the question of whether defendant may reopen the trial record nor disposes of the substantive 1304 issue, which, if raised, must be addressed in the trial decision.

Remaining then in respect of 1304 is whether to reopen the record. "When a motion to reopen is made, the trial court should consider whether the movant has provided a sufficient offer of proof, whether the opposing party is prejudiced, and whether significant delay in the trial will result if the motion is granted" (***Commonwealth Land Title Ins. Co. v Islam***, 220 AD3d 739, 742 [2d Dept 2023] quoting ***Kay Found. v S & F Towing Serv. Of Staten Is., Inc.***, 31 AD3d 499 [2d Dept 2006]). Because the decision to reopen is discretionary, this list of factors is non-exhaustive. ***Islam*** was plaintiff's post-inquest application where defendant defaulted not only in answering but also at the inquest. ***Kay*** was a contested trial application made while defendant's motion for a judgment as a matter of law was under consideration during the trial. Although this Court has the power and authority to reopen the trial record, exercising that power should be used sparingly (***Kay***, *supra*).

Defendant wants to reopen the record, but plaintiff opposes the application.

A. Offer of Proof

Defendant's offer of proof requires reminding ourselves of the rules and burdens under RPAPL § 1304. Unchanged after ***Bank of Am. v Kessler***, (39 NY2d 317 [2023]) is that if RPAPL § 1304 compliance is raised anytime before judgment is entered, "[t]he plaintiff's failure to show strict compliance requires dismissal" (***Aurora Loan Services, LLC v Weisblum***, 85 AD3d 95, 103 [2d Dept 2011] *overruled in part if Weisblum held that a mere denial of receipt was sufficient to establish entitlement to dismissal by* ***Citimortgage v Conti-Scheurer***, 172 AD3d 17 [2d Dept 2019]).

RPAPL § 1304 has two components—a content component, not at issue here, and a mailing component, which is where defendant focuses. Undisputed is that the loan here is a home loan as defined in RPAPL § 1304 (6), so "at least ninety days before a lender, an assignee or a mortgage loan servicer commences legal action against the borrower, or borrowers at the property address and any other address of record . . . such lender, assignee or mortgage loan servicer shall give notice to the borrower" in the statutory form (RPAPL § 1304 [1]). "The notices . . . shall be sent by such lender, assignee (including purchasing investor) or mortgage loan servicer to the borrower, by registered or certified mail and also by first-class mail to the last known address of the borrower, and to the residence that is the subject of the mortgage" (RPAPL § 1304 [2]).

When a plaintiff fails "to provide proof of the actual mailing, 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, the plaintiff [fails] to establish its strict compliance with RPAPL 1304" (***Conti-Scheurer***, 172 AD3d at 21). Plaintiff challenges the proper addressing as part of its mailing-based challenge.

1. Address Challenge

With this legal framework in mind, defendant argues that the envelopes were addressed to "10 Beach Road, **Port Jefferson**, NY 11777" while arguing that "[t]he actual address of the subject premises is 10 Beach Road, **Belle Terre**, NY 11777" (NYSCEF Doc No. 189, affirmation of counsel at ¶ 35 [emphasis in original]; NYSCEF Doc No. 193, exhibit C to such affirmation). Defendant's lawyer presents incomplete facts. The envelopes attached as exhibit C bear a zip plus four code of 11777-1203, not just a five-digit zip code[1]. Defendant affirms, "I reside at 10 Beach Road, Belle Terre, NY 11777. Mail addressed to Port Jefferson is instead delivered to Rosemarie Weinberg, as that is her residence" (NYSCEF Doc No. 190, affirmation of Joseph Camarda at ¶ 13).

Defendant argues that incorrect city name is fatal. Plaintiff opposes this proposition, noting that CPLR 308 (2) requires strict compliance by mailing documents to the last known address or last known residence, but "we do not believe that the mailing requirement of the statute is only satisfied by using the exact mailing address pursuant to the regulations of the United States Postal Service" (***Donohue v La Pierre***, 99 AD2d 570, 570 [3d Dept 1984]). When "it is virtually certain that the [documents] will arrive at defendant's last known residence, the mailing requirement . . . is satisfied" (***id.*** *citing* ***Brown v Feingold***, 82 AD2d 844 [2d Dept 1981]). In ***Donohue***, like here, the zip codes were the same, but the city names were different. The mailing was to Colonie, New York 12205, a place without a post office and corresponding zip code according to the Third Department. The correct address was Albany, New York 12205.

The ***Donohue*** court also relied on plaintiff having submitted proof of actual delivery. The trial record includes the return receipt from the certified mailing of the 1304 notice; that return receipt shows the mailing was addressed to Port Jefferson, NY 11777-1203.

Moreover, the 1304 notices themselves, also in evidence, show the realty address as Belle Terre, New York, so, in effect, defendant wants to reopen the record to admit facts that are already in the record—the realty is in Belle Terre, but the 1304 notices were sent to Port Jefferson.

[1] Because the exhibit is attached, the attorney affirmation, which is to be used to present facts (Uniform Rules for Trial Cts [22 NYCRR] § 202.8 [c]), does have probative value despite the general rule that attorney affirmations have no evidentiary weight (***Roche v Hearst Corp.***, 53 NY2d 767 [1981]). Nothing, however, excuses counsel or any other witness from the duty to tell the truth.

The second factor to be considered is whether the non-movant would be prejudiced. In ***Donohue***, "it is unquestioned that the defendant lived at 1950 Central Avenue in the Town of Colonie, New York, not in the City of Albany" (***Donohue***, 99 AD2d at 570). Similarly, here, it is undisputed that this foreclosure defendant lives in the village of Belle Terre, a fact already in the trial record by virtue of, among other things, the mortgage itself being in the record. Defendant does not live in the village or hamlet of Port Jefferson. Where the prejudice comes in is that plaintiff did not have a trial opportunity to introduce evidence about whether Belle Terre has a separate post office and zip code, a key fact in ***Donohue***. That prejudice is ameliorated by allowing plaintiff to introduce evidence of something of which this Court could take judicial notice: Belle Terre, New York does not have a post office and/or zip code separate from Port Jefferson (Guide to NY Evid, rule 2.01, Judicial Notice)[2].

The third factor to consider is whether significant delay will occur. It won't.

This Court is not reopening the record to permit defendant to admit evidence already in the record and in the absence of any facts or argument establishing "sufficient reasons . . . to reopen and supply defects in evidence that have inadvertently occurred" (***Kay***, 31 AD3d at 501).

2. Sender Challenge

Because the statute requires a specific entity, "***such*** lender . . .," to mail the notices, when plaintiff uses a third party vendor or a servicer to accomplish the mailing, plaintiff must establish an agency relationship between plaintiff and the mailing vendor (***Citibank, N.A. v Herman***, 215 AD3d 626 [2d Dept 2023]; ***Deutsche Bank Natl. Tr. Co. v Pariser***, 207 AD3d 518 [2d Dept 2022] [even when a lawyer or a sub-agent sends the 1304 notices, agency must be proven]). Plaintiff also challenges whether the notices' mailer—the mortgage servicer, Fay Servicing, LLC—had authority from the plaintiff to mail the notices.

Based on this rule, defendant's lawyer affirms, "[u]pon information and belief, the Plaintiff has failed to provide the Court with the Flow Servicing Agreement or the Joinder Agreement and, therefore, the Plaintiff has failed to prove that Fay [Servicing, LLC] had the authority to act on its behalf" (NYSCEF Doc No. 189, attorney affirmation at ¶ 42). "This statement is false" (NYSCEF Doc No. 197, affirmation at ¶ 26). "This allegation is clearly an attempt to create an issue when the undisputed facts clearly show otherwise" (id., at ¶ 27). The trial record wholly undercuts defendant's position. Both the Flow Servicing Agreement and the Joinder Agreement are in evidence. Thus, defendant has not made an offer of proof. This Court is not reopening the trial record to allow defendant to argue that documents in evidence as exhibits six and seven are, in fact, not in evidence.

Plaintiff already suffered the prejudice attendant to this branch of defendant's application. Plaintiff has had to defend against a meritless application.

No delay will occur.

[2] Such notice could be taken without notice or request (Guide to NY Evid, rule 2.01 [3], Judicial Notice) provided that if a party requests, it may be heard on whether to take judicial notice (Guide to NY Evid, rule 2.01 [4]).

After considering the three factors, here, as with the address-based challenge, this Court denies defendant's application especially when no inadvertence is even suggested.

III. Tolling or Discharge of Interest

Defendant also seeks to reopen the record to admit evidence regarding interest tolling. Instead, defendant complains again about what defendant characterizes as plaintiff's unwillingness to settle the action. That is not an offer of proof. The prejudice to plaintiff of reopening the record is obvious—it will have to respond to defendant's complaints by bringing witnesses in to testify, with the attendant costs therefor. Here, unlike with the 1304 challenges where the issue is quite narrow, the broad based attack defendant makes—and has made in prior motion practice and conferences—requires at least as broad a response. This Court foresees using at least another full trial day.

Defendant makes no argument about inadvertence.

The branch of the motion seeking to reopen the record to admit additional evidence regarding tolling is denied.

Therefore, based on the foregoing analysis, the motion is denied in its entirety.

Dated : June 30, 2026
Riverhead, New York

E N T E R

Hon. Aletha V. Fields, AJSC