

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

U.S. Bank N.A. v. Weiss

2026 NY Slip Op 03470 · No. 2023-11517, 2025-03046 · Decided June 3, 2026

SUMMARY

The Appellate Division, Second Department affirmed an order and judgment of foreclosure and sale in favor of U.S. Bank National Association against Jenó Weiss. The court held that the plaintiff established the mortgage, unpaid note, default, standing, and prima facie compliance with RPAPL 1304 and 1306, while Weiss failed to raise a triable issue of fact.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Francesca E. Connolly, J.P.; William G. Ford, J.; Helen Voutsinas, J.; Carl J. Landicino, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	June 3, 2026
DOCKET	2023-11517, 2025-03046
DISPOSITION	affirmed
PROCEDURAL POSTURE	Jenó Weiss appealed from an order granting U.S. Bank summary judgment on its mortgage-foreclosure complaint and an order and judgment of foreclosure and sale.
STANDARD OF REVIEW	Summary judgment is proper where the movant establishes prima facie entitlement to judgment as a matter of law and the opposing party fails to raise a triable issue of fact.
PRECEDENTIAL VALUE	published
PARTIES	Jenó Weiss v. U.S. Bank National Association

TOPICS

- foreclosure
- mortgages
- summary judgment
- appellate procedure
- standard of review

PRACTICE AREAS

mortgage foreclosure

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the direct appeal from the interlocutory order granting summary judgment and an order of reference had to be dismissed after entry of the final order and judgment of foreclosure and sale.
2. Whether U.S. Bank established prima facie entitlement to summary judgment in the mortgage-foreclosure action by proving the mortgage, unpaid note, default, and standing.
3. Whether U.S. Bank established prima facie compliance with RPAPL 1304 and RPAPL 1306.
4. Whether Weiss raised a triable issue of fact in opposition to the bank's summary-judgment motion.

HOLDINGS

1. The appeal from the order granting summary judgment and an order of reference was dismissed because the right to take a direct appeal from that order terminated when the order and judgment of foreclosure and sale was entered.
2. U.S. Bank established prima facie entitlement to summary judgment by submitting the mortgage, unpaid note, and evidence of default, and established standing by showing that it possessed the note endorsed in blank when the action was commenced.
3. Where a defendant raises RPAPL 1304 as an affirmative defense, the foreclosure plaintiff must make a prima facie showing of strict compliance with the statute; U.S. Bank made that showing here.
4. Where RPAPL 1306 is raised as an affirmative defense, the foreclosure plaintiff must make a prima facie showing of compliance; a conforming proof of filing statement from the New York State Department of Financial Services is sufficient to establish that showing.
5. Weiss failed to raise a triable issue of fact in opposition to U.S. Bank's prima facie showing, so summary judgment and the order and judgment of foreclosure and sale were properly affirmed.

KEY QUOTATIONS

“To establish a prima facie case in an action to foreclose a mortgage, a plaintiff must produce the mortgage, the unpaid note, and evidence of default”

“A plaintiff in a mortgage foreclosure action establishes its standing by demonstrating that it was the holder or assignee of the underlying note at the time the action was commenced”

“A plaintiff demonstrates its compliance with the statute by proof of the requisite mailing, which can be established by 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”

FACTUAL BACKGROUND

U.S. Bank brought an action to foreclose a mortgage against Jeno Weiss and others after an alleged default. In support of summary judgment, the bank submitted the mortgage, unpaid note, payment history, default notices, the note endorsed in blank, copies of the RPAPL 1304 notices, mailing and tracking evidence, and an RPAPL 1306 proof of filing. Weiss admitted that the note endorsed in blank was attached to the complaint and that there was no issue of fact regarding mailing of the RPAPL 1304 ninety-day notice.

PROCEDURAL HISTORY

U.S. Bank commenced a mortgage-foreclosure action in 2020. The Supreme Court, Orange County, granted the bank summary judgment against Weiss and an order of reference, then entered an order and judgment of foreclosure and sale. The Appellate Division dismissed the appeal from the earlier order because direct appellate review terminated upon entry of the final order and judgment, but reviewed the issues on the appeal from the order and judgment and affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Aho, 39 NY2d 241, 248
- Christiana Trust v. Rashid, 228 AD3d 822, 824
- Bank of N.Y. Mellon Trust Co., N.A. v. Baskin, 218 AD3d 633, 634
- Wells Fargo Bank, N.A. v. Reed, 190 AD3d 785, 785
- U.S. Bank N.A. v. Valme, 210 AD3d 1034, 1035
- Bank of Am., N.A. v. Reed, 239 AD3d 800, 803
- Wells Fargo Bank, N.A. v. Murray, 238 AD3d 956, 956-957
- NS194, LLC v. Gregg, 231 AD3d 1162, 1162-1163
- HSBC Mtge. Corp. USA v. Tehrani, 229 AD3d 772, 776
- Kuehne & Nagel v. Baiden, 36 NY2d 539, 544
- 1140 LLC v. Meis Studio Inc., 225 AD3d 516, 516
- Wells Fargo Bank, N.A. v. Benitez, 194 AD3d 986, 987-988
- Wells Fargo Fin. Credit Servs. N.Y., Inc. v. Mammen, 191 AD3d 737, 739
- Ditech Servicing, LLC v. McFadden, 217 AD3d 923, 927
- MTGLQ Invs., L.P. v. Assim, 209 AD3d 1006, 1008

OPINION

U.S. Bank N.A. v. Weiss 2026 NY Slip Op 03470

PER CURIAM.

U.S. Bank N.A. v Weiss - 2026 NY Slip Op 03470 skip to main content It appears you are using Adblock. Please disable Adblock to best experience our website. Law Reporting Bureau Thomas

J.K. Smith, State Reporter Court Decisions Resources About Home All Court Decisions Decisions U.S. Bank N.A. v Weiss 2026 NY Slip Op 03470 June 3, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This decision is uncorrected and subject to revision before publication in the Official Reports. U.S. Bank National Association, etc., respondent, v Jeno Weiss, appellant, et al., defendants. Supreme Court of the State of New York, Appellate Division, Second Judicial Department Decided on June 3, 2026 2023-11517, 2025-03046, (Index No. 1368/20) Francesca E. Connolly, J.P. William G. Ford Helen Voutsinas Carl J. Landicino, JJ. Solomon Rosengarten, Brooklyn, NY, for appellant. Gross Polowy, LLC, Williamsville, NY (Steven Rosenfeld and Michael Naghdi of counsel), for respondent. [*1] DECISION & ORDER In an action to foreclose a mortgage, the defendant Jeno Weiss appeals from (1) an order of the Supreme Court, Orange County (E. Loren Williams, J.), dated August 4, 2023, and (2) an order and judgment of foreclosure and sale (one paper) of the same court dated December 30, 2024. The order, insofar as appealed from, granted those branches of the plaintiff's motion which were for summary judgment on the complaint insofar as asserted against the defendant Jeno Weiss and for an order of reference. The order and judgment of foreclosure and sale, inter alia, directed the sale of the subject property. ORDERED that the appeal from the order is dismissed; and it is further, ORDERED that the order and judgment of foreclosure and sale is affirmed; and it is further, ORDERED that one bill of costs is awarded to the plaintiff. The appeal from the order must be dismissed because the right of direct appeal therefrom terminated with the entry of the order and judgment of foreclosure and sale in the action (see Matter of Aho , 39 NY2d 241, 248). The issues raised on the appeal from the order are brought up for review and have been considered on the appeal from the order and judgment of foreclosure and sale (see CPLR 5501[a][1]; Matter of Aho , 39 NY2d at 248). In 2020, the plaintiff commenced this action to foreclose a mortgage against, among others, the defendant Jeno Weiss. The plaintiff moved, inter alia, for summary judgment on the complaint insofar as asserted against Weiss and for an order of reference. Weiss opposed the motion and requested that the Supreme Court search the record and award him summary judgment dismissing the complaint insofar as asserted against him due to the plaintiff's alleged failure to comply with RPAPL 1304 and 1306(2). In an order dated August 4, 2023, the court, among other things, granted those branches of the plaintiff's motion. Thereafter, the court issued an order and judgment of foreclosure and sale, inter alia, directing the sale of the subject property. Weiss appeals. The Supreme Court properly granted that branch of the plaintiff's motion which was for summary judgment on the complaint insofar as asserted against Weiss. To establish a prima facie case in an action to foreclose a mortgage, a plaintiff must produce the mortgage, the unpaid note, and evidence of default (see Christiana Trust v Rashid , 228 AD3d 822 , 824; Bank of N.Y. Mellon Trust Co., N.A. v Baskin , 218 AD3d 633, 634). Additionally, where, as here, a plaintiff's standing is put into issue by a defendant, the plaintiff must prove its standing in order to be entitled to relief (see Wells Fargo Bank, N.A. v Reed , 190 AD3d 785, 785). A plaintiff in a mortgage foreclosure

action establishes its standing by demonstrating that it was the holder or assignee of the underlying note at the time the action was commenced (see Bank of N.Y. Mellon Trust Co., N.A. v Baskin , 218 AD3d at 634 ; U.S. Bank N.A. v Valme , 210 AD3d 1034, 1035). Further, "[w]here, as here, a defendant raises the issue of RPAPL 1304 [and 1306] as [affirmative defenses], the [plaintiff] is also required to make a prima facie showing of . . . compliance with RPAPL 1304" and 1306 (Bank of Am., N.A. v Reed , 239 AD3d 800 , 803; see Wells Fargo Bank, N.A. v Murray , 238 AD3d 956 , 956-957). Here, in support of its motion, the plaintiff submitted the mortgage, the unpaid note, and evidence of the default, including the payment history and notices of default. The plaintiff also established, prima facie, that it had standing to commence the action by annexing a copy of the note, endorsed in blank, to the complaint (see U.S. Bank N.A. v Valme , 210 AD3d at 1035). Additionally, Weiss admitted in his statement of material facts that a copy of the note, endorsed in blank, was attached to the complaint (see Kuehne & Nagel v Baiden , 36 NY2d 539, 544 ; 1140 LLC v Meis Studio Inc. , 225 AD3d 516 , 516). Pursuant to RPAPL 1304(1), "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, including mortgage foreclosure, such lender, assignee or mortgage loan servicer shall give notice to the borrower." "A plaintiff demonstrates its compliance with the statute by proof of the requisite mailing, which can be established [by] 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" (NS194, LLC v Gregg , 231 AD3d 1162 , 1162-1163 [internal quotation marks omitted]; see HSBC Mtge. Corp. USA v Tehrani , 229 AD3d 772 , 776). Here, the plaintiff submitted copies of the 90-day notices that were mailed to Weiss. The plaintiff also submitted, among other things, an affidavit from a representative of the mortgage loan servicer, who stated that she had personal knowledge of the standard office procedure designed to ensure that items are properly addressed and mailed and that those procedures were followed in this case. The representative attached tracking information that was created by the servicer and maintained in its regular course of business, which indicated that the notices were sent to Weiss at the mortgaged property and at his attorney's address by both certified and regular mail. In addition, Weiss admitted in his statement of material facts that "there is no issue of fact that an RPAPL § 1304 90 Day Notice was mailed" to him at the mortgaged property and at his attorney's address (see Kuehne & Nagel v Baiden , 36 NY2d at 544 ; 1140 LLC v Meis Studio Inc. , 225 AD3d at 516). These submissions were sufficient to establish, prima facie, that the plaintiff strictly complied with RPAPL 1304 (see Wells Fargo Bank, N.A. v Benitez , 194 AD3d 986, 987-988 ; Wells Fargo Fin. Credit Servs. N.Y., Inc. v Mammen , 191 AD3d 737, 739). RPAPL 1306 provides, in pertinent part, that within three business days of the mailing of the foreclosure notice pursuant to RPAPL 1304(1), every lender or assignee "shall file" certain information with the superintendent of financial services, including "at a minimum, the name, address, last known

telephone number of the borrower, and the amount claimed as due and owing on the mortgage, and such other information as will enable the superintendent to ascertain the type of loan at issue" (*id.* § 1306[1], [2]). A proof of filing statement from the New York State Department of Financial Services is sufficient to establish, *prima facie*, that the plaintiff complied with RPAPL 1306 (see *Ditech Servicing, LLC v McFadden* , 217 AD3d 923, 927 ; *MTGLQ Invs., L.P. v Assim* , 209 AD3d 1006, 1008). Here, the plaintiff demonstrated, *prima facie*, its compliance with RPAPL 1306 by submitting a copy of a proof of filing statement from the New York State Department of Financial Services that conformed with the requirements of the statute (see *Ditech Servicing, LLC v McFadden* , 217 AD3d at 927 ; *MTGLQ Invs., L.P. v Assim* , 209 AD3d at 1008). In opposition to the plaintiff's *prima facie* showing of entitlement to summary judgment on the complaint insofar as asserted against Weiss, Weiss failed to raise a triable issue of fact. Weiss's remaining contentions are without merit. CONNOLLY, J.P., FORD, VOUTSINAS and LANDICINO, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them.