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

Deutsche Bank Natl. Trust Co. v. Arrigo

2026 NY Slip Op 02102 · No. 2020-06895 · Decided April 8, 2026

SUMMARY

The Appellate Division, Second Department, reviewed an order in a mortgage foreclosure action involving Susan M. Arrigo and the estate of Michael E. Arrigo. The court upheld findings that the plaintiff established compliance with RPAPL 1304 and 1306, but held that factual issues remained regarding compliance with Banking Law § 6-l. The court dismissed portions of the appeal for lack of aggrievement, modified the order to deny certain foreclosure-related relief, and otherwise affirmed.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Department
WRITING FOR THE COURT	Hector D. Lasalle, P.J.; Lara J. Genovesi, J.; Linda Christopher, J.; Laurence L. Love, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	April 8, 2026
DOCKET	2020-06895
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from an order granting the plaintiff mortgagee summary judgment, striking the decedent's answer and affirmative defenses, and granting an order of reference in a mortgage-foreclosure action.
STANDARD OF REVIEW	Summary judgment requires the movant to establish entitlement to judgment as a matter of law; once established, the opposing party must raise a triable issue of fact. The Appellate Division reviews the order insofar as challenged and dismisses an appeal by a party who is not aggrieved under CPLR 5511.
PRECEDENTIAL VALUE	Published New York Appellate Division decision
PARTIES	Susan M. Arrigo, individually and as administrator of the estate of Michael E. Arrigo v. Deutsche Bank National Trust Company

TOPICS

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

PRACTICE AREAS

Mortgage foreclosure | Civil procedure | Appellate procedure | Predatory lending

QUESTIONS PRESENTED

1. Whether Susan M. Arrigo, individually, was aggrieved and could appeal the order.
2. Whether the plaintiff established prima facie compliance with RPAPL 1304 and whether the decedent raised a triable issue concerning receipt of the required foreclosure notice.
3. Whether the plaintiff established prima facie compliance with RPAPL 1306.
4. Whether the decedent's Banking Law § 6-l defense was time-barred in the foreclosure action.
5. Whether the plaintiff established compliance with Banking Law § 6-l sufficiently to obtain summary judgment, strike the answer and fifth affirmative defense, and obtain an order of reference.
6. Whether the appeal could be taken from Supreme Court's statements concerning the applicability of CPLR 205(a).

HOLDINGS

1. Susan M. Arrigo, in her individual capacity, was not aggrieved by the order, so her individual appeal was dismissed.
2. The plaintiff established prima facie compliance with RPAPL 1304, and the decedent's simple denial of receipt did not raise a triable issue of fact.
3. The plaintiff established prima facie compliance with RPAPL 1306 by submitting a proof-of-filing statement from the New York State Department of Financial Services, and the decedent failed to raise a triable issue of fact.
4. The Banking Law § 6-l defense was not barred by the six-year limitations period because, in a foreclosure action by an assignee, the borrower may assert claims in recoupment and defenses to payment under the statute without time limitations.
5. The plaintiff failed to establish prima facie compliance with Banking Law § 6-l because triable issues existed as to whether total points and fees exceeded five percent of the total loan amount. Summary judgment, striking the answer and fifth affirmative defense, and an order of reference were therefore improper.
6. The appeal from statements concerning the applicability of CPLR 205(a) was dismissed because those statements were dicta and did not aggrieve the appellant.

KEY QUOTATIONS

> *“proper service of RPAPL 1304 notice on the borrower or borrowers is a condition precedent to the commencement of a residential foreclosure action”* ([*1])

> *“in a foreclosure action by an assignee, the borrower may assert "any claims in recoupment and defenses to payment under [Banking Law § 6-l] and with respect to the loan, without time limitations, that the borrower could assert against the original lender"”* ([*2])

> *“That a decision 'may contain language or reasoning which . . . parties deem adverse to their interests does not furnish them with a basis for standing to take an appeal'”* ([*2])

FACTUAL BACKGROUND

In October 2006, Susan M. Arrigo and Michael E. Arrigo executed a $296,000 note secured by a mortgage on property in Bay Shore. Deutsche Bank commenced a foreclosure action in 2015. The plaintiff submitted evidence that an RPAPL 1304 notice was mailed to Michael by certified and first-class mail, including a certified-mail receipt signed by Susan, and submitted proof of RPAPL 1306 filing. The record also presented triable issues concerning whether the loan was a high-cost home loan because total points and fees may have exceeded five percent of the loan amount.

PROCEDURAL HISTORY

The plaintiff commenced a foreclosure action in 2015. Supreme Court, Suffolk County, granted the plaintiff summary judgment on the complaint insofar as asserted against Michael E. Arrigo, struck his answer and third, fourth, and fifth affirmative defenses, and granted an order of reference, while denying his cross-motion for summary judgment. Michael E. Arrigo and Susan M. Arrigo appealed; during the appeal, Michael died and Susan was substituted as administrator of his estate. The Appellate Division dismissed Susan's individual appeal and dismissed the appeal concerning dicta about CPLR 205(a), modified the order by denying the plaintiff's motion as to the Banking Law § 6-l defense and related relief, and otherwise affirmed.

DISPOSITION

other

REMAND INSTRUCTIONS

The order was modified by deleting the provisions granting summary judgment on the complaint insofar as asserted against Michael E. Arrigo, striking his answer and fifth affirmative defense alleging noncompliance with Banking Law § 6-l, and granting an order of reference, and substituting provisions denying those branches of the plaintiff's motion. As modified, the order was affirmed insofar as reviewed on the estate administrator's appeal.

CASES CITED

- Mixon v TBV, Inc., 76 AD3d 144, 156-157
- U.S. Bank Trust, N.A. v Mohammed, 197 AD3d 1205, 1207
- Citibank, N.A. v Conti-Scheurer, 172 AD3d 17, 20-21
- Bank of N.Y. Mellon v Gordon, 171 AD3d 197, 209
- U.S. Bank Trust, N.A. v Chiramannil, 205 AD3d 966, 968

- Wilmington Sav. Fund Socy., FSB v Hershkowitz, 189 AD3d 1126, 1128
- Goshen Mtge., LLC v Giertl, 180 AD3d 651, 654
- Laffey v Laffey Fine Homes Intl., LLC, 192 AD3d 878, 881
- Naula v Utokilen, LLC, 180 AD3d 1058, 1060
- Pennsylvania Gen. Ins. Co. v Austin Powder Co., 68 NY2d 465, 472-473

INSTRUCTIONS FOR AN AI ASSISTANT