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

Matter of US Bank N.A. v. Merino

2026 NY Slip Op 02477 · No. Index No. 380003/10; Appeal No. 6461; Case No. 2025-03988 · Decided April 23, 2026

SUMMARY

The Appellate Division, First Department unanimously affirmed an order denying without prejudice US Bank National Association's motion to confirm a referee's report and for a judgment of foreclosure and sale. The court held that the evidentiary foundation was insufficient to establish the amounts due because the loan-servicing affidavit did not identify the creator of specific records or sufficiently identify the loan. The court also upheld tolling of mortgage interest during specified periods because unexplained referee-related delays prejudiced the defendant.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Manzanet-Daniels, J.P.; Kennedy, J.; González, J.; Pitt-Burke, J.; Rosado, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	April 23, 2026
DOCKET	Index No. 380003/10; Appeal No. 6461; Case No. 2025-03988
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from an order denying without prejudice its motion to confirm a referee's report and for a judgment of foreclosure and sale, and granting defendant Merino's cross-motion to toll mortgage interest.
STANDARD OF REVIEW	Whether to confirm the referee's report was reviewed for propriety, and the decision to toll interest was reviewed for abuse of discretion; the court stated that Supreme Court providently exercised its discretion.
PRECEDENTIAL VALUE	published
PARTIES	US Bank National Association v. Moises R. Merino

TOPICS

foreclosure · mortgages · evidence · equitable relief · appellate procedure

PRACTICE AREAS

real estate · foreclosure · evidence · remedies · appellate procedure

QUESTIONS PRESENTED

1. Whether Supreme Court properly declined to confirm the referee's report when the supporting loan records lacked an adequate foundation and sufficient identification.
2. Whether Supreme Court properly exercised its equitable discretion under CPLR 5001(a) to toll mortgage interest during periods of plaintiff-caused or unexplained referee-related delay that substantially prejudiced the defendant.

HOLDINGS

1. A referee's report calculating amounts due on a mortgage loan may properly be rejected when the supporting affidavit does not establish who created the specific records relied upon, particularly where the records do not sufficiently identify their creator or the loan to which they relate.
2. A court may exercise its equitable power under CPLR 5001(a) to toll mortgage interest when unexplained or plaintiff-caused delays in the foreclosure-referee process substantially prejudice the defendant.

KEY QUOTATIONS

> *"The delays resulted in significant prejudice to Merino, since the accumulated interest exceeded the outstanding principal."* (*1)

> *"Accordingly, tolling of the interest was within the court's equitable power"* (*1)

FACTUAL BACKGROUND

A referee calculated the amounts allegedly due from Merino on a mortgage loan using an affidavit from an employee of plaintiff's loan servicer, Specialized Loan Servicing LLC, and attached records. The employee established the general reliability and integration of records from SLS and prior servicers but did not identify whether the specific records showing the amounts due were created by SLS, a prior servicer, or US Bank, and the records lacked sufficient identifying information. Multiple referee-related delays occurred, including a year-and-a-half gap concerning replacement of a referee and nearly four years between appointment of the referee at issue and release of his report, causing accumulated interest to exceed the outstanding principal.

PROCEDURAL HISTORY

Supreme Court, Bronx County, denied without prejudice US Bank's motion to confirm the referee's report and enter a judgment of foreclosure and sale. The court granted Merino's CPLR 5001(a) cross-motion to toll interest during specified periods of delay. The Appellate Division unanimously affirmed without costs.

DISPOSITION

affirmed

CASES CITED

- Bank of N.Y. Mellon v. Gordon, 171 AD3d 197, 209 (2d Dept 2019)
- People's United Bank v. Patio Gardens III, LLC, 189 AD3d 1622, 1622-23 (2d Dept 2020)
- Bank of N.Y. Mellon v. Davis, 219 AD3d 420, 420-421 (1st Dept 2023)

OPINION

Matter of US Bank N.A. v. Merino 2026 NY Slip Op 02477
PER CURIAM.
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loan servicer, Specialized Loan Servicing LLC (SLS) and the exhibits annexed thereto. The employee laid a proper foundation for records from SLS and prior loan servicers, whose records he attested were routinely "integrated and boarded into SLS's systems" and whose accuracy SLS routinely relied upon (<i>see</i> <i>Bank of N.Y. Mellon v Gordon</i>, 171 AD3d 197, 209 [2d Dept 2019]). However, he did not state whether SLS or a prior servicer created the specific records that he relied on to show the amounts due from Merino, or whether those records instead came from plaintiff itself, about whose records he made no attestations. Nor were there sufficient identifying marks on the records indicating who made them or any other text identifying the loan with which the records were associated.</p> <p>The court providently exercised its discretion in granting Merino's cross-motion to toll interest (<i>see</i> <i>People's United Bank v Patio Gardens III, LLC</i>, 189 AD3d 1622, 1622-23 [2d Dept 2020]; <i>c.f. Bank of N.Y. Mellon v Davis</i>, 219 AD3d 420-421 [1st Dept 2023]). Plaintiff failed to explain the year-and-a-half gap between the appointment of the fourth referee and its motion to replace him, nor did it account for the nearly four-year delay between the appointment of the Referee whose report is at issue and the release of his report. In addition, the record suggests that plaintiff was responsible for the decision of one of the Referees to decline his appointment based on an "insufficient fee." The delays resulted in significant prejudice to Merino, since the accumulated interest exceeded the outstanding principal. Accordingly, tolling of the interest was within the court's equitable power (<i>see</i> <i>People's United Bank</i>, 189 AD3d at 1622).</p><p>THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.</p>
<p>ENTERED: April 23, 2026</p> </div>
PER CURIAM.

<p>2026 NY Slip Op 02477</p> <p>April 23, 2026</p> <p>Appellate Division, First Department</p> <p>Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.</p> <p>This decision is uncorrected and subject to revision before publication in the Official Reports.</p> </div> <div> <p>In the Matter of US Bank National Association etc., Plaintiff-Appellant,</p> <p>v</p> <p>Moises R. Merino, Defendant-Respondent, Mortgage Electronic Registration Systems, Inc. et al., Defendants.</p> </div> <p>Decided and Entered: April 23, 2026</p> <p>Index No. 380003/10|Appeal No. 6461|Case No. 2025-03988|</p> <p>Before: Manzanet-Daniels, J.P., Kennedy, González, Pitt-Burke, Rosado, JJ. </p> <div> <p>Knuckles & Manfro, LLP, Tarrytown (Louis A. Levithan of counsel), for appellant.</p> <p>Petroff Amshen LLP, Brooklyn (James Tierney of counsel), for respondents.</p> </div> [*1] <p>Order, Supreme Court, Bronx County (Naita A. Semaj, J.), entered on or about May 27, 2025, which denied without prejudice plaintiff's motion to confirm a Referee's report and for a judgment of foreclosure and sale, and which granted the cross-motion of defendant Moises R. Merino pursuant to CPLR 5001 (a) to toll interest on the subject mortgage from October 12, 2012 to March 20, 2020 and from November 3, 2020 to June 8, 2023, unanimously affirmed, without costs.</p> <p>The court properly declined to confirm the Referee's report. In arriving at his conclusions regarding the amounts due from defendant Merino on the subject loan, the Referee relied exclusively on an affidavit from an employee of plaintiff's loan servicer, Specialized Loan Servicing LLC (SLS) and the exhibits annexed thereto. The employee laid a proper foundation for records from SLS and prior loan servicers, whose records he attested were routinely "integrated and boarded into SLS's systems" and whose accuracy SLS routinely relied upon (<i>see</i> <i>Bank of N.Y. Mellon v Gordon</i>, 171 AD3d 197, 209 [2d Dept 2019]). However, he did not state whether SLS or a prior servicer created the specific records that he relied on to show the amounts due from Merino, or whether those records instead came from plaintiff itself, about whose records he made no attestations. Nor were there sufficient identifying marks on the records indicating who made them or any other text identifying the loan with which the records were associated.</p> <p>The court providently exercised its discretion in granting Merino's cross-motion to toll interest (<i>see</i> <i>People's United Bank v Patio Gardens III, LLC</i>, 189 AD3d 1622, 1622-23 [2d Dept 2020]; <i>c.f. Bank of N.Y. Mellon v Davis</i>, 219 AD3d 420-421 [1st Dept 2023]). Plaintiff failed to explain the year-and-a-half gap between the appointment of the fourth referee and its motion to replace him, nor did it account for the nearly four-year delay between the appointment of the Referee whose report is at issue and the release of his report. In addition, the record suggests that plaintiff was responsible for the decision of one of the Referees to decline his appointment based on an "insufficient fee." The delays resulted in significant prejudice to Merino, since the accumulated interest exceeded the outstanding principal. Accordingly, tolling of the interest was within the court's equitable power (<i>see</i> <i>People's United Bank</i>, 189 AD3d at 1622).</p><p>THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.</p> <p>ENTERED: April 23, 2026</p> </div> <div> <footer> <div> <p>Court Decisions</p> All Court Decisions Official Reports Service Bound Volumes Decision Search </div> <div> <p>Resources</p> RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index </div> <div> <p>About</p> About the Law Reporting Bureau About our Operations Contact Us Twitter </div> <div> <p>Quick Contact Info</p> <p>17 Lodge Street</p> <p>Albany, NY 12207</p> <p>Phone: (518) 453-6900</p> </div> </footer> </div> <div> <p>Links to or from other sites do not signify endorsement or relationship with them.</p> </div> </div>