

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.

OPINION

Matter of US Bank N.A. v. Merino 2026 NY Slip Op 02477
PER CURIAM.

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Matter of US Bank N.A. v Merino

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April 23, 2026

Appellate Division, First Department

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This decision is uncorrected and subject to revision before publication in the Official Reports.

In the Matter of US Bank National Association etc., Plaintiff-Appellant,

v

Moises R. Merino, Defendant-Respondent, Mortgage Electronic Registration Systems, Inc. et al., Defendants.

Decided and Entered: April 23, 2026

Index No. 380003/10|Appeal No. 6461|Case No. 2025-03988|

Before: Manzanet-Daniels, J.P., Kennedy, González, Pitt-Burke, Rosado, JJ.

Knuckles & Manfro, LLP, Tarrytown (Louis A. Levithan of counsel), for appellant.

Petroff Amshen LLP, Brooklyn (James Tierney of counsel), for respondents.

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.

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 (*see* *Bank of N.Y. Mellon v Gordon*, 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.

The court providently exercised its discretion in granting Merino's cross-motion to toll interest (*see* *People's United Bank v Patio Gardens III, LLC*, 189 AD3d 1622, 1622-23 [2d Dept 2020]; *c.f.* *Bank of N.Y. Mellon v Davis*, 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 (*see* *People's United Bank*, 189 AD3d at 1622).

THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: April 23, 2026

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PER CURIAM.

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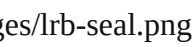


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[*1]

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