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

Bank of Am. v. Sands

2026 NY Slip Op 02443 · No. Case No. 2025-01291; Appeal No. 6456; Index No. 810068/10 · Decided April 23, 2026

SUMMARY

The Appellate Division, First Department unanimously affirmed a foreclosure judgment in favor of Bank of America. The court held that the Referee's report was properly confirmed based on business records and that the absence of a CPLR 4313 hearing did not prejudice the defendant. The court declined to review the defendant's challenge to service of the RPAPL 1304 notice and held on the merits that the loan was not a statutory home loan because the condominium was not subject to the required primary-residence occupancy.

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 Supreme Court, Appellate Division, First Department
DECIDED	April 23, 2026
DOCKET	Case No. 2025-01291; Appeal No. 6456; Index No. 810068/10
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from an order granting plaintiff's motion for a judgment of foreclosure and sale and confirming the Referee's report. The appeal was deemed taken from the subsequently entered judgment awarding judgment to plaintiff.
STANDARD OF REVIEW	The Referee's findings were reviewed for whether they were substantially supported by the record. The court also applied preservation and prejudice principles to the unreviewed service challenge.
PRECEDENTIAL VALUE	published
PARTIES	Nicholas J. Sands also known as Nicholas Sands v. Bank of America

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Supreme Court properly confirmed the Referee's report concerning the amount due on the mortgage.
2. Whether plaintiff's supporting documents and calculations were properly authenticated and submitted as business records.
3. Whether the failure to provide notice of a hearing under CPLR 4313 required reversal or otherwise prejudiced defendant.
4. Whether defendant's challenge to service of the 90-day notice under RPAPL 1304 was preserved for appellate review.
5. Whether the loan qualified as a statutory home loan under RPAPL 1304(6)(a)(1)(iii).

HOLDINGS

1. Supreme Court properly confirmed the Referee's report because its findings concerning the amount due were substantially supported by the record.
2. The failure to notice a hearing under CPLR 4313 was immaterial because defendant was not prejudiced and had an opportunity to contest the Referee's report.
3. The court declined to review defendant's challenge to proper service of the RPAPL 1304 90-day notice because defendant abandoned his appeal from the prior summary-judgment order and failed to raise the issue in opposition to the motion for a judgment of foreclosure and sale.
4. The loan was not a home loan under RPAPL 1304(6)(a)(1)(iii).

KEY QUOTATIONS

> *"The failure to notice a hearing under CPLR 4313 is immaterial."* ([*1])

> *"The loan documents demonstrate that the loan in question was not a "home loan" under the statutory definition (RPAPL 1304[6][a][1][iii])."* ([*2])

FACTUAL BACKGROUND

The foreclosure concerned a condominium unit securing a mortgage loan. Defendant admitted that he did not live in the unit when he signed the original mortgage, the original 1-4 Family Rider deleted the borrower-occupancy requirement, and the modified mortgage contained a second-home rider precluding occupancy as a primary residence. Plaintiff's affiant supported the amount due with business records, including a payment history after default, and defendant had an opportunity to present evidence challenging the calculations but did not do so.

PROCEDURAL HISTORY

Supreme Court, New York County, granted plaintiff's motion for a judgment of foreclosure and sale and confirmed the Referee's report concerning the amount due on the mortgage. The court later entered judgment for plaintiff. The Appellate Division deemed the appeal to be from that judgment and unanimously affirmed it with costs.

DISPOSITION

affirmed

CASES CITED

- HSBC Bank USA, N.A. v. Wu, 242 AD3d 599, 601 (1st Dept. 2025)
- Matter of Dubuche v. New York City Tr. Auth., 230 AD3d 1026, 1027 (1st Dept. 2024)
- U.S. Bank N.A. v. Tiburcio, 242 AD3d 591, 592 (1st Dept. 2025)
- Aurora Loan Servs., LLC v. Taylor, 114 AD3d 627, 630 (2d Dept. 2014), affd, 25 NY3d 355 (2015)
- Wells Fargo Bank N.A. v. Javier, 153 AD3d 1199, 1200 (1st Dept. 2017)
- Bray v. Cox, 38 NY2d 350, 353 (1976)
- Fellner v. Aeropostale, Inc., 150 AD3d 598, 599 (1st Dept. 2017)
- Mongeau v. SR Taxi Corp., 235 AD3d 500, 500-501 (1st Dept. 2025)
- Wall St. Mtge. Bankers, Ltd. v. Berquin, 213 AD3d 972, 975 (2d Dept. 2023)
- U.S. Bank N.A. v. Simmons, 230 AD3d 621, 622 (2d Dept. 2024)
- JP Morgan Chase Bank, N.A. v. Venture, 148 AD3d 1269, 1271 (3d Dept. 2017)

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