

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

HSBC Bank USA, N.A. v. Ehrenthal

2026 NY Slip Op 01949 · No. 2023-06410 · Decided April 1, 2026

SUMMARY

The New York Supreme Court, Appellate Division, Second Department, modified an order and judgment of foreclosure and sale by tolling the accrual of interest from August 20, 2015, through August 19, 2019. The court otherwise affirmed the judgment, concluding that the referee's finding that the plaintiff had standing was supported by the record and that the defendants had not established frivolous conduct warranting sanctions.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of New York, Appellate Division, Second Judicial Department                                                                                                                                                                                                                                                                                                                                                                                        |
| WRITING FOR THE COURT | Betsy Barros, J.P.; Angela G. Iannacci, J.; Helen Voutsinas, J.; Susan Quirk, J.                                                                                                                                                                                                                                                                                                                                                                                              |
| JURISDICTION          | Supreme Court of the State of New York, Appellate Division, Second Judicial Department                                                                                                                                                                                                                                                                                                                                                                                        |
| DECIDED               | April 1, 2026                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| DOCKET                | 2023-06410                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| PROCEDURAL POSTURE    | Defendants appealed from an order and judgment of foreclosure and sale that confirmed the referee's report of computation and directed sale of the property.                                                                                                                                                                                                                                                                                                                  |
| STANDARD OF REVIEW    | A referee's report should be confirmed when its findings are substantially supported by the record and the referee clearly defined the issues and resolved credibility questions. Credibility determinations by a referee acting as trier of fact receive great weight. The exercise of discretion concerning interest in an equitable foreclosure action and the imposition of sanctions for frivolous conduct are reviewed for abuse or improvident exercise of discretion. |
| PRECEDENTIAL VALUE    | Published appellate decision                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

## PARTIES

Samuel Ehrental, Frimet Ehrental v. HSBC Bank USA, National Association

## TOPICS

foreclosure mortgages equitable relief attorney fees appellate procedure

## PRACTICE AREAS

real estate law mortgage foreclosure civil procedure appellate procedure remedies

## QUESTIONS PRESENTED

1. Whether the Supreme Court properly confirmed the referee's post-trial report finding that HSBC/MHL and HSBC/MortgageIT were the same entity and that the plaintiff had standing when the foreclosure action commenced.
2. Whether the court should toll the accrual of interest because the plaintiff's changing theory of entity identity contributed to delay.
3. Whether defendants were entitled to attorneys' fees and costs as sanctions for frivolous conduct under 22 NYCRR 130-1.1.
4. Whether defendants' cross-motion to reject the referee's report was timely and whether the Supreme Court properly extended the time to file their cross-motion concerning interest and sanctions.

## HOLDINGS

1. The Supreme Court properly confirmed the referee's report because the referee's finding that HSBC/MHL and HSBC/MortgageIT were the same entity, and that the plaintiff had standing, was substantially supported by the trial record and the referee's credibility determination.
2. The court exercised its discretion to toll the accrual of interest from August 20, 2015, through August 19, 2019, because the plaintiff's changing theory concerning the identity of the relevant HSBC entities caused substantial delay.
3. Defendants were not entitled to attorneys' fees and costs as sanctions because they failed to establish that the plaintiff engaged in frivolous conduct within the meaning of 22 NYCRR 130-1.1(c).
4. Defendants' cross-motion to reject the referee's report was timely, and the Supreme Court did not improvidently exercise its discretion by effectively extending the time to file the cross-motion concerning interest and sanctions.

## KEY QUOTATIONS

*"The report of a referee should be confirmed whenever the findings are substantially supported by the record, and the referee has clearly defined the issues and resolved matters of credibility"* ([\*2])

*"A foreclosure action is equitable in nature and triggers the equitable powers of the court"* ([\*2])

*“Although the advancement of a meritless position may serve as the basis for a finding of frivolity, the standard for such a showing is high”* ([\*2])

## FACTUAL BACKGROUND

HSBC/MHL commenced a foreclosure action in August 2009 and later assigned the mortgage to HSBC/MortgageIT. The plaintiff initially relied on affidavits that treated HSBC/MHL and HSBC/MortgageIT as separate entities, leading the Appellate Division to reject an earlier attempt to establish standing on summary judgment. At a subsequent trial, a Wells Fargo employee identified documents, including a pooling and servicing agreement, supporting the testimony that the two names referred to the same trust and that the plaintiff possessed the note when the action commenced. The plaintiff's changing position contributed to substantial delay in the foreclosure proceedings.

## PROCEDURAL HISTORY

HSBC commenced a mortgage-foreclosure action in August 2009. The Supreme Court initially granted the plaintiff summary judgment, but the Appellate Division modified that order in the prior appeal because the plaintiff had not established that HSBC/MHL and HSBC/MortgageIT were the same entity. After a later motion was denied and a trial on standing was held, a referee found that the entities were the same and that the plaintiff possessed the note when the action commenced. The Supreme Court confirmed the referee's report, entered a judgment of foreclosure and sale, and denied defendants' requests for interest tolling and sanctions. The Appellate Division modified the judgment to toll interest for a specified period and otherwise affirmed.

## DISPOSITION

affirmed

## CASES CITED

- U.S. Bank N.A. v. Dallas, 212 A.D.3d 680, 681
- Anvaer v. Anvaer, 160 A.D.3d 794, 796
- HSBC Bank USA, N.A. v. Ehrenthal, 158 A.D.3d 668, 669-670
- Deutsche Bank Natl. Trust Co. v. Ould-Khatti, 201 A.D.3d 701, 703
- Krupnick v. Romano, 220 A.D.3d 941, 942
- Wells Fargo Bank, N.A. v. Chun Fei Lee, 208 A.D.3d 1384, 1386
- Dayan v. York, 51 A.D.3d 964, 965
- Stone Mtn. Holdings, LLC v. Spitzer, 119 A.D.3d 548, 550
- U.S. Bank N.A. v. Tait, 234 A.D.3d 889, 891-892
- U.S. Bank Trust, N.A. v. Johnson, 201 A.D.3d 841, 842
- Yadegar v. Deutsche Bank Natl. Trust Co., 164 A.D.3d 945, 948

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