

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

New Penn Fin., LLC v. Dancy

2026 NY Slip Op 01975 (N.Y. Ct. App. 2026) · No. 2024-07927 · Decided April 1, 2026

SUMMARY

In this mortgage foreclosure action, the Appellate Division, Second Department reviewed an order appointing a successor referee and substituting U.S. Bank Trust National Association as the plaintiff. The court affirmed the appointment of the successor referee but held that the plaintiff had not demonstrated that U.S. Bank had an interest in the action, requiring denial of the caption-substitution request under CPLR 1018. The order was modified accordingly and otherwise affirmed.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Department
WRITING FOR THE COURT	Valerie Brathwaite Nelson, J.P.; William G. Ford, J.; Deborah A. Dowling, J.; Elena Goldberg Velazquez, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	April 1, 2026
DOCKET	2024-07927
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant Macky Dancy appealed from an order granting the plaintiff's motion to appoint a successor referee and to amend the caption by substituting U.S. Bank Trust National Association, not in its individual capacity but solely as owner trustee for RCF 2 Acquisition Trust, as plaintiff.
STANDARD OF REVIEW	The appellate court reviewed the appointment of a successor referee under the applicable law and reviewed the substitution decision as an exercise of the trial court's discretion, determining whether that discretion was improvidently exercised.
PRECEDENTIAL VALUE	Published
PARTIES	Macky Dancy v. New Penn Financial, LLC

TOPICS

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PRACTICE AREAS

real estate mortgages foreclosure civil procedure appellate procedure

QUESTIONS PRESENTED

1. Whether the Supreme Court properly appointed a successor referee in the mortgage-foreclosure action.
2. Whether the Supreme Court properly granted leave to amend the caption to substitute U.S. Bank Trust National Association, as owner trustee for RCF 2 Acquisition Trust, as the plaintiff under CPLR 1018.

HOLDINGS

1. The Supreme Court properly granted the plaintiff's motion to appoint a successor referee.
2. The Supreme Court improvidently exercised its discretion by granting leave to amend the caption to substitute U.S. Bank as plaintiff because the plaintiff failed to demonstrate that U.S. Bank had an interest in the action.

KEY QUOTATIONS

"CPLR 1018 provides that "[u]pon any transfer of interest, the action may be continued by or against the original parties unless the court directs the person to whom the interest is transferred to be substituted or joined in the action." (at 1)

"The determination to substitute or join a party pursuant to CPLR 1018 is within the discretion of the trial court" (at 1)

FACTUAL BACKGROUND

This was an action to foreclose a mortgage on residential property in Nassau County. Dancy did not appear or answer the complaint. After an earlier referee had been appointed, the plaintiff sought appointment of a successor referee and sought to substitute U.S. Bank Trust National Association, as owner trustee for RCF 2 Acquisition Trust, as plaintiff. The plaintiff failed to demonstrate that U.S. Bank had an interest in the action.

PROCEDURAL HISTORY

The plaintiff's predecessor commenced a mortgage-foreclosure action against Dancy and others. Dancy did not appear or answer. In 2018, the Supreme Court appointed a referee to compute the amount due and amended the caption to substitute the plaintiff for its predecessor. In 2023, the Supreme Court granted the plaintiff's motion to appoint a successor referee and again amend the caption; the Appellate Division affirmed the successor-referee appointment but reversed the caption-substitution ruling.

DISPOSITION

REMAND INSTRUCTIONS

The order was modified by deleting the provision granting leave to amend the caption to substitute U.S. Bank Trust National Association as plaintiff and replacing it with a provision denying that branch of the motion; as so modified, the order was affirmed.

CASES CITED

- Associates First Capital Corp. v. Roth, 226 A.D.3d 636
- NationsCredit Home Equity Servs. v. Anderson, 16 A.D.3d 563, 564
- GRP Loan, LLC v. Taylor, 95 A.D.3d 1172, 1174
- U.S. Bank N.A. v. Medina, 230 A.D.3d 1371, 1377
- Citimortgage, Inc. v. Bredehorn, 160 A.D.3d 803, 804
- Citicorp Mtge. v. Adams, 153 A.D.3d 779, 780

OPINION

PER CURIAM.

New Penn Fin., LLC v Dancy - 2026 NY Slip Op 01975

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2026 NY Slip Op 01975

April 1, 2026

Appellate Division, Second Department

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

New Penn Financial, LLC, etc., respondent,

v

Macky Dancy, appellant, et al., defendants.

Supreme Court of the State of New York, Appellate Division, Second Judicial Department

Decided on April 1, 2026

2024-07927, (Index No. 5294/16)

Valerie Brathwaite Nelson, J.P.

William G. Ford

Deborah A. Dowling

Elena Goldberg Velazquez, JJ.

Christopher Thompson, West Islip, NY (McKinley Law, P.C.

[Shannon C. McKinley], of counsel), for appellant.

Hinshaw & Culbertson LLP, New York, NY (Omar Mulamekic and Margaret J. Cascino of counsel), for nonparty U.S. Bank Trust National Association, not in its individual capacity but solely as owner trustee for RCF 2 Acquisition Trust.

[*1]

DECISION & ORDER

In an action to foreclose a mortgage, the defendant Macky Dancy appeals from an order of the Supreme Court, Nassau County (David P. Sullivan, J.), entered June 7, 2023.

The order granted the plaintiff's motion pursuant to CPLR 4314 to appoint a successor referee and for leave to amend the caption to substitute U.S. Bank Trust National Association, not in its individual capacity but solely as owner trustee for RCF 2 Acquisition Trust, as the plaintiff.

ORDERED that the order is modified, on the law and in the exercise of discretion, by deleting the provision thereof granting that branch of the plaintiff's motion which was for leave to amend the caption to substitute U.S. Bank Trust National Association, not in its individual capacity but solely as owner trustee for RCF 2 Acquisition Trust, as the plaintiff, and substituting therefor a provision denying that branch of the motion; as so modified, the order is affirmed, without costs or disbursements.

The plaintiff's predecessor in interest commenced this action against the defendant Macky Dancy (hereinafter the defendant), among others, to foreclose a mortgage on certain residential property located in Nassau County.

The defendant did not appear or answer the complaint. In an order dated June 27, 2018, the Supreme Court, inter alia, appointed a referee to compute the amount due on the mortgage loan and amended the caption to substitute the plaintiff in place of the plaintiff's predecessor in interest.

Thereafter, the plaintiff moved pursuant to CPLR 4314 to appoint a successor referee and for leave to amend the caption to substitute U.S. Bank Trust National Association, not in its individual capacity but solely as owner trustee for RCF 2 Acquisition Trust (hereinafter U.S. Bank), as the plaintiff.

In an order entered June 7, 2023, the Supreme Court granted the plaintiff's motion. The defendant appeals.

Under the circumstances presented, the Supreme Court properly granted that branch of the plaintiff's motion which was to appoint a successor referee (*see id.*; *Associates First Capital Corp. v Roth*, 226 AD3d 636).

CPLR 1018 provides that "[u]pon any transfer of interest, the action may be continued by or against the original parties unless the court directs the person to whom the interest is transferred to be substituted or joined in the action."

"The determination to substitute or join a party pursuant to CPLR 1018 is within the discretion of the trial court" (*NationsCredit Home Equity Servs. v Anderson*, 16 AD3d 563, 564; *see* *GRP Loan, LLC v Taylor*, 95 AD3d 1172, 1174).

Here, the plaintiff failed to demonstrate that U.S. Bank had an interest in this action, and therefore, the Supreme Court improvidently exercised its discretion in granting that branch of the plaintiff's

motion which was for leave to amend the caption to substitute U.S. Bank as the plaintiff (*see* *U.S. Bank N.A. v Medina*, 230 AD3d 1371, 1377; *Citimortgage, Inc. v Bredehorn*, 160 AD3d 803, 804; *Citicorp Mtge. v Adams*, 153 AD3d 779, 780).

The parties' remaining contentions are either without merit or not properly before this Court.

BRATHWAITE NELSON, J.P., FORD, DOWLING and GOLDBERG VELAZQUEZ, JJ., concur.

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