

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

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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

reversed_and_remanded

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

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