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

AS Helios LLC v. Chauhan

2026 NY Slip Op 01592 (Supreme Court of the State of New York Appellate Division First Department 2026) · No. Appeal No. 6140; Case No. 2024-06698; Index No. 850023/16 · Decided March 19, 2026

SUMMARY

The Appellate Division, First Department, affirmed an order denying defendants' motions for summary judgment dismissing a mortgage foreclosure action and for restitution. The court held that defendants failed to eliminate factual issues concerning the plaintiff's standing and compliance with contractual and statutory notice requirements, including RPAPL 1304 and 1306. Because the foreclosure action remained pending, the court concluded that restitution was unwarranted at that juncture.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Scarpulla, J.P.; Kapnick, J.; Pitt-Burke, J.; Michael, J.; Hagler, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	March 19, 2026
DOCKET	Appeal No. 6140; Case No. 2024-06698; Index No. 850023/16
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of Supreme Court, New York County, denying defendants' motion for summary judgment dismissing the foreclosure complaint and denying their motion for restitution after the mortgaged property had been sold at foreclosure.
STANDARD OF REVIEW	The court reviewed whether defendants established their prima facie entitlement to summary judgment by eliminating all questions of fact and whether restitution was warranted while the foreclosure action remained pending.
PRECEDENTIAL VALUE	published
PARTIES	Pushpa Chauhan, Paul Eaton v. AS Helios LLC

TOPICS

foreclosure mortgages summary judgment quiet title appellate procedure

PRACTICE AREAS

real estate mortgage foreclosure civil procedure appellate procedure remedies

QUESTIONS PRESENTED

1. Whether defendants established prima facie entitlement to summary judgment dismissing the foreclosure complaint by eliminating all questions of fact concerning plaintiff's standing.
2. Whether defendants established as a matter of law that plaintiff failed to comply with contractual notice requirements or the statutory notice requirements of RPAPL 1304 and RPAPL 1306.
3. Whether defendants were entitled to restitution because the property had been sold at a foreclosure sale.

HOLDINGS

1. Defendants were not entitled to summary judgment because the lost-note affidavit they relied on predated the assignment of the mortgage to plaintiff and therefore did not eliminate all questions of fact concerning plaintiff's standing.
2. Defendants failed to establish as a matter of law that plaintiff failed to comply with RPAPL 1304. Mere denial of receipt was insufficient to rebut a presumption of mailing supported by documentary proof, and the alleged omission of the Department of Financial Services toll-free helpline telephone number did not invalidate the notice as a matter of law.
3. Defendants failed to establish that plaintiff did not substantially comply with the mortgage's contractual notice requirements.
4. Defendants failed to demonstrate that omissions in the RPAPL 1306 filing, including the redacted last-known telephone number and the designation of the number of days delinquent as 'other,' established noncompliance or warranted dismissal of the foreclosure complaint.
5. Defendants were not entitled to restitution at that juncture because the foreclosure action remained pending.

KEY QUOTATIONS

> *“mere denial of receipt is insufficient to rebut a presumption of mailing where there is documentary proof of the mailing”*

FACTUAL BACKGROUND

AS Helios LLC brought a mortgage foreclosure action alleging that defendants failed to make monthly mortgage payments beginning in September 2010. The property was later sold at a foreclosure sale, although the First Department had previously vacated a foreclosure judgment after finding factual issues concerning plaintiff's standing and statutory notice compliance. Defendants relied on alleged defects involving the mortgage assignment, RPAPL 1304 and 1306 notices, and the mortgage's contractual notice requirements to seek dismissal and restitution.

PROCEDURAL HISTORY

AS Helios LLC commenced a mortgage foreclosure action in 2016. On a prior appeal, the First Department reversed plaintiff's summary judgment, vacated the foreclosure judgment, and found issues of fact concerning standing and compliance with RPAPL 1304. After the property was sold at foreclosure, the court later affirmed denial of defendants' motion to vacate the judgment granting the purchaser's motion to quiet title. Defendants then moved for summary judgment and restitution; Supreme Court denied both motions, and the First Department unanimously affirmed.

DISPOSITION

affirmed

CASES CITED

- AS Helios v. Chauhan, 167 AD3d 492 (1st Dept 2018)
- AS Helios v. Chauhan, 203 AD3d 567 (1st Dept 2022)
- U.S. Bank Trust, N.A. v. Rose, 176 AD3d 1012, 1016 (2d Dept 2019)
- Weiss v. Philips, 157 AD3d 1, 7-8 (1st Dept 2017)
- United Nations Fed. Credit Union v. Diarra, 194 AD3d 506, 507 (1st Dept 2021)
- Emigrant Bank v. Cohen, 205 AD3d 103, 110 (1st Dept 2022)
- Hudson City Sav. Bank v. Friedman, 146 AD3d 757, 758 (2d Dept 2017)
- Bank of Am. N.A. v. Colagrande, 171 AD3d 1124, 1125 (2d Dept 2019)
- Nassau Operating Co., LLC v. DeSimone, 206 AD3d 920, 925 (2d Dept 2022)

OPINION

PER CURIAM.

AS Helios LLC v Chauhan (2026 NY Slip Op 01592) AS Helios LLC v Chauhan 2026 NY Slip Op 01592 Decided on March 19, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: March 19, 2026 Before: Scarpulla, J.P., Kapnick, Pitt-Burke, Michael, Hagler, JJ. Index No. 850023/16|Appeal No. 6140|Case No. 2024-06698| [*1]AS Helios LLC, Plaintiff-Respondent, v Pushpa Chauhan, et al., Defendants-Appellants, M&T Bank Also Known as Manufacturers and Traders Trust Company, Defendant-Respondent, New York City Environmental Control Board, et al., Defendants.

Petroff Amshen LLP, Brooklyn (James Tierney of counsel), for appellants. Order, Supreme Court, New York County (Francis A. Kahn, III, J.), entered on or about October 25, 2024, which, to the extent appealed from as limited by the briefs, denied the motion of defendants Pushpa Chauhan and Paul Eaton for summary judgment dismissing the complaint as against them, and denied their motion for restitution, unanimously affirmed without cost.

Plaintiff commenced this action to foreclose on the mortgage on February 18, 2016, alleging that defendants had failed to make their monthly mortgage payments on the property beginning in September 2010. On a prior appeal, this Court reversed the award of summary judgment to plaintiff and vacated a judgment of foreclosure based on our determination that there were issues of fact as to whether plaintiff had standing to commence the foreclosure action and had complied with statutory notice requirements under RPAPL 1304 (AS Helios v Chauhan, 167 AD3d 492 [1st Dept 2018]).

In the interim, however, the property was sold in a foreclosure sale, and this Court later affirmed the denial of defendants' motion to vacate the judgment which granted the purchaser's motion to quiet title (AS Helios v Chauhan, 203 AD3d 567 [1st Dept 2022]). Defendants now move for summary judgment dismissing the complaint as against them and for restitution because the property had been sold.

Defendants failed to meet their prima facie burden and eliminate all questions of fact as to plaintiff's standing by relying on a lost note affidavit that predated the assignment of mortgage to plaintiff (see U.S. Bank Trust, N.A. v Rose, 176 AD3d 1012, 1016 [2d Dept 2019]; see also Weiss v Philips, 157 AD3d 1, 7-8 [1st Dept 2017]). Defendants also failed to establish their prima facie case that plaintiff failed to comply with contractual and statutory notice requirements.

With respect to RPAPL 1304, "mere denial of receipt is insufficient to rebut a presumption of mailing where there is documentary proof of the mailing" (United Nations Fed. Credit Union v Diarra, 194 AD3d 506, 507 [1st Dept 2021]), and any other purported discrepancies in the section 1304 notice, such as the failure to include the telephone number for the Department of Financial Services toll-free helpline, did not render it invalid as a matter of law (see Emigrant Bank v Cohen, 205 AD3d 103, 110 [1st Dept 2022]).

Nor did defendants establish that plaintiff failed to substantially comply with the notice requirements of the subject mortgage (see Hudson City Sav. Bank v Friedman, 146 AD3d 757, 758 [2d Dept 2017]), as the notice of default apprises defendants of their entitlement to assert defenses and how to stop enforcement.

Finally, defendants failed to demonstrate that the purported omissions in the section 1306 filing of defendants' last known phone number, which is redacted in the record, and stating the number of days delinquent as "other," which may indicate over 120 days, show that plaintiff did not comply with the requirements of RPAPL 1306 (see Bank of Am. N.A. v Colagrande, 171 AD3d 1124, 1125 [2d Dept 2019]), let alone that these omissions would warrant dismissal of the complaint.

Based on the foregoing, the action remains pending, and therefore restitution is unwarranted at this juncture (cf. Nassau Operating Co., LLC v DeSimone, 206 AD3d 920, 925 [2d Dept 2022]). We have considered defendants' remaining arguments and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: March 19, 2026