



## ***U.S. Bank N.A. v. Speller***

Supreme Court of New York, Appellate Division, Second Department

May 6, 2026, Decided

2024-08987, (Index No. 500088/22)

### **Reporter**

2026 N.Y. App. Div. LEXIS 3046 \*; 2026 NY Slip Op 02866 \*\*; 2026 LX 250867; 2026 WL 1238499

U.S. Bank National Association, etc., appellant, v Michael M. Speller, et al., respondents, et al., defendants.

**Notice:** THE PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION.

THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

**Prior History:** [\*U.S. Bank N.A. v. Speller, 2024 N.Y. Misc. LEXIS 16114 \(Aug. 4, 2024\)\*](#)

## **Core Terms**

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lack of standing, sua sponte, affirmative defense, summary judgment, non jury trial, pay expenses, trial court, mortgage foreclosure action, review a determination, render a judgment, limited power, close case, addendum, assignee, holder

## **Case Summary**

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### **Overview**

#### **Key Legal Holdings**

- Where plaintiff U.S. Bank N.A. presented testimony from Charles Brehm, a vice president of note custodian Computershare Delaware Trust Company, along with a limited power of attorney and transaction addendum that were properly admitted as business records, plaintiff established that Computershare possessed the original note on plaintiff's behalf at the time this foreclosure action commenced, thereby proving standing to foreclose against defendants Speller and Fitzsimmons.

### **Material Facts**

- Plaintiff U.S. Bank N.A. commenced mortgage foreclosure action against defendants Michael M. Speller and Ellen M. Fitzsimmons.
- Defendants raised affirmative defense of lack of standing.
- Supreme Court ordered nonjury trial on standing issue on October 31, 2023.
- Charles Brehm, vice president of Computershare Delaware Trust Company, testified at trial.

- Limited power of attorney and transaction addendum were admitted as business records.
- Computershare was custodian of the note on behalf of plaintiff and possessed original note at commencement.

### Controlling Law

- Standing requirement for mortgage foreclosure actions - plaintiff must be holder or assignee of note at commencement.
- [CPLR 4518](#)- business records exception to hearsay rule.
- [CPLR 5701\(c\)](#)- leave to appeal requirements.
- [Real Property Law § 282\(1\)](#)- expenses in mortgage foreclosure actions.
- Standard of review for nonjury trial - appellate court has broad power to render judgment warranted by facts.

### Court Rationale

The appellate court found that Brehm's testimony established proper foundation for admission of the documentary evidence as business records under [CPLR 4518](#). The limited power of attorney and transaction addendum, combined with Brehm's testimony, demonstrated that Computershare was the note custodian on behalf of plaintiff and possessed the original note when the action commenced. This evidence was sufficient to establish plaintiff's standing to foreclose, contrary to the trial court's finding.

### Outcome

#### Procedural Outcome

Order reversed with costs. Plaintiff's motion for summary judgment dismissing defendants' lack of standing defense is granted. Trial court's sua sponte dismissal of complaint and award of expenses to defendants under Real Property Law § 282(1) is vacated. Case remanded for further proceedings on the merits of the foreclosure action.

## LexisNexis® Headnotes

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Civil Procedure > Trials > Bench Trials

### [HN1](#) Trials, Bench Trials

In reviewing a determination made after a nonjury trial, the appellate court's power is as broad as that of the trial court, and the appellate court may render the judgment it finds warranted by the facts, taking into account in a close case that the trial court had the advantage of seeing and hearing the witnesses.

Real Property Law > Financing > Foreclosures > Judicial Foreclosures

### [HN2](#) Foreclosures, Judicial Foreclosures

A plaintiff in a mortgage foreclosure action establishes its standing by demonstrating that it was the holder or assignee of the underlying note at the time the action was commenced.

## Headnotes/Summary

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### Headnotes

#### Mortgages — Foreclosure — Standing — Mortgagor's Right to Recover Attorney's Fees

**Counsel:** 2026 N.Y. App. Div. LEXIS 3046 2026 NY Slip Op 02866 2026 LX 250867 2026 WL 1238499 at 1Friedman Vartolo LLP, Garden City, NY (Stephen J. Vargas of counsel), for appellant.

Michael M. Speller and Ellen M. Speller, sued herein as Ellen M. Fitzsimmons, respondents, Pro se, Brewster, NY.

**Judges:** Francesca E. Connolly, J.P., Valerie Brathwaite Nelson, Barry E. Warhit, Lourdes M. Ventura, JJ. CONNOLLY, J.P., BRATHWAITE NELSON, WARHIT and VENTURA, JJ., concur.

## Opinion

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### 2026 N.Y. App. Div. LEXIS 3046 2026 NY Slip Op 02866 2026 LX 250867 2026 WL 1238499 at 1 DECISION & ORDER

In an action to foreclose a mortgage, the plaintiff appeals from an order of the Supreme Court, Putnam County (Victor G. Grossman, J.), dated August 14, 2024. The order, after a nonjury trial, denied that branch of the plaintiff's motion which was for summary judgment dismissing the affirmative defense of the defendants Michael M. Speller and Ellen M. Fitzsimmons of lack of standing, sua sponte, directed dismissal of the complaint insofar as asserted against those defendants on the ground of lack of standing, and, sua sponte, directed that the plaintiff pay expenses to those defendants pursuant to [Real Property Law § 282\(1\)](#).

ORDERED that on the Court's own motion, the notice of appeal from so much of the order as, sua sponte, directed dismissal of the complaint insofar as asserted against the defendants Michael M. Speller and Ellen M. Fitzsimmons2026 N.Y. App. Div. LEXIS 3046 2026 NY Slip Op 02866 2026 LX 250867 2026 WL 1238499 at 2 on the ground of lack of standing and, sua sponte, directed that the plaintiff pay expenses to those defendants pursuant to [Real Property Law § 282\(1\)](#) is deemed to be an application for leave to appeal from those portions of the order, and leave to appeal is granted (see [CPLR 5701\(c\)](#)); and it is further,

ORDERED that the order is reversed, on the law, with costs, and that branch of the plaintiff's motion which was for summary judgment dismissing the affirmative defense of the defendants Michael M. Speller and Ellen M. Fitzsimmons of lack of standing is granted.

The background facts and procedural history of this case are more fully set forth in this Court's decision and order on a related appeal (see *U.S. Bank N.A. v Speller*, \_\_ AD3d \_\_ [Appellate Division Docket No.2023-01252; decided herewith]). In an order dated October 31, 2023, the Supreme Court, inter alia, directed a nonjury trial pursuant to [CPLR 3212\(c\)](#) on that branch of the plaintiff's motion which was for summary judgment dismissing the affirmative defense of the defendants Michael M. Speller and Ellen M. Fitzsimmons (hereinafter together the defendants) of lack of standing. Following the nonjury trial on that issue, in an order dated August 14, 2024, the court denied that2026 N.Y. App. Div. LEXIS 3046 2026 NY Slip Op 02866 2026 LX 250867 2026 WL 1238499 at 3 branch of the plaintiff's motion which was for summary judgment dismissing the defendants' affirmative defense of lack of standing, sua sponte, directed dismissal of the complaint insofar as asserted against the defendants on the ground of lack of standing, and, sua sponte, directed 2026 N.Y. App. Div. LEXIS 3046 2026 NY Slip Op 02866 2026 LX 250867 2026 WL 1238499 at 2 that the plaintiff pay expenses to the defendants pursuant to [Real Property Law § 282\(1\)](#). The plaintiff appeals.

**HN1** "In reviewing a determination made after a nonjury trial, this Court's power is as broad as that of the trial court, and this Court may render the judgment it finds warranted by the facts, taking into account in a close case that the trial court had the advantage of seeing and hearing the witnesses" ([U.S. Bank N.A. v Sakizada](#), 235 AD3d 800, 801, 228 N.Y.S.3d 248; see [Northern Westchester Professional Park Assoc. v Town of Bedford](#), 60 NY2d 492, 499, 458 N.E.2d 809, 470 N.Y.S.2d 350).

**HN2** "A plaintiff in a mortgage foreclosure action establishes its standing by demonstrating that 'it was the holder or assignee of the underlying note at the time the action was commenced'" ([U.S. Bank N.A. v Sakizada](#), 235 AD3d at 801-802, quoting [US Bank N.A. v. Nelson](#), 169 A.D.3d 110, 114, 93 N.Y.S.3d 138, *affd* 36 N.Y.3d 998, 139 N.Y.S.3d 118, 163 N.E.3d 49). Here, the plaintiff established its standing through, among other things, the testimony of Charles Brehm, who was a vice president of Computershare Delaware Trust Company (hereinafter Computershare), along with copies of a limited power of attorney and a transaction addendum (see [U.S. Bank N.A. v Sakizada](#), 235 AD3d at 802; [Bank of Am., N.A. v Bloom](#), 202 AD3d 736, 737, 162 N.Y.S.3d 136; [Deutsche Bank Natl. Trust Co. v Gordon](#), 181 AD3d 645, 646, 120 N.Y.S.3d 366). Brehm's testimony laid a proper **2026 N.Y. App. Div. LEXIS 3046 2026 NY Slip Op 02866 2026 LX 250867 2026 WL 1238499 at 4** foundation for the admission of the limited power of attorney and the transaction addendum as business records under the business records exception to the hearsay rule (see [CPLR 4518](#); [Bank of Am., N.A. v Bloom](#), 202 AD3d at 737; [Nationstar Mtge., LLC v Tabick](#), 193 AD3d 950, 951, 142 N.Y.S.3d 848). These documents and Brehm's testimony established that Computershare was the custodian of the note on behalf of the plaintiff and that Computershare was in possession of the original note at the time this action was commenced (see [HSBC Bank USA, NA v Thoppil](#), 227 AD3d 1056, 1058, 212 N.Y.S.3d 422; [Nationstar Mtge., LLC v Tabick](#), 193 AD3d at 951; [U.S. Bank Trust, N.A. v O'Driscoll](#), 168 AD3d 783, 785, 90 N.Y.S.3d 639).

The defendants' remaining contentions are not properly before this Court.

Accordingly, the Supreme Court should have granted that branch of the plaintiff's motion which was for summary judgment dismissing the defendants' affirmative defense of lack of standing and should not have, sua sponte, directed dismissal of the complaint insofar as asserted against the defendants and, sua sponte, directed that the plaintiff pay expenses to the defendants pursuant to [Real Property Law § 282\(1\)](#).

CONNOLLY, J.P., BRATHWAITE NELSON, WARHIT and VENTURA, JJ., concur.