# United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

**FILED**
August 26, 2026

Lyle W. Cayce
Clerk

No. 25-10897

Lester Lorenzo Rummans,

*Plaintiff—Appellant*,

*versus*

HSBC Bank USA, National Association, *as Trustee for* MASTR Reperforming Loan Trust 2005-2; Specialized Loan Servicing, L.L.C.; Northsky, L.L.C.,

*Defendants—Appellees*.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:22-CV-2046

Before Higginbotham, Smith, and Oldham, *Circuit Judges*.

Patrick E. Higginbotham, *Circuit Judge*:

HSBC Bank USA foreclosed on Lester Lorenzo Rummans's home and sold it to Northsky, LLC. Rummans sued, alleging HSBC and its loan servicer, Specialized Loan Servicing, LLC ("SLS"), violated the VA Servicing Guidelines by failing to contact him before foreclosure.[1]

[1] The mortgage explicitly incorporated the VA Servicing Guidelines as terms of the contract.

The sole issue in this appeal is whether the district court properly applied the "mailbox rule" to presume HSBC and SLS mailed Rummans the required information, rendering the foreclosure sale proper. Finding no error, we AFFIRM.

## I.

### A.

In 2003, Rummans and his late wife financed their home with a VA loan. They qualified because Rummans was an Army Reserve soldier from December 2003 to December 2020. The loan was eventually assigned to HSBC and serviced by SLS.

Rummans submitted no payments for at least a decade. HSBC ultimately foreclosed in 2022. But first, the VA Servicing Guidelines required HSBC to notify Rummans of the default and explore options for him to cure it.[2] 38 C.F.R. § 36.4350(h) requires loan servicers to "solicit sufficient information to properly evaluate the prospects for curing [a] default and whether the granting of forbearance or other relief assistance would be appropriate." SLS, acting on HSBC's behalf, claims it satisfied this provision by mailing Rummans numerous "Payoff Statements" starting in August 2021, followed by a "Notice of Default and Intent to Accelerate" in May 2022. Rummans alleges he never received these notices.

### B.

Rummans sued HSBC, SLS, and Northsky in Texas state court, alleging the defendants violated various provisions of federal and Texas law and the foreclosure sale should be set aside. HSBC and SLS removed the case.

---

[2] *See* 38 C.F.R. § 36.4350.

The district court denied Northsky's motion to dismiss but granted partial summary judgment for HSBC and SLS, leaving Rummans's claims for VA Servicing Guidelines violations, quiet title, and trespass to try title.

These claims proceeded to a bench trial. HSBC and SLS offered circumstantial evidence that they contacted Rummans, invoking the mailbox rule's presumption of receipt. SLS introduced several letters to Rummans taken from its business records. These letters were not stamped or postmarked, but corporate representative Kevin Payne testified that based on the way they were filed in SLS's records, these letters were mailed in the ordinary course of SLS's business.

Payne worked for the company that later acquired SLS (NewRez, LLC).[3] He testified that he had "looked at a lot of SLS files" over his career and reviewed "hundreds in addition to the 110 or so that [he] worked personally." Payne, pointing to the postal barcodes on the letters in Rummans's file, explained that SLS's mailing contractor Covius would not add these barcodes until it actually put a letter in the mail. And as the letters in Rummans's file all had barcodes on them, Payne testified he was "fully confident they went out," explaining that SLS would not receive barcoded copies of the letters in the ordinary course of its business unless Covius had mailed them.

---

[3] SLS previously serviced Rummans's loan, but NewRez later acquired SLS and adopted its records. Payne worked only for NewRez; he never worked for SLS. However, "[t]here is no requirement that the witness who lays the foundation be the author of the [business] record or be able to personally attest to its accuracy," nor is there any "requirement that the records be created by the business having custody of them" as long as the adopted materials "were themselves business records" otherwise admissible. *United States v. Duncan*, 919 F.2d 981, 986 (5th Cir. 1990) (citations omitted). That is because "the 'primary emphasis of rule 803(6) is on the reliability or trustworthiness of the records sought to be introduced,'" *id.* (quoting *United States v. Veytia-Bravo*, 603 F.2d 1187, 1189 (5th Cir. 1979)), rather than which entity the records' author or custodian is affiliated with.

The only evidence to the contrary was Rummans' word that he never received the letters, and he otherwise focused on attacking HSBC and SLS's evidence.

The district court held "[t]he circumstances establish that SLS mailed to Plaintiff via first-class mail addressed to Plaintiff at the proper address each of the letters" at issue. Applying the mailbox rule, the court presumed Rummans received these letters.[4] And as Rummans failed to rebut this presumption, the court found HSBC and SLS met their obligations under the VA Servicing Guidelines and upheld the foreclosure sale.

Rummans timely appealed his two VA Servicing Guidelines-related claims: the breach of contract claim and the TDCA section 392.301(a)(8) claim.

## II.

### A.

On appeal from a bench trial, we review findings of fact for clear error and mixed questions and conclusions of law de novo.[5] "A factual finding is clearly erroneous when although there is evidence to support it, the

---

[4] *See, e.g.*, *Faciane v. Sun Life Assurance Co. of Canada*, 931 F.3d 412, 420–21 (5th Cir. 2019) ("To conclude that Faciane received the March 31, 2008 letter, the district court applied the 'mailbox rule,' under which proof that a letter properly directed was placed in a U.S. post office mail receptacle creates a presumption that it reached its destination in the usual time and was actually received by the person to whom it was addressed. (cleaned up)).

[5] *Water Craft Mgmt. LLC v. Mercury Marine*, 457 F.3d 484, 488 (5th Cir. 2006); *Dickerson v. Lexington Ins. Co.*, 556 F.3d 290, 294 (5th Cir. 2009) (discussing mixed questions).

reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed."[6]

## B.

We turn now to the mailbox rule. This rebuttable presumption provides that "[a] letter properly addressed, stamped and mailed may be presumed to have been received by the addressee in the due course of the mail."[7] "Placing letters in the mail may be proved by circumstantial evidence, including customary mailing practices used in the sender's business."[8] Sworn testimony from a business representative proves customary mailing practices,[9] and there is no "requirement that the [testimony] be corroborated by independent evidence of mailing."[10] "[T]o be a competent witness" for this purpose, "at a minimum the [witness] must have personal knowledge of the procedures in place at the time of mailing."[11]

---

[6] *One Beacon Ins. Co. v. Crowley Marine Servs., Inc.*, 648 F.3d 258, 262 (5th Cir. 2011) (cleaned up).

[7] *Wells Fargo Bus. Credit v. Ben Kozloff, Inc.*, 695 F.2d 940, 944 (5th Cir. 1983) (citing *Southland Life Ins. Co. v. Greenwade*, 159 S.W.2d 854 (Tex. 1942)). Texas law governed the mortgage.

[8] *Id.* (citing *Cooper v. Hall*, 489 S.W.2d 409 (Tex. App.—Amarillo 1972, writ ref'd n.r.e.)).

[9] *Id.*; *see also Duron v. Albertson's LLC*, 560 F.3d 288, 291 (5th Cir. 2009) (overturning summary judgment for defendants after they "submitted no affidavits in support of the mailing").

[10] *See Bassknight v. Deutsche Bank Nat'l Trust Co.*, No. 3:12-cv-1412-M, 2014 WL 6769085, at *6 (N.D. Tex. Dec. 1, 2014) (collecting cases, and observing that similar evidence "is exactly the type of evidence repeatedly found by courts to be sufficient to constitute prima facie evidence that service by certified mail was completed in accordance with Texas law.").

[11] *Burton v. Banta Global Turnkey Ltd.*, 170 F. App'x 918, 924 (5th Cir. 2006) (unpublished); *cf. United States v. Wilson*, 322 F.3d 353, 362 (5th Cir. 2003) (finding business representative was not a competent witness when "there really were no consistent

"If such evidence is presented and not rebutted," we presume the addressee received the letter.[12] "The presumption of delivered mail cannot be rebutted simply by denying receipt; the very purpose of a presumption would be undercut if all that were necessary to defeat a presumed fact were a party's uncorroborated statement."[13]

The presumption of receipt is best analyzed as a mixed question of fact and law.[14] "The task is partly factual because it involves marshaling and weighing evidence," but the district court also had to "determine whether the evidence satisfies a legal standard."[15] Here, in deciding to apply the presumption of receipt, most of the work was weighing evidence of mailing. "That a mixed question requires a court to immerse itself in facts . . . suggests a more deferential standard of review"[16]—even more so here, where the presumption rested on facts found at trial.

### C.

Rummans argues "there was no evidence to support . . . mailing" and the district court therefore "erred finding that the presumption of receipt

---

procedures or practices [for mailing] during the time in question" and the witness "[did] not know what the procedures were . . . in what they sent out").

[12] *Wells Fargo*, 695 F.2d at 944.

[13] *Ortega v. Alamo Cmty. Coll. Dist.*, 31 F. App'x 152, 2001 WL 1747723, at *1 (5th Cir. Dec. 6, 2001) (unpublished).

[14] *See U.S. Bank N.A. v. Village at Lakeridge, LLC*, 583 U.S. 387, 394 (2018) ("whether the historical facts found satisfy the legal test chosen" is a "so-called 'mixed question' of law and fact" (quoting *Pullman-Standard v. Swint*, 456 U.S. 273, 289, n.19 (1982))).

[15] *Bufkin v. Collins*, 604 U.S. 369, 381–82 (2025).

[16] *Wilkinson v. Garland*, 601 U.S. 209, 222 (2024).

was satisfied." But we conclude the able district judge did not err in finding HSBC and SLS adequately proved the required mailing.

We agree with the district court that Payne's testimony was sufficient. The presumption of receipt requires personal knowledge of the general "customary mailing practices used in the sender's business" (*i.e.*, SLS).[17] Payne had this knowledge. He knew, from hundreds of cases involving SLS, that the company's "customary mailing practice[]" was to archive barcoded letters only once they were actually mailed. That was adequate foundation for his testimony that the barcoded letters in Rummans's file were sent. Payne did not know exactly how Covius delivered mailpieces to the postal service, but such specific knowledge is not required.[18]

Having established mailing, HSBC and SLS enjoy the presumption of receipt.[19] Rummans must rebut it. He did not do so, offering no evidence of non-receipt besides his own self-serving testimony. It is settled law that "[a] 'bare assertion of non-receipt' is insufficient to rebut the presumption."[20] A contrast to *Trammell v. AccentCare, Inc.* illustrates the kinds of evidence—missing here—that might have rebutted receipt:[21]

> Whatever the precise amount of evidence required to rebut the mailbox rule's presumption of receipt . . . Trammell has

---

[17] *Wells Fargo*, 695 F.2d at 944.

[18] *Burton*, 170 F. App'x at 924 ("[A]t a minimum the [witness] must have personal knowledge of the *procedures* in place at the time of mailing." (emphasis added)).

[19] *See Wells Fargo*, 695 F.2d at 944.

[20] *Faciane*, 931 F.3d at 421 (quoting *Custer v. Murphy Oil USA, Inc.*, 503 F.3d 415, 421 (5th Cir. 2007)).

[21] 776 F. App'x 208, 210 (5th Cir. 2019) (unpublished) (emphasis added). To be clear, we cite *Trammell* only as an example. Our holding rests on the principle from *Faciane*, *Custer*, and other cases that when the presumption of receipt is properly established, merely claiming non-delivery cannot rebut that presumption without more evidence.

> satisfied it here. Trammell has denied receipt in a sworn affidavit, *stating further* that she notified three AccentCare personnel about her problems sending and receiving mail at her home, including mail from AccentCare, and that she began driving her time slips to work since they were being lost in the mail. Moreover, while there is no dispute that AccentCare mailed the proposed arbitration agreement to Trammell, the company admits that it cannot produce the signed agreement, which tends to corroborate that she did not sign the agreement.

By contrast here, the evidence suggests Rummans *did* receive notice. Beyond Payne's testimony plus the barcoded letters, Rummans also testified that "[s]everal times [he] tried to reach out and get help," but SLS representatives gave him no information "on how [he] could remedy this loan." That Rummans affirmatively contacted SLS to "remedy this loan" makes plain he knew there was some looming issue to "remedy."

## III.

The district court found the evidence was sufficient to raise a presumption of receipt and that Rummans failed to rebut it. Applying "a more deferential standard of review"[22] to this fact-bound mixed question, we find no error. We AFFIRM.

---

[22] *Wilkinson*, 601 U.S. at 222.