

**Wilmington Trust, N.A. v 446 W 164 LLC**

2026 NY Slip Op 31148(U)

March 18, 2026

Supreme Court, New York County

Docket Number: Index No. 850430/2025

Judge: Francis A. Kahn III

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. FRANCIS A. KAHN, III PART 32

Justice

INDEX NO. 850430/2025

MOTION DATE

MOTION SEQ. NO. 002

WILMINGTON TRUST, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE REGISTERED HOLDERS OF CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES CORP., MULTIFAMILY MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2019-SB67, BY AND THROUGH ITS SPECIAL SERVICER,

Plaintiff,

- v -

DECISION + ORDER ON MOTION

446 W 164 LLC, DOUGLAS PETERSON, MAURICE ARLOS, NEW YORK CITY DEPARTMENT OF FINANCE, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, JOHN DOE, JANE DOE, XYZ CORPORATION,

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 47, 48

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, the motion is determined as follows:

On the branches of the motion for summary judgment, a default judgment and appointment of a referee, Plaintiff established the mortgage, note, and evidence of Mortgagor's default in repayment by affidavit which was sufficiently supported by admissible business records annexed thereto (see eg Bank of NY v Knowles, 151 AD3d 596 [1st Dept 2017]; SRMOF II 2012-I Trust v Tella, 139 AD3d 599, 600 [1st Dept 2016]; Fortress Credit Corp. v Hudson Yards, LLC, 78 AD3d 577 [1st Dept 2010]). Defendant guarantor's limited opposition is unavailing as Plaintiff has not pled a cause of action for breach of the guaranty. Rather, by its own admission, Plaintiff only seeks leave to seek a deficiency judgment, if necessary.

The branch of Plaintiff's motion for declaratory relief with respect to collection of rents from tenants at the mortgaged premises is denied. An assignment of rents clause in the mortgage, even one termed as "absolute", is not an actual conveyance of the rents, but a form of mortgage by a pledge of property as security for the mortgage debt (see In re South Side House, LLC, 474 BR 391, 403 [Bankr. EDNY 2012]; see also Sullivan v Rosson, 223 NY 217, 224 [1918]; Malta v Gaudio, 166 AD3d 508 [1st Dept 2018]). As such, such a provision affords a plaintiff the right to collect rents, not title to them (see In re South Side House, LLC, supra). The collection of unpaid rents may only be accomplished by a

receiver (*see 1180 Anderson Ave. Realty Corp. v Mina Equities Corp.*, 95 AD2d 169, 173-74 [1<sup>st</sup> Dept 1983])<sup>1</sup>.

Accordingly, it is

ORDERED that the branch of the motion for summary judgment on the foreclosure cause of action against the appearing parties, a default judgment against the non-appearing parties and the appointment of a referee to compute is granted without opposition; and it is further

ORDERED that **Gerard Geisweller, 134-01 20<sup>TH</sup> Ave College Point, New York 11356-2428, 718-353-8880** is hereby appointed Referee in accordance with RPAPL § 1321 to compute the amount due to Plaintiff and examine whether the tax parcel can be sold in parcels; and it is further

ORDERED that if a Defendant appears and contests the amount due, in the discretion of the Referee, a hearing may be held, and testimony taken, otherwise the Referee shall hold no hearing and take no testimony or evidence other than by written submission; and it is further

ORDERED that by accepting this appointment the Referee certifies that he is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2 (c) (“Disqualifications from appointment”), and §36.2 (d) (“Limitations on appointments based upon compensation”), and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall immediately notify the Appointing Judge; and it is further

ORDERED that, pursuant to CPLR 8003(a), and in the discretion of the court, a fee of \$350 shall be paid to the Referee for the computation of the amount due and upon the filing of his report and the Referee shall not request or accept additional compensation for the computation unless it has been fixed by the court in accordance with CPLR 8003(b); and it is further

ORDERED that the Referee is prohibited from accepting or retaining any funds for himself or paying funds to himself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED that if the Referee holds a hearing or is required to perform other significant services in issuing the report, the Referee may seek additional compensation at the Referee’s usual and customary hourly rate; and it is further

ORDERED that plaintiff shall forward all necessary documents to the Referee and to defendants who have appeared in this case within 30 days of the date of this order and shall *promptly* respond to every inquiry made by the referee (promptly means within two business days); and it is further

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<sup>1</sup> Upon qualification, a receiver is entitled to collect the rents that become due after his appointment, including those collected prior to their qualification (*see Granite Mgmt. & Disposition v Sun*, 221 AD2d 186, 187 [1<sup>st</sup> Dept 1995]), as well as rents “that have accrued prior [to the appointment] and which have not been paid” (*New York Life Ins. Co. v Fulton Dev. Corp.*, 265 NY 348, 351 [1934][emphasis added]).

ORDERED that if defendant(s) have objections, they must submit them to the referee within 14 days of the mailing of plaintiff's submissions; and include these objections to the Court if opposing the motion for a judgment of foreclosure and sale; and it is further

ORDERED that the failure by defendants to submit objections to the referee shall be deemed a waiver of objections before the Court on an application for a judgment of foreclosure and sale; and it is further

ORDERED that plaintiff must bring a motion for a judgment of foreclosure and sale within 30 days of receipt of the referee's report; and it is further

ORDERED that if plaintiff fails to meet these deadlines, then the Court may *sua sponte* vacate this order and direct plaintiff to move again for an order of reference and the Court may *sua sponte* toll interest depending on whether the delays are due to plaintiff's failure to move this litigation forward; and it further

ORDERED, that the caption of this action be amended to strike the defendants sued herein as fictitious, so that the action is discontinued as against them, all without prejudice to any of the proceedings heretofore had herein or to be had herein; and it is further

ORDERED that the caption of this action as amended, shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
WILMINGTON TRUST, NATIONAL ASSOCIATION,  
AS TRUSTEE FOR THE REGISTERED HOLDERS OF  
CREDIT SUISSE FIRST BOSTON MORTGAGE  
SECURITIES CORP., MULTIFAMILY MORTGAGE  
PASS-THROUGH CERTIFICATES, SERIES 2019-  
SB67, by and through its Special Servicer, KEYBANK  
NATIONAL ASSOCIATION,

Plaintiff,

-against-

446 W 164 LLC, DOUGLAS PETERSON, MAURICE  
ARLOS, NEW YORK CITY DEPARTMENT OF  
FINANCE, AND NEW YORK CITY  
ENVIRONMENTAL CONTROL BOARD,

Defendants.

-----X

and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being removed pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address ([www.nycourts.gov/suptctmanh](http://www.nycourts.gov/suptctmanh))); and it is further

ORDERED that Plaintiff shall serve a copy of this Order with notice of entry on all parties and persons entitled to notice, including the Referee appointed herein.

All parties are to appear for a virtual conference via Microsoft Teams on **August 5, 2026, at 11:00 a.m.** If a motion for judgment of foreclosure and sale has been filed Plaintiff may contact the Part Clerk ([SFC-Part32-Clerk@nycourts.gov](mailto:SFC-Part32-Clerk@nycourts.gov)) in writing to request that the conference be cancelled. If a motion has not been made, then a conference is required to explore the reasons for the delay.

3/18/2026

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

NO FURTHER DISPOSITION

GRANTED IN PART

OTHER

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE

*Francis A. Kahn III*

FRANCIS KAHN, III, A.J.S.C.

HON. FRANCIS A. KAHN III J.S.C.