

**Wilmington Trust, N.A. v Walker**

2026 NY Slip Op 30096(U)

January 9, 2026

Supreme Court, Kings County

Docket Number: Index No. 7981/2007

Judge: Carolyn Walker-Diallo

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At an IAS Term, Part FRP4, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 320 Jay Street, Brooklyn, New York, on the 9th day of January 2026.

PRESENT:

HON. CAROLYN WALKER-DIALLO, J.S.C.

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WILMINGTON TRUST, N.A.,

Plaintiff,

Index No.: 7981/2007

**DECISION AND ORDER**

*-against-*

RUDOLPH E. WALKER, et al.,

Defendants.

\_\_\_\_\_ X

Recitation, as required by CPLR 2219 (a), of the papers considered in the review of this

Order to Show Cause:

**Papers**

Order to Show Cause, and Exhibits  
Affirmation in Opposition, and Exhibits

**Numbered**

NYSCEF Doc. Nos. 24-38/41  
NYSCEF Doc. Nos. 45-51

**Motion Sequence #6**

Upon the foregoing cited papers, the Decision/Order on this Order to Show Cause is as follows:

Defendant Rudolph E. Walker (“Defendant”) moves for an Order pursuant to CPLR 5519 (c) staying enforcement of the Judgment of Foreclosure and Sale pending the determination of the

perfected appeal. Plaintiff submits opposition papers. For the reasons set forth below, Defendant's Order to Show Cause is GRANTED.

#### PROCEDURAL HISTORY

On July 2, 2024, the court issued an order confirming the referee's report and a Judgment of Foreclosure and Sale. Thereafter, on August 21, 2024, Defendant appealed to the Appellate Division, Second Department. At this time, the appeal has been fully briefed under Docket Number 2024-10733 and is awaiting the scheduling of oral argument. A foreclosure sale scheduled for November 7, 2024, was cancelled after the Appellate Division, Second Department, granted a temporary restraining order in response to an order to show cause that Defendant filed. The order to show cause was ultimately denied.

Defendant now moves to stay the enforcement of the Judgment of Foreclosure and Sale, contending that he has a strong likelihood of success on the merits as the Appellate Division, Second Department, has already ruled numerous times that an affidavit attesting to a review of unproduced business records is inadmissible hearsay, and a referee's report based upon same is not substantially supported by the record, which is the issue in the pending appeal. Plaintiff opposes, arguing that because: (1) the Appellate Division, Second Department, ultimately denied a stay; (2) this relief is not available to Defendant; and (3) that Defendant is unlikely to succeed on appeal. Specifically, Plaintiff contends that because Defendant remains in default, he was not entitled to challenge the motion to confirm the referee's report. Finally, Plaintiff argues that a stay would be prejudicial.

## DISCUSSION

CPLR 5519 (c), entitled Stay and Limitation of Stay by Court Order, provides: “The court from or to which an appeal is taken or the court of original instance may stay all proceedings to enforce the judgment or order appealed from pending an appeal or determination on a motion for permission to appeal in a case not provided for in subdivision (a) or subdivision (b), or may grant a limited stay or may vacate, limit or modify any stay imposed by subdivision (a), subdivision (b) or this subdivision, except that only the court to which an appeal is taken may vacate, limit or modify a stay imposed by paragraph one of subdivision (a).”

“CPLR 5519 (c) permits this Court, *inter alia*, to grant a discretionary stay of proceedings to enforce the order or judgment appealed from, or to vacate, limit or modify any automatic stay obtained pursuant to CPLR 5519 (a) or (b). The scope of the stay authorized by subdivision (c) is thus coextensive with the stay authorized by subdivision (a).” *Schwartz v. N.Y.C. Hous. Auth.*, 219 A.D.2d 47, 48 (2d Dep’t 1996). However, “[u]nder [CPLR 5519(c)], there is no entitlement to a stay and, indeed, the court considering the stay may consider the merits of the appeal. In considering whether to grant a stay under subdivision (c), the court’s discretion is the guide. It will be influenced by any relevant factor, including the presumptive merits of the appeal and any exigency or hardship confronting any party.” *Deutsche Bank Nat’l Tr. Co. v. Royal Blue Realty Holdings, Inc.*, 2016 NY Slip Op 31510(U), ¶ 4 (Sup. Ct. N.Y. Co. 2016). Further, “[u]nder CPLR 5519 (c), there is no single factor in determining whether to grant a stay, the court’s discretion is the guide and [i]t will be influenced by any relevant factor, including the presumptive merits of the appeal and any exigency or hardship confronting any party.” *Schaffer v. VSB Bancorp, Inc.*, 68 Misc. 3d 827, 834 (Sup. Ct. Richmond Co. 2020) (Internal quotations omitted).

As an initial matter, Plaintiff's contention that this Court is without authority to issue a stay is without merit. The stay available pursuant to CPLR 5519 (c) is co extensive with the stay under CPLR 5519 (a). *See Schwartz*, 219 A.D.2d at 47. Additionally, the argument that a party in default cannot challenge the amount due in a motion to confirm a referee's report in furtherance of the entry of judgment is equally without merit. While a party in default admits traversable allegations in the complaint, the amount of damages is always subject to challenge. "The fact that the defendants defaulted in appearing did not mean that they were precluded from contesting the amount owed." *Wilmington Sav. Fund Soc'y, FSB v. Moriarty-Gentile*, 190 A.D.3d 890, 892 (2d Dep't 2021); *see also Wells Fargo Bank, N.A. v. Campbell*, 196 A.D.3d 726, 727 (2d Dep't 2021).


Here, Defendant has demonstrated a significant likelihood of success on appeal. "[C]omputations based on the review of unproduced business records amount to inadmissible hearsay and lack probative value. Here, the referee's findings with respect to the amount due were based on unproduced business records. Consequently, the referee's calculation of the amount due to the plaintiff was not substantially supported by the record." *U.S. Bank N.A. v. Mays*, 221 A.D.3d 934, 936 (2d Dep't 2023) (Internal quotations and citations omitted); *see also Christiana Tr. v. Campbell*, 202 A.D.3d 750 (2d Dep't 2022).

#### CONCLUSION

Accordingly, Defendant's Order to Show Cause is GRANTED. The Court has considered the additional contentions of the parties not specifically addressed herein. As such, to the extent that any relief requested was not addressed by the Court, it is hereby DENIED. Enforcement of the Judgment of Foreclosure and Sale is stayed pending determination of the appeal filed with the Appellate Division, Second Department, under Docket Number 2024-10733. A status conference will be held on April 28, 2026, at 9:30 a.m., all parties to appear in person. Defendant shall serve

notice of entry of this order within ten (10) days of the upload of the order to NYSCEF upon Plaintiff, Defendants, and all parties who have appeared in this action, with parties not participating in e-filing to be noticed via first-class mail.

This constitutes the Decision and Order of the Court.

ENTER:   
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Hon. Carolyn Walker-Diallo, J.S.C.