Citizens Bank, N.A. v 241-243 E. Realty, LLC
2026 NY Slip Op 30360(U)
January 13, 2026
Supreme Court, Kings County
Docket Number: Index No. 526107/2024
Judge: Menachem M. Mirocznik
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At IAS Part FRP5 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, NY 11201, on the 13th of January 2026

PRESENT: HON. MENACHEM M. MIROCZNIK
JUSTICE OF THE SUPREME COURT

CITIZENS BANK, N.A. successor by merger to Investors Bank,

Plaintiff,

-against-

241-243 EAST REALTY, LLC; NEW YORK CITY ENVIRONMENTAL CONTROL BOARD; NEW YORK CITY DEPARTMENT OF FINANCE; NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE; JOHN DOE #1 through JOHN DOE #20, the names of the last-named defendants being fictitious, the parties being tenants or persons in possession of portions of the property described in the complaint or parties who have, or claim to possess an interest, lien or encumbrance against the property which is subordinate to the lien of the Plaintiff

Defendant.

Index No. 526107/2024

Decision and Order
(Motion Seq. 1, 2 and 4)

Papers	Numbered
Notice of Motion (Seq. 1)	NYSCEF Doc. 31-47
Notice of Motion (Seq. 2)	NYSCEF Doc. 48-54
Notice of Cross-Motion (Seq. 4)	NYSCEF Doc. 62-66
Opposition to Cross-Motion (Seq. 4)	NYSCEF Doc. 69-76
Reply to Cross-Motion (Seq. 4)	NYSCEF Doc. 77

Upon the foregoing papers, the motion(s) is/are determined in accordance with this Decision and Order as follows:

Relevant Procedural and Factual History

This action was commenced on September 26 2024, seeking to foreclose a commercial mortgage (the "mortgage") executed by defendant 241-243 East Realty, LLC (the "borrower") which encumbers the property known as 241-243 East 56th Street, Brooklyn, NY 11203 (the "property").

On January 17, 2025, defendant joined issue with the filing of an answer that asserted various affirmative defenses and counterclaims.

On March 4, 2025, plaintiff moved (Seq. 1) for summary judgment, to strike defendant's answer for a default judgment against the non-answering parties, to amend the caption to substitute the names of certain John Doe defendants and to appoint a referee to compute the amounts to due. In support of the motion, plaintiff annexes the affirmation of Holly Badessa ("Ms. Badessa" or "Badessa Affidavit") a purported Assistant Vice President" of plaintiff.

Plaintiff argues it has established prima facie entitlement to summary judgment by producing the note, mortgage, and proof of default and defendant's answer fails to raise an issue of fact. Plaintiff further contends it had standing at commencement because it is the successor by merger to the original lender and acquired all the assets of the original lender including the subject note and mortgage.

On March 14, 2025, plaintiff additionally moved (Seq. 2) to compel defendant to respond to its discovery demands.

On May 21, 2025, plaintiff further moved (Seq. 3) to substitute Origen Brooklyn LLC ("Origen LLC") as party plaintiff and to amend the caption.

Defendant opposes the motion to substitute (Seq. 3) contending that Origen LLC is not authorized to do business in New York pursuant to Limited Liability Company Law 808[a] and BCL 1312[a] and therefore may not maintain this action.

In reply, Origen LLC contended it cured said deficiency by registering to do business in New York and therefore the issue is moot.

By order dated September 10, 2025 and entered on September 12, 2025, the Court granted the motion (Seq. 3) to substitute Origen LLC.

On September 10, 2025, before the order granting substitution was entered, defendant cross-moved (Seq. 4) for summary judgment dismissing the action contending that plaintiff admits it lacks standing by seeking to substitute Origen LLC and that Origen LLC lacks capacity because at the time the motion was made for substitution it was not registered to do business in New York. Defendant further contends that Origen LLC failed to show the note was assigned or transferred to it, that the assignment of mortgage without the note is a nullity, and it failed to demonstrate any allonge was firmly affixed to the note. Lastly, defendant argues that plaintiff failed to establish a default in payment and that Badessa Affidavit is hearsay and lacks sufficient foundation for admission of the alleged business records attached to her affidavit.

In opposition to defendant's cross-motion and in further support of its motion, plaintiff argues that Origen LLC has capacity, the argument was rendered moot by the September 10, 2025 order, that Origen LLC is not "doing business" within the meaning of the statute and that in any case, any deficiency was cured when Origen LLC registered to do business in New York. Origen LLC further argues that its submission of the affidavit of John A. Gibbons, ("Mr. Gibbons" or Gibbons Affidavit") a purported member of Origen LLC demonstrates that Origen LLC was assigned the note and mortgage and that Mr. Gibbons is personally in possession of the original note and allonge, personally handled the purchase of the subject note and that the Badessa Affidavit lays sufficient foundation for the admissibility the business records establishing a default in payment pursuant to CPLR 4518.

In reply to the cross-motion, defendant argues that the Origen LLC may not meet its prima facie burden for the first time in reply and the Court should not consider the Gibbons Affidavit. Defendant further argues the Gibbons Affidavit is insufficient to demonstrate the allonge was firmly affixed to the note and that plaintiff failed to establish a default in payment because the Badessa Affidavit failed to lay sufficient foundation in as much as Ms. Badessa does not allege she has personal knowledge of the record keeping practices of plaintiff.

Discussion

I. Standard of Review

"Summary judgment is a "drastic remedy" that should be granted only where the moving party has tender[ed] sufficient evidence to demonstrate the absence of any material issue of fact…Even then, summary judgment should be granted only if, upon the moving party's meeting this burden, the non-moving party fails to establish the existence of material issues of fact which require a trial of the action…Issue finding, not issue deciding, is the court's purpose at the summary judgment stage…Thus, [w]here the court entertains any doubt as to whether a triable issue of fact exists, summary judgment should be denied…When ruling on a motion for summary judgment, the deciding court must view the facts "in the light most favorable to the non-moving party" *U.S. Bank N.A. v DLJ Mtge. Capital, Inc.*, 38 NY3d 169 [2022][internal citations and quotation marks omitted]

"Generally, in moving for summary judgment in an action to foreclose a mortgage, a plaintiff establishes its prima facie case through the production of the mortgage, the unpaid note, and evidence of default" *Hudson City Sav. Bank v Genuth*, 148 AD3d 687 [2d Dept. 2017]. This showing shifts the burden to the non-movant to present evidence in admissible form sufficient to raise a material issue of fact requiring a trial. See *Gesuale v. Campanelli & Assocs., P.C.*, 126 AD3d 936 [2d Dept 2015]

I. Plaintiff Established It Had Standing When The Action Was Commenced.

"Where, as here, the plaintiff's standing has been placed in issue by the defendant's answer, the plaintiff must prove its standing as part of its prima facie showing on a motion for summary judgment." *U.S. Bank N.A. v Moulton*, 179 AD3d 734, 736 [2d Dept 2020]; See also *Deutsche Bank Nat. Tr. Co. v Brewton*, 142 AD3d 683, 684 [2d Dept 2016]["Where, as here, standing is put into issue by a defendant, the plaintiff must prove its standing in order to be entitled to relief"]

"A plaintiff has standing to commence a foreclosure action where it is the holder or assignee of the underlying note, either by physical delivery or execution of a written assignment prior to the commencement of the action with the filing of the complaint…Thus, a plaintiff may demonstrate its standing in a foreclosure action through proof that it was in possession of the subject note endorsed in blank, or the subject note and a firmly affixed allonge endorsed in blank, at the time of commencement of the action" *US Bank Tr., N.A. v Loring*, 193 AD3d 1101 [2d Dept 2021][internal citations omitted]

In general, a plaintiff can establish prima facie that it had standing to commence the action by annexing a copy of the subject note, endorsed in blank, to the complaint. *U.S. Bank N.A. v Auguste*, 173 AD3d 930 [2d Dept 2019]; *Bank of New York Mellon v Swift*, 213 AD3d 624 [2d Dept 2023]; *Selene Fin., L.P. v Coleman*, 187 AD3d 1082 [2d Dept 2020]; *U.S. Bank N.A. v Rozo-*

Castellanos, 201 AD3d 995 [2d Dept 2022]

Here, plaintiff established prima facie it had standing by annexing a copy of the note to the complaint and was in any case the original lender in as much as plaintiff demonstrated it was the successor by merger to the original lender and acquired all its assets including the subject note.

Moreover, contrary to defendant's contention "the post-commencement transfer of the note and mortgage did not divest the plaintiff of its standing." *JPMorgan Chase Bank, N.A. v Esparza*, 213 AD3d 655, 657 [2d Dept 2023]; *JPMorgan Chase Bank, N.A. v Fischer*, 194 AD3d 1031, 1032 [2d Dept 2021]["Contrary to the Fischers' contention, the fact that the plaintiff subsequently assigned the notes and mortgage to U.S. Bank did not deprive the plaintiff of standing, since U.S. Bank may continue the action in the plaintiff's name in the absence of a formal substitution."]; See CPLR 1018

Lastly, defendant's challenge to Origen LLC's standing is barred by law of the case. "The doctrine of the law of the case seeks to prevent relitigation of issues of law that have already been determined at an earlier stage of the proceeding" *Bank of New York Mellon v Singh*, 205 AD3d 866, 867 [2d Dept 2022]

Here, the issue of Origen LLC's standing has already been litigated and determined with entry of the order dated September 10, 2025, granting plaintiff's motion to substitute Origen LLC as party plaintiff. The Court notes that defendant did not raise its standing arguments in opposition to the motion for substitution. The sole basis for the opposition was Origen LLC's purported lack of authority to do business in New York. I.e. a capacity argument. It was only in its later filed cross-motion to motion seq. 1 that defendant took issue with Origen LLC's standing. The cross-motion was filed after the Court granted the motion but before it was entered.

II. Plaintiff Failed to Establish Prima Facie That Defendant Defaulted Under The Terms Of The Note and Mortgage.

"There is no requirement that a plaintiff in a foreclosure action rely on any particular set of business records to establish a prima facie case, so long as the plaintiff satisfies the admissibility requirements of CPLR 4518(a), and the records themselves actually evince the facts for which they are relied upon." *Citigroup v Kopelowitz*, 147 AD3d 1014 [2d Dept 2017]

"[A] motion for summary judgment will not be granted if it depends on proof that would be inadmissible at the trial under some exclusionary rule of evidence…Records made in the regular course of business are hearsay when offered for the truth of their contents…When a party relies upon the business records exception to the hearsay rule in attempting to establish its prima facie case, '[a] proper foundation for the admission of a business record must be provided by someone with personal knowledge of the maker's business practices and procedures." *HSBC Bank USA, N.A. v Vasishta*, 241 AD3d 1299 [2d Dept 2025][internal citations and quotation marks omitted]

"Accordingly, to establish a foundation for the admission of a business record, the proponent of the record must satisfy the requirements identified in the statute (*see* CPLR 4518[a]). ***First***, the proponent must establish that the record be made in the regular course of business—essentially, that it reflect a routine, regularly conducted business activity, and that it be needed and relied on in the performance of functions of the business.... ***Second***, the proponent must also demonstrate that it be the regular course of such business to make the record ... essentially, that

the record be made pursuant to established procedures for the routine, habitual, systematic making of such a record…***Third,*** the proponent must establish that the record be made at or about the time of the event being recorded—essentially, that recollection be fairly accurate and the habit or routine of making the entries assured." *Bank of New York Mellon v Gordon*, 171 AD3d 197 [2d Dept 2019][internal citations and quotation marks omitted and emphasis added]

However, "[a] proper foundation for the admission of a business record must be provided by someone with *personal knowledge* of the maker's business practices and procedures" *U.S. Bank N.A. v 22 S. Madison, LLC*, 170 AD3d 772 [2d Dept 2019][emphasis added]; *Citibank, N.A. v Cabrera*, 130 AD3d 861 [2d Dept 2015]["A proper foundation for the admission of a business record must be provided by someone with personal knowledge of the maker's business practices and procedures."]

Here, contrary to plaintiff's contentions, Ms. Badessa did not lay sufficient foundation as required by CPLR 4518.

First, Ms. Badessa does not allege ***personal familiarity*** with business practices and procedures of plaintiff. See e.g. *Nationstar HECM Acquisition Tr. 2015-2 v Andrews*, 167 AD3d 1025, 1027 [2d Dept 2018]["However, the plaintiff failed to demonstrate the admissibility of the records relied upon by Craycroft under the business records exception to the hearsay rule (*see* CPLR 4518[a]), since Craycroft did not clearly attest that he was personally familiar with the plaintiff's record-keeping practices and procedures."]; *San Antonio v 340 Ridge Tenants Corp.*, 204 AD3d 713 [2d Dept 2022]["However, the basis for [the Affiant's] knowledge of the tests were documents attached to his affidavit, and he failed to lay the proper foundation for the admission of those documents under the business records exception to the hearsay rule…since he failed to attest that he was personally familiar with Trex's record-keeping practices and procedures."];

Second Ms. Badessa does not allege that the records were "made at or about the time of the event being recorded". See *Deutsche Bank Natl. Trust Co. v Dennis*, 181 AD3d 864 [2d Dept 2020]["Reyes also failed to indicate that the record [was] made at or about the time of the event being recorded."]["Wallace also failed to attest that the records were made…at the time of the act, transaction, occurrence, or event, or within a reasonable time thereafter"]; See also *Std. Textile Co., Inc. v Natl. Equip. Rental, Ltd.*, 80 AD2d 911 [2d Dept 1981]["Moreover, the letter was dated eight months after the purported delivery, and was thus not made at the time of the event or within a reasonable time thereafter."]

Accordingly, Ms. Badessa failed to lay sufficient foundation for the admission of the business records annexed to her affidavit and failed to establish prima facie that a default exists under the mortgage.

Therefore, plaintiff's motion must be denied without regard to the sufficiency of the opposition papers. See *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]["Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers"];*Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]["Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers"]; *Gregg v Key Food Supermarket*, 50 AD3d 1093 [2d Dept 2008]["Moreover, when the defendant fails to meets its burden, the motion must be denied without regard to the sufficiency of the plaintiff's opposition papers"]

III. Defendant Failed To Demonstrate Entitlement To Summary Judgment Dismissing The Action Because That Origen LLC Lacks Capacity.

A foreign limited liability company doing business in New York without "a certificate of authority to do business in this state may not maintain any action, suit or special proceeding in any court of this state unless and until such limited liability company shall have received a certificate of authority in this state" (Limited Liability Company Law § 808[a]). However, the failure of such a limited liability company to obtain a certificate of authority to do business in New York "does not impair the validity of any contract or act of the foreign limited liability company or prevent the foreign limited liability company from defending any action or special proceeding in any court of this state" *Muzio v Alfano-Hardy*, 202 AD3d 1093 [2d Dept 2022]

NY Limit Liab Co § 803[a] provides that a "foreign limited liability company shall not be considered to be doing business in this state for the purposes of this chapter, by reason of carrying on in this state any one or more of the following activities: (1) maintaining or defending any action or proceeding, whether judicial, administrative, arbitrative or otherwise or effecting settlement thereof or the settlement of claims or disputes."

"There is no precise measure of the nature or extent of activities necessary for a finding that a foreign corporation is "doing business" in this State. Determination of this question must be approached on a case by case basis with inquiry made into the type of business being conducted…The party relying upon this statutory barrier bears the burden of proving that "the corporation's business activities in New York were not just casual or occasional, but 'so systematic and regular as to manifest continuity of activity in the jurisdiction…In this regard, there is a presumption that a plaintiff does business in its State of incorporation rather than in New York." *Alicanto, S.A. v Woolverton*, 129 AD2d 601, 602 [2d Dept 1987][internal citations omitted]

"The purpose of that section is to regulate foreign corporations which are 'doing business' within the State, not...to enable the avoidance of contractual obligations" *JPMorgan Chase Bank, N.A. v Didato*, 185 AD3d 801, 802 [2d Dept 2020]; *Forethought Life Ins. Co. v 1442, LLC*, 2025 NY Slip Op 07285 [2d Dept Dec. 24, 2025]["The purpose of this statutory provision is to regulate foreign corporations which are doing business within the State, not ... to enable the avoidance of contractual obligations"]; See also *Von Arx, A. G. v Breitenstein*, 52 AD2d 1049 [4th Dept 1976]["The purpose of the "Law and its predecessor statutory provisions is not to enable defendants to avoid contractual obligations but to regulate such foreign corporations which are in fact conducting business within the State so that they shall not be doing business under more advantageous terms than those allowed a corporation of this State."] *affd sub nom. Von Arx, AG. v Breitenstein*, 41 NY2d 958 [1977]

Here, defendant failed to establish prima facie that Origen LLC does business in New York. Neither the maintenance of this action nor the purchase of the subject note qualify as "doing business" in New York within the meaning of the statute. *See Colonial Mortg. Co. v First Fed. Sav. and Loan Ass'n of Rochester*, 57 AD2d 1046 [4th Dept 1977]["The fact that Colonial has sold $40,000,000 worth of certificates in New York and that the contract in this case was made in New York is not controlling."]; *IS REO Opportunity 1, LLC v Harlem Premier Residence, LLC*, 234 AD3d 401, 402-03 [1st Dept 2025]["Defendants have offered no evidence that plaintiff is "doing business" within this state without authorization such that Limited Liability Company Law §808(a) acts as a bar to plaintiff's maintenance of a suit in New York."]

In any case, even if plaintiff was "doing business" in New York, dismissal is not the appropriate remedy.

"Relevant case law regarding Business Corporation Law § 1312(a), an analog of Limited Liability Company Law§ 808(a), supports the petitioner's contention that, under the circumstances presented, it was entitled to a reasonable opportunity to cure its noncompliance with the statute before dismissal of the proceeding should be considered." *Matter of Mobilevision Med. Imaging Services, LLC v Sinai Diagnostic & Interventional Radiology, P.C.*, 66 AD3d 685 [2d Dept 2009]; *Uribe v Merchants Bank of New York*, 266 AD2d 21, 22 [1st Dept 1999]["In any event, the failure of plaintiff to obtain a certificate pursuant to BCL 1312 may be cured prior to the resolution of the action and its absence is an insufficient basis upon which to grant summary judgment."]

Here, the "failure to obtain a certificate of authority to do business in New York before initiating the action is not a fatal jurisdictional defect and such certificate has since been obtained." *Basile v Mulholland*, 73 AD3d 597 [1st Dept 2010]

IV. Plaintiff's Motion To Compel Is Denied As Premature.

Plaintiff's motion to compel responses to discovery demands is denied as premature. A preliminary conference has not yet been held and issues surrounding discovery are more appropriate after a preliminary conference order has been entered.

Moreover, CPLR 3214[b] provides that "Service of a notice of motion under rule 3211, 3212, or section 3213 stays disclosure until determination of the motion unless the court orders otherwise." Here, plaintiff filed a motion for summary judgment. Therefore, discovery was stayed.

The parties' remaining contentions need not be reached in light of the Court's determinations.

Accordingly, it is hereby

ORDERED, that plaintiff's motion for summary judgment (Seq. 1) is DENIED with PREJUDICE; and it is further

ORDERED, that defendant's cross-motion for summary judgment (Seq. 4) is DENIED with PREJUDICE; and it is further

ORDERED, that plaintiff's motion to compel (Seq. 2), is DENIED; and it is further

ORDERED, that plaintiff is directed filed a request for preliminary conference and the parties are directed to complete discovery and proceed to trial.

This constitutes the decision and order of the Court.

ENTER:

Hon. Menachem M. Mirocznik, JSC