

<b>Wilmington PT Corp. v Grey</b>
2026 NY Slip Op 30538(U)
January 27, 2026
Supreme Court, Kings County
Docket Number: Index No. 508804/2024
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 27<sup>th</sup> of January 2026

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

<p>WILMINGTON PT CORPORATION,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">-against-</p> <p>WELTON GREY A/K/A WELTON W. GREY; MARCIA BRYAN GREY A/K/A MARCIA BRYAN GREY A/K/A MARCIA J. BRYAN-GREY; NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE; NEW YORK CITY ENVIRONMENTAL CONTROL BOARD; UNITED STATES OF AMERICA (EASTERN DISTRICT); NEW YORK CITY PARKING VIOLATIONS BUREAU; "JOHN DOES" and "JANE DOES", said names being fictitious, parties intended being possible tenants or occupants of premises, and corporations, other entities or persons who claim, or may claim, a lien against the premises,</p> <p style="text-align: center;">Defendant.</p>
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**Index No. 508804/2024**

**Decision and Order  
(Motion Seq. 3)**

<b>Papers</b>	<b>Numbered</b>
Notice of Motion	NYSCEF Doc. 77-109
Opposition Papers	NYSCEF Doc. 111-112
Reply Papers	NYSCEF Doc. 114

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 March 28, 2024, seeking to foreclose a mortgage (the "mortgage") executed by defendants Marcia Bryan Grey (the "defendant") and Welton Grey which encumbers the property known as 543 Hegeman Avenue, Brooklyn, NY 11207 (the "property").

On July 14, 2024, defendant joined issue with the filing of an answer that asserted numerous affirmative defenses, including lack of standing and non-compliance with RPAPL 1304, RPAPL 1306 and the notice provisions of the mortgage.

Initially the answer was rejected, plaintiff moved for default judgment and defendant cross-moved to compel acceptance of her answer. The motions were resolved with plaintiff's acceptance of defendant's answer.

Plaintiff now moves for summary judgment, to strike defendant's answer, to amend the caption and for a default judgment against the non-answering defendants. The motion is supported by the affirmation of Seth Weinberg, Esq, ("Mr. Weinberg" or "Weinberg Affirmation") the affirmation of Joseph DeRuscia ("Mr. DeRuscia" or "DeRuscia Affirmation") a purported Vice President of plaintiff and the affirmation of John W. Ramer ("Mr. Ramer" or "Ramer Affirmation") a purported Authorized Signatory 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.

Defendant opposes the motion arguing that plaintiff failed to demonstrate compliance with the notice provisions of the mortgage, in as much as the notice allegedly sent does not comply with the notice provision as to form, failed to demonstrate plaintiff's standing, and failed to demonstrate a default under the terms of the mortgage in as much as the payment history attached to the DeRuscia Affirmation is from FCI Lender Services Inc. ("FCI") and he failed to lay sufficient foundation for the admissibility of same.

In reply, plaintiff argues that it established a default under the mortgage and the records attached to the DeRuscia Affirmation are admissible pursuant to CPLR 4518 and Mr. DeRuscia laid sufficient foundation for the records of prior holders of note and mortgage which were incorporated into plaintiff's records. Plaintiff further argues that it demonstrated substantial compliance with the notice of provisions of the mortgage, that service of the RPAPL 1304 notice satisfies compliance with the notice provision of the mortgage, that it established standing with the affirmation of counsel and the supporting documents who was in possession of the note prior to commencement of the instant action and which was also annexed to the complaint.

### Discussion

"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]

"[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]

“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]

“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]

Here, the note attached to the certificate of merit filed with the complaint contains three endorsements on the note and three allonges. The chain of endorsements are as follows: (1) First Magnus Financial Corporation to Residential Funding Company LLC (“Residential”) (2) from Residential to Lasalle Bank, N.A. as Trustee (“Lasalle”) (3) from Lasalle by Residential as alleged attorney in fact back to itself (4) from an indecipherable endorser to Stelis LLC (“Stelis”) (5) from Stelis to Trinity Financial Services LLC (“Trinity”) and (6) from Trinity in blank. Notably, the now attorney certified note attached to plaintiff’s moving papers reflects the last endorsement from Trinity is now specifically endorsed to plaintiff.

However, plaintiff’s submission and the chain of endorsements fail to establish as a matter of law that plaintiff had standing at the time the action was commenced.

First, defendant is correct that the endorsement from Residential to itself on behalf of Lasalle is not supported by a power of attorney granting such authority.

“[A] power of attorney ...is clearly given with the intent that the attorney-in-fact will utilize that power for the benefit of the principal... Generally, [a]bsent a specific provision in the power of attorney document authorizing gifts, an attorney-in-fact, in exercising his or her fiduciary responsibilities to the principal, may not make a gift to himself [or herself] or a third party of the money or property which is the subject of the agency relationship... Such a gift carries with it a presumption of impropriety and self-dealing, a presumption which can be overcome only with the clearest showing of intent on the part of the principal to make the gift.” *Matter of Rosenthal*, 238 AD3d 1049, 1050-1051 [2d Dept 2025][internal citations and quotation marks omitted]

Here, plaintiff does not proffer a power of attorney or proof showing that Residential had authority to transfer the note to itself on behalf of Lasalle. In the absence of such authority the subsequent endorsements would be void. Therefore, plaintiff failed to establish it had standing at the time the action was commenced. See *U.S. Bank Trust, N.A. v Rose*, 176 AD3d 1012 [2d Dept 2019][“The plaintiff also failed to demonstrate its ownership of the subject note by written assignment. The plaintiff submitted a document dated June 12, 2015, purporting to be a written assignment of the appellants' mortgage and underlying note to the plaintiff by Beneficial, signed by Caliber Home Loans, Inc. (hereinafter Caliber), as Beneficial's "attorney in fact." However, the plaintiff failed to demonstrate as a matter of law the validity of the written assignment, because the plaintiff did not produce sufficient evidence of Caliber's authority to execute the assignment as Beneficial's attorney-in-fact.”]; *DLJ Mtge. Capital, Inc. v Pittman*, 150 AD3d 818 [2d Dept 2017][“Here, the appellant failed to meet that burden, since it merely demonstrated the existence of questions of fact as to Wells Fargo's authority to assign the note on behalf of Fairbanks, by pointing to the plaintiff's failure to attach a power of attorney to the complaint along with the assignment and asserting that no such document was recorded. *Although the plaintiff will ultimately be required to demonstrate that Wells Fargo had authority to assign the note on behalf of Fairbanks in order to demonstrate its standing on the basis of the written assignments.*”][emphasis added]

Second, it is not clear who executed the endorsement to Stelis and therefore the same is insufficient to demonstrate a proper endorsement of the note. Thus, when viewed in the light most favorable to the defendant, as this Court must, entitlement to the drastic remedy of summary judgment is inappropriate.

Third, contrary to plaintiff's contention, attaching the note to the complaint alone does not establish the allonge was firmly affixed to the note at the time the action was commenced. See e.g. *Nationstar Mtge., LLC v Calomarde*, 201 AD3d 940, 942 [2d Dept 2022] [“Although the plaintiff attached to the complaint copies of the note and an undated purported allonge endorsed in blank, the plaintiff did not demonstrate that the purported allonge, which was on a piece of paper completely separate from the note, was “so firmly affixed thereto as to become a part thereof,” as required by UCC 3-202 (2)”];

Therefore, to demonstrate standing plaintiff was required to demonstrate that subject allonges were “so firmly affixed thereto as to become a part thereof.”

Here, there is insufficient evidence to demonstrate the note and the allonges were “so firmly affixed thereto as to become a part thereof” at the time the action was commenced. In support of the contention that the allonges were firmly affixed to the note, plaintiff submits the Weinberg Affirmation and what he claims are plaintiff counsel's “custodial records”. Mr. Weinberg claims based upon a review of his employers business records that the note annexed to the certificate of merit filed with the complaint contained allonges that were “affixed by staple”.

“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, 1015 [2d Dept 2017]

“Although, [t]he foundation for admission of a business record usually is provided by the testimony of the custodian, the author or some other witness familiar with the practices and procedures of the particular business...it is the business record itself, not the foundational affidavit, that serves as proof of the matter...Accordingly, [e]vidence of the contents of business records is admissible only where the records themselves are introduced...Without their introduction, a witness's testimony as to the contents of the records is inadmissible hearsay” *Bank of NY Mellon v Gordon*, 171 AD3d 197 [2d Dept 2019][internal citations and quotation marks omitted]; See also *U.S. Bank N.A. v Pickering-Robinson*, 197 AD3d 757 [2d Dept 2021][“However, while the Lee affidavit was sufficient to lay a proper foundation for the admission of a business record pursuant to CPLR 4518 (a)...Lee failed to identify the records upon which she relied in making the statements, and the plaintiff failed to submit copies of the records themselves.”]; *Deutsche Bank Trust Co. Ams. v Miller*, 198 AD3d 867 [2d Dept 2021][“Moreover, even if Lee's affidavit set forth a proper foundation for the admissibility of the unspecified records he relied on...Lee failed to identify the records upon which [ ]he relied in making the statements, and the plaintiff failed to submit copies of the records themselves...It is the business record itself, not the foundational affidavit, that serves as proof of the matter asserted”][internal citations and quotation marks omitted]

Indeed, “[w]ithout business records proving the matter asserted, [plaintiff]’s “unsubstantiated and conclusory” statement, by itself, [is] insufficient...” *Wilmington Sav. Fund Socy., FSB v Kutch*, 202 AD3d 1030, 1033 [2d Dept 2022]; *JPMorgan Chase Bank, N.A. v Bonilla*, 227 AD3d 788, 790 [2d Dept 2024][“Without business records proving the matter asserted, Ranaldi's “unsubstantiated and conclusory” statement, by itself, was insufficient...”]

Here, the alleged “custodial records” appear to be nothing more than an email from 2018 stating counsel reviewed the “docs for the above-noted file”. The e-mail makes not reference to the note, allonges, or that the allonges were affixed by staple.

Accordingly, Mr. Weinberg’s unsubstantiated, conclusory, hearsay assertions lack probative value and are insufficient to demonstrate plaintiff had standing at the time the action was commenced. See *Nationstar Mtge., LLC v Calomarde*, 201 AD3d 940, 942 [2d Dept 2022] [“Although the plaintiff attached to the complaint copies of the note and an undated purported allonge endorsed in blank, the plaintiff did not demonstrate that the purported allonge, which was on a piece of paper completely separate from the note, was “so firmly affixed thereto as to become a part thereof,” as required by UCC 3-202 (2)"]; See also *LNV Corp. v Almberg*, 194 AD3d 703, 704 [2d Dept 2021][“Here...the plaintiff failed, prima facie, to establish its standing to commence this action. The copy of the note submitted in support of the plaintiff’s motion contained two additional pages, the first entitled “Allonge to Note” and the second entitled “Note Allonge.” However, as the defendants correctly contend, the plaintiff did not submit any evidence to indicate that the purported allonges were so firmly affixed to the note so as to become a part thereof...”]

Lastly, defendant is also correct that plaintiff failed to establish prima facie that a default exists under the terms of the note and mortgage.

In support of the motion plaintiff relies on the DeRuscia Affirmation which attests to the defendant’s default purportedly based upon a review of plaintiff’s business records. However, the

payment history annexed to the DeRuscia Affirmation is from FCI Lender Services Inc. not from plaintiff.

“It is true that as a general rule, the mere filing of papers received from other entities, even if they are retained in the regular course of business, is insufficient to qualify the documents as business records...However, such records may be admitted into evidence if the recipient can establish personal knowledge of the maker's business practices and procedures, or establish that the records provided by the maker were incorporated into the recipient's own records and routinely relied upon by the recipient in its own business.” *Bank of NY Mellon v Gordon*, 171 AD3d 197 [2d Dept 2019].

Here, Mr. DeRuscia avers that the “historical business records (“Historical Records”) consist of records kept and maintained by all prior owners, holders, custodians and servicers of the subject note and mortgage, all of which have been boarded, incorporated and merged into the Records of the Plaintiff. As a part of its boarding process, the Plaintiff verifies the information received from its predecessors in the Historical Records. The Plaintiff relies on these incorporated Historical Records in the ordinary course of its business.”

However, Mr. DeRuscia failed to *establish* that the FCI’s payment history was actually incorporated into plaintiff’s business records. Mr. DeRuscia does not provide plaintiff’s business records showing FCI’s records were incorporated and merely attaches FCI’s records. Moreover, Mr. DeRuscia does not demonstrate that FCI was a previous owner, holder, custodian or servicer of the loan. Lastly, on its face the FCI record was generated after the note was allegedly transferred to plaintiff and after commencement of this action and offers no explanation as to what if any relationship FCI has or had with plaintiff.

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]

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

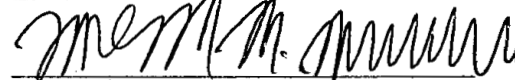
Accordingly, it is hereby

**ORDERED**, that plaintiff’s motion is DENIED with PREJUDICE; and it is further

**ORDERED**, that 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

KINGS COUNTY CLERKS OFFICE

FEB 11 2026

FILED