

Wilmington Sav. Fund Socy., FSB v Weiss
2026 NY Slip Op 31459(U)
March 12, 2026
Supreme Court, Kings County
Docket Number: Index No. 505680/2020
Judge: Derefim B. Neckles
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At an IAS Term, Part FSMP, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 12th day of March 2026.

P R E S E N T:

HON. DEREKIM B. NECKLES,
J.S.C.

Index No.: 505680/2020

WILMINGTON SAVINGS FUND SOCIETY, FSB, AS
TRUSTEE OF ACM STANWICH ALAMOSA 2020
TRUST,

x

Plaintiff,

DECISION AND ORDER

-against-

HENRICK WEISS; NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD; NEW YORK
CITY PARKING VIOLATIONS BUREAU; NEW YORK
CITY TRANSIT ADJUDICATION BUREAU; TATIANNA
CHURCH; JOHN DOE 2; JOHN DOE 3,

Defendant,

x

The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Affidavits (Affirmations) Annexed
Opposition to Motion
Affirmation in Reply

81, 82
116
119

Upon the foregoing papers in this action to foreclose on a mortgage encumbering the subject property at 655 East 2nd Street in Brooklyn, plaintiff Wilmington Savings Fund Society, (“plaintiff”) moves (under mot. seq. 2) for an order (1) granting judgment of foreclosure and sale; (2) granting the relief sought in the complaint in this action; (3) confirmation of the referee's report; and (4) amendment of the case caption.

Background

Plaintiff commenced the instant action on March 6, 2020 by filing of a summons and complaint. By decision dated January 30, 2024, plaintiff's motion for summary judgment and an order of reference was granted. On August 14, 2024 the referee executed his report of amount due. Plaintiff now moves, inter alia, to confirm the referee's report and for judgment of foreclosure and sale.

In opposition to plaintiff's motion, defendant alleges that plaintiff's affiant is unauthorized as plaintiff has not submitted the servicing agreement allowing the affiant to testify on plaintiff's behalf. Additionally, defendant argues that the referee failed to identify the documents he relied on to conclude that the premises should be sold in one parcel. Further, defendant contends that plaintiff's affiant fails to attest to personal knowledge of the servicer's business practices and procedures for incorporating records from prior servicers and fails to identify such records. As such, defendant maintains that plaintiff's affiant fails to lay a foundation for business records.

In reply, plaintiff argues that defendant's request to reject the referee's report is procedurally improper and untimely pursuant to CPLR 4403. Plaintiff maintains that its affiant affirmed that the information in the affidavit is taken from the servicer's business records, that he has personal knowledge of the servicer's procedures for creating and maintaining business records, that they are made at or near the time of occurrence by persons with personal knowledge of the information in the business record, that they are kept in the course of the servicer's regular conducted business activities, and that it is the

regular practice of the servicer to make such records. Additionally, plaintiff argues that the servicing agreement does not restrict the servicer's authority as alleged by defendant.

Discussion

I. Servicing agreement is sufficient to demonstrate servicer's authority

Defendant contends that the power of attorney attached to the affiant's affirmation is insufficient because it is limited by the related servicing agreement and the servicing agreement wasn't annexed. In reply, plaintiff provides the servicing agreement by annexing it to the affirmation of Brian Cox, Director, Contested Litigation/Mediation of the servicer for plaintiff. As was similarly held in *Central Mtge. Co. v Jahnsen*, "the function of reply papers is to address arguments made in opposition to the position taken by the movant" (*Central Mtge. Co. v Jahnsen*, 150 AD3d 661, 664 [2017] [internal quotation marks and brackets omitted]; see *OneWest Bank, FSB v Simpson*, 148 AD3d 920, 923 [2017]). As defendant in opposition to plaintiff's motion argued that plaintiff failed to provide the servicing agreement, plaintiff properly provided such in reply. Therefore, this court finds that the servicing agreement evidences the servicer's authority to act on behalf of plaintiff.

II. Referee's Report is not substantially supported by the record

"The report of a referee should be confirmed whenever the findings are substantially supported by the record, and the referee has clearly defined the issues and resolved matters of credibility" (*Citimortgage v Kidd*, 148 AD3d 767, 768 [2d Dept 2017], *Flagstar Bank, F.S.B. v Konig*, 153 AD3d 790, 790-791 [2017]). However, "[c]omputations based upon a

review of unidentified and unproduced business records, ... constitute inadmissible hearsay and lack probative value” (*Bank of N.Y. Mellon v. Glasgow*, 232 A.D.3d at 755, 223 N.Y.S.3d 115; see *U.S. Bank N.A. v. Jong Shin*, 224 A.D.3d at 936, 207 N.Y.S.3d 88).

Here, defendant contends that although the referee's report found that the mortgaged premises should be sold in one parcel, the referee failed to identify the documents or other sources upon which he based that finding. However, the referee provided that he relied upon the mortgage specifically in his finding that the mortgaged premises should be sold in one parcel. As such, the referee's finding is substantially supported by the record (see *Wilmington Sav. Fund Socy., FSB v. Mehraban*, 192 A.D.3d 1066, 146 N.Y.S.3d 130; *Wells Fargo Bank, N.A. v. Laronga*, 219 A.D.3d 1559, 1561, 197 N.Y.S.3d 531, 533 (2023)).

III. The business records of the prior servicer's were incorporated

An affiant must aver that he was familiar with the record-keeping practices and procedures of the entity that generated the records 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” (*U.S. Bank Nat'l Ass'n v. Kropp-Somoza*, 191 A.D.3d 918, 143 N.Y.S.3d 52, 56 (2021); *Citibank, N.A. v. Potente*, 210 A.D.3d at 862, 179 N.Y.S.3d 91; *Green Tree Servicing, LLC v. Huda*, 222 A.D.3d 623, 625, 201 N.Y.S.3d 197). Here, plaintiff's affiant asserts that he has personal knowledge of the servicer's procedures for creating and maintaining records as he is responsible for the maintenance and review of internal foreclosure and loan specific documents maintained by the servicer

on behalf of the plaintiff. Additionally, plaintiff's affiant attests that to the extent that the business records were created by prior servicers, those records have been integrated into the current servicer's business records and are kept and relied upon as a routine and regular business practice and in the ordinary course of business conducted by the current servicer on behalf of plaintiff. As such, defendant's argument of the contrary is without merit.

Accordingly, it is

ORDERED that plaintiff's motion (mot. seq. 2) is granted.

This constitutes the decision and order of the court.

E N T E R,



HON. DEREKIM B. NECKLES

J. S. C.

Hon. Derefim B. Neckles
Supreme Court Justice

2026 APR - 7 A 10: 22
KINGS COUNTY CLERK