

Wells Fargo Bank N.A. v Williamson
2026 NY Slip Op 31555(U)
March 12, 2026
Supreme Court, Kings County
Docket Number: Index No. 20280/2010
Judge: Derefim B. Neckles
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KINGS COUNTY CLERK
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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.: 20280/2010

WELLS FARGO BANK N.A. AS TRUSTEE FOR BANC
OF AMERICA FUNDING CORPORATION MORTGAGE
PASS-THROUGH CERTIFICATES SERIES 2007-5,

x

Plaintiff,

DECISION AND ORDER

-against-

LISA WILLIAMSON; SHANE WILLIAMSON; NEW
YORK CITY ENVIRONMENTAL CONTROL BOARD;
NEW YORK CITY PARKING VIOLATIONS BUREAU; ET
AL,

Defendant,

x

The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Affidavits (Affirmations) Annexed
Opposition to Motion

82, 85
120

Upon the foregoing papers in this action to foreclose on a mortgage encumbering the subject property at 152 East 35th Street in Brooklyn, plaintiff Wells Fargo Bank, (“plaintiff”) moves (under mot. seq. 5) for an order (1) confirming the referee’s report; (2) granting judgment of foreclosure and sale; (3) directing the distribution of the sale proceeds; and (4) deeming the refiled notice of pendency timely filed, *nunc pro tunc*.

Background

Plaintiff commenced the instant action on August 16, 2010. Summary judgment was granted in favor of the plaintiff on November 12, 2015. Judgment of foreclosure and sale was subsequently granted on June 16, 2016. Defendants Lisa Williamson and Shane Williamson (“defendants”) filed an order to show seeking leave to renew and upon renewal, denial of plaintiff’s motion for summary judgment. Defendants’ order to show cause was granted on January 3, 2017, and plaintiff’s motion for summary judgment was denied without prejudice to renew. Thereafter, plaintiff moved for an order of reference that was granted by order dated November 15, 2023.

In opposition to plaintiff’s motion, defendants contend that the referee relied on an affidavit from an employee of New Rez d/b/a Shellpoint, yet no power of attorney was provided to establish that New Rez is the attorney in fact of plaintiff. Additionally, defendants argue that no records were annexed to the affidavit, evidencing that defendants had defaulted in their payment pursuant to the mortgage. Finally, defendants assert that if the court is inclined to confirm the referee’s report, the court should deduct the property taxes paid for by plaintiff.

In reply, plaintiff proffers that defendants’ opposition is a deficient filing because defense counsel failed to include any affidavit from the defendants or another person with firsthand knowledge of the facts of this case. Further, plaintiff maintains that plaintiff’s affidavit was made based upon business records (1) made in the regular course of a business, (2) it was the regular course of the business to make such records, and (3) the

records were made at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter.

Discussion

“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” (*U.S. Bank N.A. v. Moschetta*, 216 A.D.3d 848, 849, 187 N.Y.S.3d 340 [internal quotation marks omitted]; *U.S. Bank N.A. v. Sheth*, 177 A.D.3d 1018, 1020, 113 N.Y.S.3d 166 [internal quotation marks omitted]).

Here, the referee's findings are substantially supported by the record. Contrary to defendants' contention, all records relied upon by the referee relating to defendants' default were annexed to the affidavit. Although defendant is correct that the loan records are records that were made by NEWREZ LLC D/B/A Shellpoint Mortgage Servicing ("Shellpoint"), the affidavit by Kenneth Wigley, a document verification specialist of Shellpoint, attests that he made his affidavit based upon his review of the records relating to the loan and from his own personal knowledge of how the records are kept and maintained. He further provides that the loan records were created and maintained by Shellpoint in the course of its regularly conducted business activities and were made at or near the time of the event, by a person with knowledge of the activity and that it is the regular practice to keep such records (see *U.S. Bank N.A. v. Haber*, 230 A.D.3d 530, 533, 216 N.Y.S.3d 257); *Deutsche Bank Nat'l Tr. Co. v. Clark*, 246 A.D.3d 1029 (N.Y. App. Div. 2026).

As such, the affidavit sufficiently laid a foundation for the admissibility of the business records annexed including those records created by the prior loan servicer, as the affiant states that the prior servicer's records for the loan were integrated and boarded into Shellpoint's systems, such that the prior servicer's records concerning the loan are now incorporated into and are part of Shellpoint's business records. As such, the affiant "made the requisite showing that the prior servicer[s'] records were incorporated into [Shellpoint's] own records and routinely relied upon by [Shellpoint] in its business" (*Fed. Nat'l Mortg. Ass'n v. Markowitz*, 244 A.D.3d 948, 950 (N.Y. App. Div. 2025) quoting *Wilmington Trust, N.A. v. Reed*, 210 A.D.3d 731, 732, 177 N.Y.S.3d 642; see *U.S. Bank N.A. v. Kropp-Somoza*, 191 A.D.3d 918, 921, 143 N.Y.S.3d 52)).

Although defendants contend that plaintiff did not annex any documents showing that NEWREZ was the attorney in fact for plaintiff, the court finds this argument to be without merit. Plaintiff attached both a limited power of attorney, evidencing that Specialized Loan Servicing LLC had the authority to act on behalf of plaintiff, and a certificate of merger between Specialized Loan Servicing LLC and NEWREZ LLC. Thus, the power of attorney annexed with the affidavit shows that the loan servicer had the authority to act on behalf of the plaintiff (see *Bank of N.Y. Mellon Trust Co., N.A. v. Ahmed*, 204 A.D.3d at 973, 165 N.Y.S.3d 330).

As for defendants' contention that this court should deduct the property taxes paid for by plaintiff, that requested relief is also denied. Pursuant to 54A Am. Jur. 2d Mortgages § 226, the general rule is that a mortgagee who pays taxes or special assessments thereon,

which the mortgagor is under a duty to pay, is entitled to be reimbursed for the amount so paid and may add it to the mortgage debt.

Accordingly, it is

ORDERED that plaintiff's motion (mot. seq. 5) is granted.

This constitutes the decision and order of the Court.

ENTER:



HON. DEREFIM B. NECKLES
J. S. C.

FILED
KINGS COUNTY CLERK
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