

Wilmington Sav. Fund Socy., FSB v 8614 Realty LLC

2026 NY Slip Op 31824(U)

April 17, 2026

Supreme Court, Kings County

Docket Number: Index No. 536309/2023

Judge: Genine D. Edwards

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This opinion is uncorrected and not selected for official publication.

At Comm-6 of the Supreme Court held in and for the County of Kings, at the County Courthouse, 360 Adams Street, Brooklyn, New York 11201, on the 17th day of April 2026.

P R E S E N T :

Hon. Genine D. Edwards, Justice

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WILMINGTON SAVINGS FUND SOCIETY, FSB,
NOT ITS INDIVIDUAL CAPACITY BUT SOLELY
AS OWNER TRUSTEE FOR VERSUS
SECURITIZATION TRUST 2022-4,

Index No. 536309/2023

Plaintiff,

- against -

DECISION & ORDER

8614 REALTY LLC, SALVATORE STRAZZULLO,
“JOHN DOE #1” through “JOHN DOE #12,”
the last twelve names being fictitious and unknown
to plaintiff, the persons or parties intended being
the tenants, occupants, persons or corporations,
if any, having or claiming an interest in or lien upon
the premises, described in the complaint,

Defendants.
-----X

The following e-filed papers read herein:

NYSCEF Nos.:

Notice of Motion, Affirmation/Affidavit in Support,
Memorandum at Law and Exhibits Annexed82-96
Affirmation in Opposition and Exhibits.....97-110
Affirmation in Reply and Exhibit.....112, 113

Upon the foregoing cited papers, defendant moved for an order, pursuant to CPLR § 3211(a)(1), dismissing plaintiff’s Amended Complaint in its entirety. Plaintiff opposed.

This is an action to foreclose a commercial mortgage encumbering 8614 5th Avenue, Brooklyn, New York (“property”). Defendant moves to dismiss based upon the grounds that plaintiff’s mortgage is neither valid nor enforceable. The note demonstrates that on or about

January 26, 2022, defendant borrowed \$1,592,500.00 from Family First Funding LLC. That note was executed by Salvatore Strazzullo¹ (“Strazzullo”) as “PRESIDENT.” On September 8, 2023, defendant’s mortgage was assigned to plaintiff.

In addition to plaintiff’s mortgage, a previous mortgage encumbered the property. On or about March 31, 2017, Suzy DiMuro (“DiMuro”), executed a one-million-dollar mortgage in favor of Avatar Capital Finance, LLC (“Avatar”). Subsequently, on November 8, 2019, DiMuro executed a gap mortgage and refinanced the Avatar mortgage, entering a \$1.5 million dollar consolidation, extension, and modification agreement (“CEMA”). A Satisfaction of Mortgage, recorded on April 26, 2022, indicated that the Avatar CEMA mortgage was satisfied. A wire confirmation slip from Signature Bank showed a wire transfer was made on January 28, 2022, in the amount of \$1,528,329.28, from an account named “PULEO DELISLE, PLLC NY IOLA - *8021” to East West Bank for a recipient named “AVATAR CAPITAL FINANCE LLC.” The additional information on the wire transfer slip indicated that the transfer was a “PAYOFF FOR LOAN IV 117, 8614 REALTY LLC, 8614 5TH.”

Defendant contended that plaintiff’s mortgage is neither valid nor enforceable because (1) the mortgage was not approved or ratified by a member of 8614 Realty LLC; and (2) defendant never received any consideration or benefit in connection with plaintiff’s mortgage. Defendant argued that Strazzullo did not possess any authority to act on the LLC’s behalf since he did not have an ownership interest in the LLC and was not a signatory nor an officer. Michael Afanasyev, as owner, sole managing member, and signatory of the LLC, is the only agent authorized to enter into a mortgage on the LLC’s behalf. Mr. Afanasyev maintained that he never appointed Strazzullo as “President” of the LLC. He affirmed that he did not sign any

¹ Salvatore Strazzullo was a named defendant in this matter; the action was discontinued as against him due to his death on August 10, 2024.

documents in which he authorized, approved, or agreed to the mortgage transaction. Since the property was the LLC's sole asset and was pledged as security for the mortgage, a majority vote of the membership was required pursuant to New York Limited Liability Company Law ("LLC Law") § 412(b)(1).

In addition, defendant maintained that it had no knowledge about and did not authorize the Avatar mortgage. Defendant argued that the LLC did not receive any consideration, proceeds, or benefits from the Avatar mortgage.

Finally, defendant averred that the LLC's 2022 tax returns and bank account statements confirm that it did not receive any monies from plaintiff's mortgage nor did it make any payments on the mortgage. Defendant alleged that the proceeds were remitted directly to a bank account in possession, custody, and/or control of Strazzullo and/or his law firm. Given the foregoing, defendant argued that plaintiff's equitable subrogation claim must fail. And, in addition to plaintiff's mortgage being void *ab initio*, plaintiff failed to plead that it lacked actual notice of the prior Avatar mortgage.

In opposition, plaintiff contended that defendant is estopped from claiming ignorance and denying the validity of the Avatar mortgage since it was negotiated by an officer of the LLC, namely, DiMuro. Plaintiff highlighted LLC Law §412(a), which provides:

Unless otherwise indicated by the Articles of Organization, every member is an agent of the LLC for the purpose of its business, and can execute any instrument in the LLC's name, thus binding the LLC, if done in the usual course of the LLC's business; unless (i) the acting member has no authority to act for the LLC in a particular matter; and (ii) the person with whom the member is dealing with has knowledge of the fact that the member lacks authority.

Plaintiff pointed out that defendant's Verified Answer recounted Strazzullo's representation to Mr. Afanasyev that he would be the LLC's attorney, Mr. Afanasyev would have a 50% ownership interest in the LLC and be the LLC's managing member and property manager, and Strazzullo's sister, DiMuro, would have the other 50% ownership interest in the LLC. Given DiMuro's actual authority in the LLC and her execution of the Avatar and CEMA mortgages, defendant cannot claim that it did not authorize the Avatar mortgage.

Plaintiff further argued that Strazzullo was "cloaked with the apparent authority to mortgage the premises" based upon: (1) a 2013 deed, which exhibited that Strazzullo was the counsel of record for defendant; (2) defendant's Articles of Organization, which identified Strazzullo as the LLC's "Organizer," and "Managing Member"; and (3) the LLC's Operating Agreement indicated that Strazzullo was the sole member of the LLC. Thus, plaintiff would be entitled to equitable subrogation of \$1.5 million if Strazzullo lacked authority to grant plaintiff's mortgage.

Furthermore, plaintiff averred that defendant's documentary evidence does not conclusively establish a defense to plaintiff's claims. "A motion to dismiss pursuant to CPLR 3211(a)(1) will be granted only if the documentary evidence resolves all factual issues as a matter of law and conclusively disposes of the plaintiff's claim." *Patel v. Edmund*, 237 A.D.3d 961, 237 N.Y.S.3d 314 (2d Dept. 2025). Evidence is considered "documentary" under CPLR § 3211(a)(1) where it is "unambiguous and of undisputed authenticity... essentially unassailable." *Old Republic Nat'l Title Ins. Co. v. 1152 53 Mgmt., LLC*, 227 A.D.3d 824, 212 N.Y.S.3d 345 (2d Dept. 2024). "Judicial records... [and] documents reflecting out-of-court transactions such as mortgages, deeds, contracts, and any other papers, the contents of which are essentially undeniable [,] [] qualify as documentary evidence in the proper case." *Twitchell Technical*

Products, LLC v. Mechoshade Systems, LLC, 227 A.D.3d 45, 208 N.Y.S.3d 657 (2d Dept. 2024). Conversely, website printouts, and affidavits prepared in support of a motion do not constitute documentary evidence. CPLR § 3211(a)(1); *Twitchell*, 227 A.D.3d 45 (2d Dept. 2024); *Davis v. Henry*, 212 A.D.3d 597, 181 N.Y.S.3d 606 (2d Dept. 2023); *JBGR, LLC v. Chicago Title Ins. Co.*, 128 A.D.3d 900, 11 N.Y.S.3d 83 (2d Dept. 2015).

Here, based upon defendant's admissible documentary evidence, this Court is not persuaded that Strazzullo lacked authority to execute the note and mortgage on behalf of the LLC. Defendant's Articles of Organization do not unambiguously show that Mr. Afanasyev is the sole managing member of the LLC, but rather, that he is the LLC's designated agent to receive service of process. Defendant's tax returns and bank statements, similarly, furnish little to no evidence that Strazzullo lacked authority to bind the LLC in plaintiff's mortgage. Lastly, the Department of Housing Preservation and Development Property Registration Form merely indicated that Mr. Afanasyev was listed as a "Responsible Person/Individual/Owner." The remainder of defendant's annexed exhibits, specifically, affidavits and a website printout from the King's County District Attorney's Office, do not constitute documentary evidence within the meaning of CPLR § 3211(a)(1). *All Nations Steel Corp. v. KSK Construction Group, LLC*, 240 A.D.3d 835, 241 N.Y.S.3d 67 (2d Dept. 2025); *Mikoma Electric, LLC v. Otek Builders, LLC*, 233 A.D.3d 856, 227 N.Y.S.3d 109 (2d Dept. 2024). As such, defendant failed to shoulder its prima facie burden. *Red Target, LLC v. Kun Resources*, 244 A.D.3d 1147, 249 N.Y.S.3d 152 (2d Dept. 2025); *Rubenstein v. Salomon*, 46 A.D.3d 536, 849 N.Y.S.2d 69 (2d Dept. 2007).

Accordingly, it is

ORDERED that defendant's motion to dismiss plaintiff's Amended Complaint is denied in its entirety, and it is further

ORDERED that plaintiff is directed to electronically serve a copy of this Decision and Order with notice of entry on counsel for defendant and to electronically file and affidavit of service thereof with the Kings County Clerk.

This constitutes the Decision and Order of the Court.

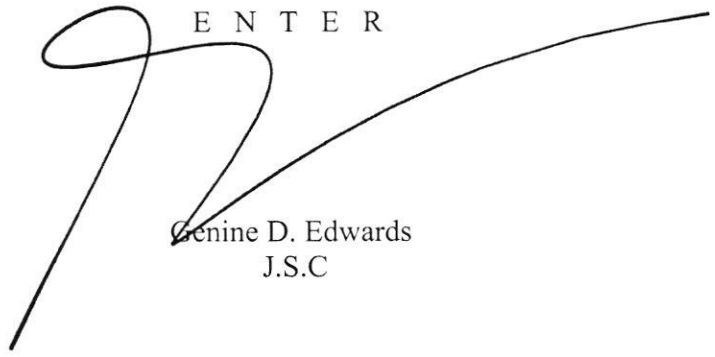
For Clerks use only

MG _____

MD _____

Motion Seq. #: 3

E N T E R

A large, stylized handwritten signature in black ink, appearing to be 'G. Edwards', written over the typed name.

Genine D. Edwards
J.S.C