

**Wilmington Trust, N.A. v Thor Gateway I & II
Owner, LLC**

2026 NY Slip Op 31997(U)

May 6, 2026

Supreme Court, New York County

Docket Number: Index No. 850102/2025

Judge: Anar R. Patel

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 45

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WILMINGTON TRUST, NATIONAL
ASSOCIATION,

Plaintiff,

- v -

THOR GATEWAY I & II OWNER, LLC, JOSEPH J.
SITT, DEPENDABLE MECHANICAL CORP.,
SAFEGUARD LOCKSMITHS NY LLC, CROKER
FIRE DRILL CORPORATION, RAINIER
RESTORATION LLC, AB SOLUTIONS ITS INC.,
AIR STREAM AIR CONDITIONING CORP., D&E
REFRIGERATION & AIR CONDITIONING, INC.
D/B/A TRADEMARK MECHANICAL (A/K/A D&E
REFRIGERATION & AIR CONDITIONING, LLC
A/K/A D&E REFRIGERATION, LLC D/B/A
TRADEMARK MECHANICAL), NEW YORK
CITY CRIMINAL COURT, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD, NEW
YORK CITY DEPARTMENT OF FINANCE, NEW
YORK STATE DEPARTMENT OF TAXATION
AND FINANCE, JOHN DOE # 1-50,

Defendants.
-----X

INDEX NO. 850102/2025

**MOTION
DATE** 03/06/2026

**MOTION SEQ.
NO.** 002

**DECISION + ORDER ON
MOTION**

HON. ANAR RATHOD PATEL:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 144–176, 180–182 were read on this motion to/for JUDGMENT – SUMMARY.

Plaintiff Wilmington Trust, National Association (“Plaintiff”) moves for (i) partial summary judgment in its favor and against Defendant Thor Gateway I & II Owner, LLC (“Borrower”) on the Complaint’s First Cause of Action for foreclosure of the Mortgage and severing Plaintiff’s Second Cause of Action against Defendant Joseph J. Sitt (“Guarantor,” and together with Borrower, “Borrower Defendants”) for liability under the Guaranty pursuant to CPLR § 3212(b) and (e); (ii) an award of attorneys’ fees, costs, and expenses as provided for under the Loan Documents¹; (iii) default judgment pursuant to CPLR § 3215 and RPAPL § 1321 in

¹ The “Loan Documents” consist of a promissory note; the mortgage on the properties in question, at 135 East 125th Street and 126 East 126th Street, New York, New York, securing Borrower’s obligations under the note (“Mortgage”);
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Plaintiff's favor and against Defendants Dependable Mechanical Corp., Safeguard Locksmiths NY LLC, Croker Fire Drill Corporation, Rainier Restoration LLC, AB Solutions ITS Inc., D&E Refrigeration & Air Conditioning, Inc., New York City Criminal Court, New York City Environmental Control Board, New York City Department of Finance, New York State Department of Taxation and Finance (collectively, "Defaulted Defendants"), and excising defendants "John Doe #1-50" from the caption of this action; and (iv) the appointment of a referee to ascertain and compute the amount due to Plaintiff under the Loan Documents, including attorneys' fees, costs, and expenses.

I. Plaintiff is Entitled to Summary Judgment on the Mortgage Foreclosure and Attendant Recovery of Fees, Costs, and Expenses

Counsel for Borrower Defendants filed an Affidavit in Response to Plaintiff's Motion for Partial Summary Judgment and Related Relief stating, "Borrower and Guarantor have no objection to the granting of Plaintiff's motion for summary judgment on the first cause of action and for that branch of the motion seeking to sever the second cause of action, as well as the other relief sought therein." NYSCEF Doc. No. 180 (Zuckerbrod Aff.) at ¶ 2. Counsel goes on to state its position that "there are no recourse obligations that have been triggered under the Guaranty of Recourse Obligations, dated February 3, 2017 (Docket No. 86) that would give rise to any liability or any deficiency judgment"; counsel provides no further explanation or basis for its position. *Id.* at ¶ 3. Defaulted Defendants have not opposed the motion or otherwise appeared in this action.

Plaintiff has established a *prima facie* case in support of foreclosure. Entitlement to judgment of foreclosure as a matter of law is warranted where the plaintiff provides "evidence of the note and mortgage, and proof of defendant's default." *See, e.g., PNC Bank, N.A. v. Salcedo*, 161 A.D.3d 571, 571 (1st Dept. 2018); *Wilmington Trust v. Sukhu*, 155 A.D.3d 591 (1st Dept. 2017) ("Plaintiff established its *prima facie* entitlement to mortgage foreclosure as a matter of law, by producing the note, mortgage, assignment, and evidence of defendant's nonpayment[.]"). The validity of the Loan Documents and the subsequent documents assigning the relevant interests under the Loan Documents to Plaintiff, as well as the fact of Borrower's default, are not in dispute. NYSCEF Doc. Nos. 175 (R.19-a St.) at ¶¶ 1–14, 33–45; 147 (Note); 148 (Mortgage); 164 (Notice of Default and Acceleration); 152–59 (Assignment Documents). Borrower Defendants do not object to the granting of summary judgment in favor of Plaintiff on its first cause of action for mortgage foreclosure. Borrower Defendants also do not oppose the related relief requested for costs, expenses, and fees in connection with this action in addition to all other sums owing under the Loan Documents pursuant to §§ 4.29, 10.21(b) of the Loan Agreement. NYSCEF Doc. No. 150 (Loan Agreement).

Accordingly, the Court grants Plaintiff's unopposed Motion for Summary Judgment on the first cause of action for mortgage foreclosure, severs the second cause of action against the Guarantor for liability under the Guaranty, and grants Plaintiff an award of attorneys' fees, costs, and expenses as provided for under the Loan Documents.

an assignment of leases and rents further securing the obligations under the note; a loan agreement ("Loan Agreement"); and a guaranty of recourse obligations ("Guaranty"). NYSCEF Doc. No. 175 (R.19-a St.) at ¶¶ 1–14. The original lender's interests under the Loan Documents were ultimately assigned to Plaintiff. *Id.* at ¶¶ 15–29.

II. Plaintiff is Entitled to Default Judgment Against the Defaulted Defendants and Amendment of the Caption

Plaintiff has submitted proof establishing that the Defaulted Defendants were duly served with the Summons and Amended Complaint and have failed to either appear or respond to the Amended Complaint. NYSCEF Doc. No. 166 (Kapoor Aff.) at ¶¶ 7, 12, 17; NYSCEF Doc. Nos. 169, 172 (Affidavits of Service). On May 14, 2025, the New York City Department of Finance filed a Notice of Appearance and Waiver in Foreclosure, pursuant to which it waived service of all papers in this action, except amended complaints, notices of discontinuance of action, notices of sale, referee's report of sale, and notices of proceedings to obtain surplus monies. *See* NYSCEF Doc. No. 80. Otherwise, however, the Defaulted Defendants have made no appearance in this case.

In the Amended Complaint, Plaintiff submits that each of the Defaulted Defendants is named as a party solely because of any claim it may have to some interest in or lien upon the Property.² NYSCEF Doc. No. 81 (Am. Compl.) at ¶¶ 4–14. Plaintiff submits documentation of the relevant portions of a title search listing violations, judgments, and/or mechanics' liens in favor of Defaulted Defendants. The title search evidences that all such violations, judgments, and/or mechanics' liens encumbering the Property post-date the lien of the Mortgage and are therefore subordinate to the Mortgage. Kapoor Aff. at ¶ 19; NYSCEF Doc. No. 174 (Defendants' Violations, Judgments and Mechanics' Liens Against the Property). Thus, the Court grants the branch of Plaintiff's unopposed motion for default judgment against the Defaulted Defendants.

The Court further grants the branch of Plaintiff's unopposed motion to amend the caption of this action to strike the names of the fictitious defendants "John Does #1-50" without prejudice, as none of these defendants has been identified or served with process. Kapoor Aff. ¶ 18.

III. Appointment of a Referee

The Court grants the branch of Plaintiff's unopposed motion seeking to appoint a referee to compute the amount due to Plaintiff under the Loan Documents pursuant to RPAPL § 1321(1). *See Bd. of Managers of Cent. Park Place Condo. v. Potoschnig*, 111 A.D.3d 586 (1st Dept. 2013), *aff'd as modified*, 136 A.D.3d 441 (1st Dept. 2016).

Accordingly, it is hereby

ORDERED that Plaintiff's Motion for Partial Summary Judgment and Related Relief (Motion 002) is GRANTED; and it is further

² Property is defined as 135 East 125th Street (a/k/a 127-137 East 125th Street and/or 2076-2080 Lexington Ave), New York, New York 10035 and 126 East 126th Street (a/k/a 124-132 East 126th Street and/or 2082-2090 Lexington Ave), New York, New York 10035 in the Borough of Manhattan, City, County, and State of New York, and designated as Block 1774, Lots 17 and 56 on the Tax Map of the City of New York, County of New York (collectively, together with the premises, fixtures, improvements, equipment, and related personal property located thereon, as more particularly described in the Mortgage. NYSCEF Doc. No. 81 (Am. Compl.) at ¶ 2.

ORDERED that the Court grants summary judgment on the first cause of action of the Amended Complaint for foreclosure of the Mortgage in Plaintiff's favor and against Defendant Thor Gateway I & II Owner, LLC; and it is further

ORDERED that the Court grants the portion of the Motion severing the second cause of action of the Amended Complaint for liability under the Guaranty against Defendant Joseph J. Sitt for further proceedings; and it is further

ORDERED that counsel for Plaintiff and for Defendant Sitt shall appear for a Pre-Trial Conference on **September 15, 2026** at 10:30 a.m. in Courtroom 428 (*see* Part 45 Practices and Procedures at Section XI.C.); and it is further

ORDERED that the Court grants an award of attorneys' fees, costs, and expenses as provided for under the Loan Documents to Plaintiff; and it is further

ORDERED that the Court grants default judgment pursuant to CPLR § 3215 and RPAPL § 1321 in Plaintiff's favor and against Defendants Dependable Mechanical Corp., Safeguard Locksmiths NY LLC, Croker Fire Drill Corporation, Rainier Restoration LLC, AB Solutions ITS Inc., D&E Refrigeration & Air Conditioning, Inc., New York City Criminal Court, New York City Environmental Control Board, New York City Department of Finance, and New York State Department of Taxation and Finance; and it is further

ORDERED that the caption is amended to remove defendants "John Doe #1-50" from the caption of this action upon service of this Decision and Order upon the Clerk of the Court who shall then amend the caption accordingly, and that all future papers filed with the Court bear the amended caption; and it is further

ORDERED that Plaintiff shall serve a copy of this Decision and Order with notice of entry upon the Clerk of the Court within seven (7) days of this Decision and Order; and it is further

ORDERED that such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address <https://www.nycourts.gov/courts/new-york-county-supreme-court-civil-term>); and it is further

ORDERED that the Court grants the appointment of a referee to ascertain and compute the amount due to Plaintiff under the Loan Documents, including attorneys' fees, costs, and expenses as set forth *supra*; and it is further

ORDERED this matter is directed to a hearing before a Special Referee who shall hear and make a recommendation to the Court as to the amount due to Plaintiff under the Loan Documents; it is further

ORDERED that the powers of the JHO/Special Referee to determine shall not be limited further than as set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119 M, 646-386-3028 or spref@courts.state.ny.us) for placement at the earliest possible date upon the


calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this Court at <https://www.nycourts.gov/courts/new-york-county-supreme-court-civil-term> at the “References General Info” link), shall assign this matter to an available Special Referee to determine as specified above; and it is further

ORDERED that Plaintiff’s counsel shall serve a copy of this Decision and Order with notice of entry on Defendants within five days of the filing of this Decision and Order and that counsel for Plaintiff shall, after thirty days from service of those papers, submit to the Special Referee Clerk by fax (212-401-9186) or by email an Information Sheet (which can be accessed at <https://www.nycourts.gov/LegacyPDFS/courts/1jd/supctmanh/SR-JHO/SRP-InfoSheet.pdf>) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR § 4318) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and that the parties shall appear for the reference hearing, including with all such witnesses and evidence as they may seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referee’s Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue specified above shall proceed from day to day until completion.

The foregoing constitutes the Decision and Order of this Court.

<p><u>5/6/2026</u> DATE</p>	 <hr/> ANAR R. PATEL, A.J.S.C.	
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> OTHER
	<input type="checkbox"/> DENIED	<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input checked="" type="checkbox"/> REFERENCE