APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST DEPARTMENT

Wilmington Sav. Fund Socy. v. Okoronkwo

2026 NY Slip Op 03253 (N.Y. Ct. App. 2026) · No. Index No. 804084/21; Appeal No. 6696; Case No. 2025-02982 · Decided May 21, 2026

SUMMARY

The Appellate Division, First Department, reversed an order that required the plaintiff to prove its predecessor-in-interest's compliance with Limited Liability Company Law § 802 and stayed execution of orders of reference. The court held that defendants failed to rebut the presumption that NS194, LLC was not conducting business in New York and lacked capacity to sue. It further held that purchasing and foreclosing on New York mortgages does not constitute doing business in the state for purposes of Limited Liability Company Law § 802.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Moulton, J.P.; González, J.; O'Neill Levy, J.; Chan, J.; Hagler, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	May 21, 2026
DOCKET	Index No. 804084/21; Appeal No. 6696; Case No. 2025-02982
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiff appealed from an order of Supreme Court, Bronx County, that granted defendants' motion to reargue, directed plaintiff to prove its predecessor's compliance with Limited Liability Company Law § 802 within thirty days or face dismissal, and stayed execution of prior orders of reference.
STANDARD OF REVIEW	Review of the order on the law; the court reviewed Supreme Court's legal determination concerning an LLC's capacity to sue and the application of Limited Liability Company Law §§ 802 and 803.
PRECEDENTIAL VALUE	Published
PARTIES	Wilmington Savings Fund Society v. Precila Okoronkwo, et al.

TOPICS

summary judgment · limited liability companies · foreclosure · appellate procedure · civil procedure

PRACTICE AREAS

real estate · civil procedure · limited liability companies · appellate procedure

QUESTIONS PRESENTED

1. Whether Supreme Court properly directed plaintiff to prove that its predecessor-in-interest, NS194, LLC, complied with Limited Liability Company Law § 802.
2. Whether purchasing and foreclosing on mortgages in New York constitutes doing business in New York for purposes of Limited Liability Company Law § 802.

HOLDINGS

1. Supreme Court erred in directing plaintiff to prove NS194's compliance with Limited Liability Company Law § 802 because defendants failed to rebut the presumption that NS194 was not conducting business within New York and lacked capacity to sue.
2. A plaintiff's purchasing and foreclosing on mortgages in New York does not constitute doing business in New York for purposes of Limited Liability Company Law § 802.

KEY QUOTATIONS

> *"Defendants failed to rebut the presumption that NS194 was not conducting business within the state and lacked capacity to sue pursuant to Limited Liability Company Law § 802."* (*1)

> *"Plaintiff's conduct of purchasing and foreclosing on mortgages in New York does not constitute doing business in this state"* (*1)

> *"the mere maintenance of an action [for foreclosure] by a foreign corporation does not constitute doing business within the State"* (*1)

FACTUAL BACKGROUND

Wilmington Savings Fund Society sought to foreclose mortgages in New York and had been substituted for its predecessor-in-interest, NS194, LLC. Defendants challenged NS194's capacity to sue under Limited Liability Company Law § 802, arguing that it had been conducting business in New York. The appellate court relied on the mortgage purchases and foreclosure activities described in the record and concluded that defendants had not rebutted the presumption that NS194 was not conducting business in the state.

PROCEDURAL HISTORY

Supreme Court initially granted plaintiff's motion for summary judgment and appointment of a referee, substituted plaintiff for NS194, LLC, and denied defendants' cross-motion for summary judgment dismissing the action. On reargument, Supreme Court directed plaintiff to establish NS194's compliance with Limited Liability Company Law § 802 and stayed execution of the orders of reference. The First Department unanimously reversed that order and denied defendants' motion for reargument.

DISPOSITION

reversed

CASES CITED

- Kapitus Servicing, Inc. v. Epazz, Inc., 231 A.D.3d 408, 409 (1st Dep't 2024)
- S & T Bank v. Spectrum Cabinet Sales, 247 A.D.2d 373, 374 (2d Dep't 1998)
- Star201, LLC v. Martinez, 2023 NY Slip Op. 31059(U), *1 (N.Y. Sup. Ct., Queens County 2023)
- Star201, LLC v. Martinez, 2026 NY Slip Op. 02144, *2 (2d Dep't Apr. 8, 2026)

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