

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

Wells Fargo Bank, N.A. v. Whyte

Wells Fargo, 2026 NY Slip Op 03375 (Appellate Division of the Supreme Court of the State of New York First Department 2026) · No. Index No. 36127/20; Appeal No. 6734; Case No. 2025-04825 · Decided May 28, 2026

SUMMARY

The Appellate Division, First Department, unanimously affirmed an order denying the defendant’s motion to compel evidence of litigation counsel’s authority and to strike counsel’s appearance and foreclosure settlement conference request. The court held that the plaintiff’s attorney-in-fact affirmation sufficiently established co-counsel’s authority, that CPLR 322(a) did not support the defendant’s demand after an answer had been served, and that CPLR 321(b) did not apply to co-counsel. The court also held that the defendant lacked standing to seek counsel’s disqualification.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Webber, J.P.; Gesmer, J.; Pitt-Burke, J.; O'Neill Levy, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	May 28, 2026
DOCKET	Index No. 36127/20; Appeal No. 6734; Case No. 2025-04825
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from an order denying her motion to compel proof of plaintiff's litigation counsel's authority to represent plaintiff and to strike counsel's notice of appearance and request for a foreclosure settlement conference.
STANDARD OF REVIEW	The Appellate Division reviewed the order and affirmed, determining that Supreme Court properly denied the motion as moot and on the merits.
PRECEDENTIAL VALUE	published
PARTIES	Coleen Whyte, also known as Coleen A. Whyte v. Wells Fargo Bank, N.A.

TOPICS

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civil procedure

standing

appellate procedure

PRACTICE AREAS

foreclosure

civil procedure

legal ethics and attorney disqualification

appellate procedure

QUESTIONS PRESENTED

1. Whether plaintiff established litigation counsel's authority to represent it in the foreclosure action through an affirmation made under penalties of perjury pursuant to CPLR 2106.
2. Whether defendant could demand proof of litigation counsel's authority under CPLR 322(a) after serving an answer, and whether CPLR 322(a) applied to litigation counsel rather than the counsel who commenced the action.
3. Whether CPLR 321(b) prevented litigation counsel from representing plaintiff before foreclosure counsel formally withdrew when litigation counsel appeared as co-counsel.
4. Whether defendant had standing to seek disqualification of plaintiff's litigation counsel.

HOLDINGS

1. An affirmation from plaintiff's loan servicer and attorney-in-fact stating that plaintiff retained litigation counsel as co-counsel was sufficient to establish counsel's authority. Because the affirmation was made under penalties of perjury and satisfied CPLR 2106, notarization was not required.
2. Defendant was precluded from demanding proof of plaintiff's counsel's authority to prosecute the foreclosure after serving an answer. In addition, CPLR 322(a) permits a demand for proof of counsel's authority to commence an action, so any proper demand would have concerned the foreclosure counsel who commenced the action, not litigation counsel appointed later to prosecute it.
3. CPLR 321(b) did not apply because litigation counsel appeared as co-counsel rather than being substituted for foreclosure counsel. Even if a formal notice of withdrawal had been required, its absence would have been a technical oversight that did not affect litigation counsel's authority to prosecute the action.
4. Defendant lacked standing to seek disqualification because she did not allege that she was or had been in an attorney-client relationship with plaintiff's litigation counsel or that counsel's representation of plaintiff would result in disclosure of confidential information.

KEY QUOTATIONS

*"Because defendant served an answer in the foreclosure, she is precluded from demanding that plaintiff produce evidence of litigation counsel's authority to prosecute the action." (*1)*

*"Since litigation counsel appeared as co-counsel, as opposed to being substituted in the place of foreclosure counsel, CPLR 321(b) is inapplicable." (*1)*

"Finally, to the extent defendant seeks litigation counsel's disqualification, she lacks standing because she does not allege that she is or was in an attorney-client relationship with it or that its representation of plaintiff

would somehow result in the disclosure of confidential information” (*1)

FACTUAL BACKGROUND

Wells Fargo brought a foreclosure action and was represented by foreclosure counsel and later by litigation counsel appearing as co-counsel. Defendant Coleen Whyte served an answer and moved to compel evidence that litigation counsel had authority to represent Wells Fargo, to strike counsel's notice of appearance and request for a foreclosure settlement conference, and, to the extent applicable, to disqualify litigation counsel. Wells Fargo submitted an affirmation from its loan servicer and attorney-in-fact stating that it had retained litigation counsel as co-counsel.

PROCEDURAL HISTORY

Supreme Court, Bronx County, denied defendant's motion in an order entered on or about May 21, 2025. The Appellate Division, First Department, unanimously affirmed the order without costs.

DISPOSITION

affirmed

CASES CITED

- Sperry Assoc. Fed. Credit Union v. John, 160 A.D.3d 1007, 1009 (2d Dep't 2018)
- Develop Don't Destroy Brooklyn v. Empire State Dev. Corp., 31 A.D.3d 144, 150 (1st Dep't 2006), lv. denied, 8 N.Y.3d 802 (2007)

OPINION

PER CURIAM.

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May 28, 2026

Appellate Division, First Department

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This decision is uncorrected and subject to revision before publication in the Official Reports.

Wells Fargo Bank, N.A., etc., Plaintiff-Respondent,

v

Coleen Whyte Also Known as Coleen A. Whyte, Defendant-

Appellant, New York City Bureau of Highway Operations, et al., Defendants.

Decided and Entered: May 28, 2026

Index No. 36127/20|Appeal No. 6734|Case No. 2025-04825

Before: Webber, J.P., Gesmer, Pitt-Burke, O'Neill Levy, JJ.

Coleen Whyte, appellant pro se.

Hinshaw & Culbertson LLP, New York (Nicholas Ponzio of counsel), for respondent.

Order, Supreme Court, Bronx County (Naita A. Semaj, J.), entered on or about May 21, 2025, which denied defendant's motion to compel plaintiff to produce evidence of plaintiff's litigation counsel's authority to represent plaintiff and to strike counsel's notice of appearance and request for foreclosure settlement conference, unanimously affirmed, without costs.

The court properly denied as moot defendant's motion to compel evidence of plaintiff's litigation counsel's authority to prosecute this foreclosure action.

Plaintiff submitted an affirmation from its loan servicer and attorney-in-fact affirming that it retained litigation counsel as co-counsel to represent plaintiff in the foreclosure action, which was sufficient to establish litigation counsel's authority to represent plaintiff.

The affirmation satisfied the requirements of CPLR 2106 and did not require notarization since it was made under the penalties of perjury.

In any event, plaintiff failed to establish any basis under CPLR 322(a) to compel plaintiff to establish litigation counsel's authority to prosecute the foreclosure.

Because defendant served an answer in the foreclosure, she is precluded from demanding that plaintiff produce evidence of litigation counsel's authority to prosecute the action. Further, since CPLR 322(a) only permits a defendant to demand proof of counsel's authority to commence an action, any demand under CPLR 322(a) should instead have been made with respect to plaintiff's foreclosure counsel, which actually commenced the action before appointing litigation counsel to prosecute it in court.

Defendant's argument that CPLR 321(b) prevented litigation counsel from representing plaintiff until foreclosure counsel withdrew is similarly unavailing.

Since litigation counsel appeared as co-counsel, as opposed to being substituted in the place of foreclosure counsel, CPLR 321(b) is inapplicable. Even if a formal notice of withdrawal had been required, the failure to file it would have been a technical oversight that would have had no effect on litigation counsel's authority to prosecute the action (*see Sperry Assoc.*

Fed. Credit Union v John, 160 AD3d 1007, 1009 [2d Dept 2018]).

Finally, to the extent defendant seeks litigation counsel's disqualification, she lacks standing because she does not allege that she is or was in an attorney-client relationship with it or that its representation of plaintiff would somehow result in the disclosure of confidential information (*see Develop Don't Destroy Brooklyn v Empire State Dev.*

Corp.

, 31 AD3d 144, 150 [1st Dept 2006], *lv denied* 8 NY3d 802 [2007]).

We have considered defendant's remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: May 28, 2026

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PER CURIAM.

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This decision is uncorrected and subject to revision before publication in the Official Reports. Wells Fargo Bank, N.A., etc., Plaintiff-Respondent, v Coleen Whyte Also Known as Coleen A. Whyte, Defendant-Appellant, New York City Bureau of Highway Operations, et al., Defendants. Decided and Entered: May 28, 2026 Index No. 36127/20|Appeal No. 6734|Case No. 2025-04825| Before: Webber, J.P., Gesmer, Pitt-Burke, O'Neill Levy, JJ. Coleen Whyte, appellant pro se.

Hinshaw & Culbertson LLP, New York (Nicholas Ponzo of counsel), for respondent. [*1] Order, Supreme Court, Bronx County (Naita A. Semaj, J.), entered on or about May 21, 2025, which denied defendant's motion to compel plaintiff to produce evidence of plaintiff's litigation counsel's authority to represent plaintiff and to strike counsel's notice of appearance and request for foreclosure settlement conference, unanimously affirmed, without costs.

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Because defendant served an answer in the foreclosure, she is precluded from demanding that plaintiff produce evidence of litigation counsel's authority to prosecute the action. Further, since CPLR 322(a) only permits a defendant to demand proof of counsel's authority to commence an action, any demand under CPLR 322(a) should instead have been made with respect to plaintiff's foreclosure counsel, which actually commenced the action before appointing litigation counsel to prosecute it in court.

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Fed. Credit Union v John, 160 AD3d 1007, 1009 [2d Dept 2018]). Finally, to the extent defendant seeks litigation counsel's disqualification, she lacks standing because she does not allege that she is or was in an attorney-client relationship with it or that its representation of plaintiff would somehow result in the disclosure of confidential information (see *Develop Don't Destroy Brooklyn v Empire State Dev.*

Corp., 31 AD3d 144, 150 [1st Dept 2006], lv denied 8 NY3d 802 [2007]). We have considered defendant's remaining arguments and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: May 28, 2026 Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them.