

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Deutsche Bank National Trust Company v. McElroy

2026 NY Slip Op 02390 · No. 2024-06397 · Decided April 22, 2026

SUMMARY

The Appellate Division, Second Department, affirmed an order denying Kathy McElroy's motion to dismiss a mortgage foreclosure action or to compel the plaintiff's counsel to produce evidence of authority to commence the action. The court held that the plaintiff sufficiently established counsel's authority under CPLR 322(a) through an affidavit from its servicer's assistant vice president and an accompanying power of attorney.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Angela G. Iannacci, J.P.; Cheryl E. Chambers; Lillian Wan; Janice A. Taylor
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	April 22, 2026
DOCKET	2024-06397
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from an order denying her pre-answer motion to dismiss a mortgage-foreclosure complaint or, alternatively, to compel plaintiff's counsel to produce evidence of its authority to commence the action.
PRECEDENTIAL VALUE	Published
PARTIES	Kathy McElroy v. Deutsche Bank National Trust Company

TOPICS

- foreclosure
- mortgages
- civil procedure
- appellate procedure
- real estate

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the plaintiff established under CPLR 322(a) that its attorneys were authorized to commence the mortgage-foreclosure action.
2. Whether the defendant was entitled to dismissal under CPLR 3211(a)(1), (3), or (8), or alternatively to an order compelling production of admissible evidence of counsel's authority.

HOLDINGS

1. The plaintiff sufficiently established that its attorneys were authorized to commence the foreclosure action by submitting the servicer's affidavit stating that the attorneys had such authority together with a power of attorney authorizing the servicer to act on the plaintiff's behalf.
2. The Supreme Court properly denied the branches of the defendant's motion seeking dismissal of the amended complaint under CPLR 3211(a)(1), (3), and (8), or alternatively seeking to compel production of admissible evidence of counsel's authority.

KEY QUOTATIONS

“Here, the plaintiff sufficiently established that KKM was authorized to commence this action by submitting Raab's affidavit indicating that KKM had such authority, accompanied by a power of attorney authorizing the plaintiff's servicing agent to act on the plaintiff's behalf” ([*2])

“Any writing by the plaintiff or his [or her] agent requesting the attorney to begin the action or ratifying his [or her] conduct of the action on behalf of the plaintiff is prima facie evidence of the attorney's authority.” ([*2])

FACTUAL BACKGROUND

Deutsche Bank commenced an action to foreclose a mortgage on real property in East Northport. In opposing McElroy's motion, the plaintiff submitted an affidavit from Nicholas J. Raab, an assistant vice president of its servicer and attorney-in-fact, Specialized Loan Servicing, LLC, stating that the law firm had authority to commence and represent the plaintiff in the action. The plaintiff also submitted a limited power of attorney authorizing the servicer to enforce and preserve the plaintiff's interests in mortgage loans, including through foreclosure.

PROCEDURAL HISTORY

Deutsche Bank commenced a mortgage-foreclosure action against Kathy McElroy and others. McElroy moved under CPLR 322(a) and CPLR 3211(a)(1), (3), and (8) to dismiss the complaint or compel plaintiff's counsel to produce evidence of authority. After plaintiff filed a supplemental summons and amended complaint, McElroy elected to proceed against the amended complaint. The Supreme Court, Suffolk County, denied the relevant branches of the motion, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Bank of N.Y. Mellon Trust Co., N.A. v. Berokhim, 231 AD3d 916, 917
- Chase Manhattan Bank v. Beckerman, 271 AD2d 392, 393

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