

determination forecloses re-examination of the same claims raised again on this appeal (see *Massey v Byrne*, 164 AD3d 416, 416-417 [1st Dept 2018]; see also *Matter of Part 60 RMBS Put-Back Litig.*, 195 AD3d 40, 48 [1st Dept 2021] [LOTC “requires that the underlying legal determination on which preclusion is based was resolved on the merits”]).

However, Supreme Court improperly granted plaintiff’s renewed motion for summary judgment. While plaintiff is correct that the Business Corporation Law did not require it to establish that its stockholders approved the sale before it could transfer the property (see *Soho Gold v 33 Rector St.*, 227 AD2d 314, 315 [1st Dept 1996], *lv denied* 89 NY2d 806 [1997]), that is irrelevant here because the operative title report still required plaintiff to provide proof of such consent.

Moreover, “[s]uccessive motions for summary judgment should not be entertained without a showing of newly discovered evidence or other sufficient justification” (*Jones v 636 Holding Corp.*, 73 AD3d 409, 409 [1st Dept 2010]). In support of the renewed motion for summary judgment, plaintiff presented an affirmation from Joseph DeCiutiis, a senior vice president at a title insurance company who represented that his company had determined that a secretary certificate of authority for the sale of the subject real property was “insurable authorization for the sale.” While the DeCiutiis affirmation is dispositive of the issue of fact identified by this Court in *Apple Bank I* with respect to plaintiff’s entitlement to summary judgment, plaintiff offers no reason why it could not have obtained a similar affirmation in support of its first summary judgment motion. Such evidence “was clearly available to [plaintiff] earlier, and thus should be rejected for failure to show due diligence in attempting to obtain the statement before the submission of the prior motion” (*id.* [internal quotation

marks omitted]).

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

ENTERED: May 14, 2026

A handwritten signature in black ink, appearing to read "Susanna M. Rojas". The signature is written in a cursive, flowing style.

Susanna Molina Rojas
Clerk of the Court