| **US Bank Trust N.A. v Gurt** |
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| 2026 NY Slip Op 30362(U) |
| January 13, 2026 |
| Supreme Court, Kings County |
| Docket Number: Index No. 526638/2022 |
| Judge: Menachem M. Mirocznik |
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At IAS Part FRP5 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, NY 11201, on the 13th of January 2026

**PRESENT:** HON. MENACHEM M. MIROCZNIK
JUSTICE OF THE SUPREME COURT

US BANK TRUST NATIONAL ASSOCIATION AS TRUSTEE FOR LB-CABANA SERIES IV TRUST,

Plaintiff,

-against-

YOAV GURT; JPMORGAN CHASE BANK, N.A.; NATIONAL CITY BANK; "JOHN DOE" and "JANE DOE" said names being fictitious, it being the intention of Plaintiff to designate any and all occupants of premises being foreclosed herein,

Defendants.

**Index No. 526638/2022**

**Decision and Order**
**(Motion Seq. 4 and 5)**

| Papers | Numbered |
|---|---|
| Notice of Motion | NYSCEF Doc, 128-136 |
| Notice of Motion | NYSCEF Doc. 139-141 |
| Opposition Papers | NYSCEF Doc. 142 |
| Reply Papers | NYSCEF Doc. 147 |

Upon the foregoing papers, the motion is determined in accordance with this Decision and Order as follows:

## Procedural History

This action was commenced on September 13, 2022, seeking to foreclose a mortgage (the "mortgage") executed by defendant Yoav Gurt ("defendant") encumbering the property known as 2052 East 71st Street Brooklyn, New York 11234 (the "property").

On March 16, 2023, the Court denied defendant's pre-answer motion seeking dismissal of the action for lack personal jurisdiction.

On May 22, 2023, defendant joined issue with the filing of an answer that asserted various affirmative defenses, including that plaintiff lacked standing to commence this action.

On June 27, 2023, defendant filed amended answer which asserted various affirmative defenses, counterclaims and cross-claims. Said answer was rejected by plaintiff as untimely.

On March 19, 2024, plaintiff moved for summary judgment, to strike defendant's answer, for a default judgment against the non-answering defendants and to appoint a referee to compute.

On June 4, 2024, defendant cross-moved for summary judgment dismissing the action for non-compliance with RPAPL 1304 and for plaintiff's alleged fraud on courts. Defendant also argued inter alia, that plaintiff failed to demonstrate it had standing to commence this action. Defendant also argued that plaintiff's affiant did not lay sufficient foundation and that the affiant's testimony was inadmissible hearsay.

On June 17, 2025, the Court granted plaintiff's motion to the extent of dismissal of defendants affirmative defenses except for standing, granted a default judgment, amended the caption and otherwise denied the motion without prejudice and denied defendant's cross-motion in its entirety. The Cour found that plaintiff demonstrated compliance with RPAPL 1304 but found that plaintiff failed to demonstrate standing in as much as plaintiff failed to demonstrate the allonge was firmly affixed to the note because no business records substantiating same were produced. The Court further held that given the "remaining issue is narrow and likely can be resolved without trial, the remainder of the motion is denied without prejudice."

On July 22, 2025, Attorney Jerome E. Goldman was substituted as counsel for defendant.

Plaintiff now moves again for summary judgment and order of reference, noting that the Court denied the previous motion without prejudice, should entertain this successive motion for summary judgment. In support of the motion plaintiff annexes the affidavit of Skyler Robison ("Mr. Robison " or Robison Affidavit") a purported Asset Manager of SN Servicing Corporation ("SNSC") the alleged servicer of plaintiff.

Defendant, through Attorney Goldman, also moves reargument of the June 17, 2025 in so far as the Court declined to dismiss the action for lack of standing. Defendant contends the court overlooked or misapprehended the law or facts. Defendant contends that once the Court found that plaintiff failed to demonstrate it had standing "it is not enough merely to deny plaintiff's motion...The logical consequence of a lack of standing is dismissal of the complaint. The court should have dismissed the case for lack of standing."

In opposition to the motion, plaintiff argues that defendant's motion is procedurally defective as the motion is not properly identified as required by CPLR 2221[d][1], defendant failed to demonstrate the Court misapprehended anything and correctly determined that defendant failed to meet his burden in demonstrating that plaintiff lacked standing as a matter of law. Plaintiff notes that the Court's finding of an issue of fact as to whether the allonge was firmly affixed to the note does not carry defendant's burden in establishing plaintiff's lack of standing.

In reply, Attorney Goldman contends that plaintiff's procedural argument is frivolous and calls for sanctions against plaintiff. He further argues that the Court did not expressly state an "issue of fact existed" did not use those words, calls plaintiff's arguments a "fantasy" and reiterates his contention that once the Court found that plaintiff did not demonstrate standing the Court should have dismissed the complaint.

## Discussion

### I. Plaintiff's Motion For Summary Judgment Is Denied.

"Summary judgment is a "drastic remedy" that should be granted only where the moving

party has tender[ed] sufficient evidence to demonstrate the absence of any material issue of fact...Even then, summary judgment should be granted only if, upon the moving party's meeting this burden, the non-moving party fails to establish the existence of material issues of fact which require a trial of the action...Issue finding, not issue deciding, is the court's purpose at the summary judgment stage...Thus, [w]here the court entertains any doubt as to whether a triable issue of fact exists, summary judgment should be denied...When ruling on a motion for summary judgment, the deciding court must view the facts "in the light most favorable to the non-moving party" *U.S. Bank N.A. v DLJ Mtge. Capital, Inc.*, 38 NY3d 169 [2022][internal citations and quotation marks omitted]

"Generally, in moving for summary judgment in an action to foreclose a mortgage, a plaintiff establishes its prima facie case through the production of the mortgage, the unpaid note, and evidence of default" *Hudson City Sav. Bank v Genuth*, 148 AD3d 687 [2d Dept. 2017]. This showing shifts the burden to the non-movant to present evidence in admissible form sufficient to raise a material issue of fact requiring a trial. See *Gesuale v. Campanelli & Assocs., P.C.*, 126 AD3d 936 [2d Dept 2015]

"[A] motion for summary judgment will not be granted if it depends on proof that would be inadmissible at the trial under some exclusionary rule of evidence...Records made in the regular course of business are hearsay when offered for the truth of their contents...When a party relies upon the business records exception to the hearsay rule in attempting to establish its prima facie case, '[a] proper foundation for the admission of a business record must be provided by someone with personal knowledge of the maker's business practices and procedures." *HSBC Bank USA, N.A. v Vasishta*, 241 AD3d 1299 [2d Dept 2025][internal citations and quotation marks omitted]

"Where, as here, the plaintiff's standing has been placed in issue by the defendant's answer, the plaintiff must prove its standing as part of its prima facie showing on a motion for summary judgment." *U.S. Bank N.A. v Moulton*, 179 AD3d 734, 736 [2d Dept 2020]; See also *Deutsche Bank Nat. Tr. Co. v Brewton*, 142 AD3d 683, 684 [2d Dept 2016]["Where, as here, standing is put into issue by a defendant, the plaintiff must prove its standing in order to be entitled to relief"]

In general, a plaintiff can establish prima facie that it had standing to commence the action by annexing a copy of the subject note, endorsed in blank, to the complaint. *U.S. Bank N.A. v Auguste*, 173 AD3d 930 [2d Dept 2019]; *Bank of New York Mellon v Swift*, 213 AD3d 624 [2d Dept 2023]; *Selene Fin., L.P. v Coleman*, 187 AD3d 1082 [2d Dept 2020]; *U.S. Bank N.A. v Rozo-Castellanos*, 201 AD3d 995 [2d Dept 2022]

"A plaintiff has standing to commence a foreclosure action where it is the holder or assignee of the underlying note, either by physical delivery or execution of a written assignment prior to the commencement of the action with the filing of the complaint...Thus, a plaintiff may demonstrate its standing in a foreclosure action through proof that it was in possession of the subject note endorsed in blank, or the subject note and a firmly affixed allonge endorsed in blank, at the time of commencement of the action" *US Bank Tr., N.A. v Loring*, 193 AD3d 1101 [2d Dept 2021][internal citations omitted]

Here, as the Court previously determined, attaching the note to the complaint alone does not establish the allonge was firmly affixed to the note at the time the action was commenced. See e.g. *Nationstar Mtge., LLC v Calomarde*, 201 AD3d 940, 942 [2d Dept 2022] ["Although the

plaintiff attached to the complaint copies of the note and an undated purported allonge endorsed in blank, the plaintiff did not demonstrate that the purported allonge, which was on a piece of paper completely separate from the note, was "so firmly affixed thereto as to become a part thereof," as required by UCC 3-202 (2)"];

Therefore, to demonstrate standing plaintiff was required to demonstrate that subject allonges were "so firmly affixed thereto as to become a part thereof."

In support of the contention that the allonge was firmly affixed to the note at the time the action was commenced, Mr. Robison states that:

> "According to the business records I have reviewed and based on my knowledge of the record keeping practices of Plaintiff, the original Note, endorsed to blank with the Note Allonge affixed thereto, was physically delivered to Plaintiff, Custodian or its Servicer on July 20, 2022, and was maintained by Plaintiff, Custodian or its Servicer at the time of commencement of this action. A copy of the business record is annexed hereto as Exhibit I."

However, contrary to plaintiff's contentions, Mr. Robison's testimony and proffered exhibit do not cure the deficiency previously identified the Court and Mr. Robison's statements are nothing more than inadmissible hearsay.

"There is no requirement that a plaintiff in a foreclosure action rely on any particular set of business records to establish a prima facie case, so long as the plaintiff satisfies the admissibility requirements of CPLR 4518(a), and the records themselves actually evince the facts for which they are relied upon." *Citigroup v Kopelowitz*, 147 AD3d 1014, 1015 [2d Dept 2017]

"Although, [t]he foundation for admission of a business record usually is provided by the testimony of the custodian, the author or some other witness familiar with the practices and procedures of the particular business...it is the business record itself, not the foundational affidavit, that serves as proof of the matter...Accordingly, [e]vidence of the contents of business records is admissible only where the records themselves are introduced...Without their introduction, a witness's testimony as to the contents of the records is inadmissible hearsay" *Bank of NY Mellon v Gordon*, 171 AD3d 197 [2d Dept 2019][internal citations and quotation marks omitted]; See also See *U.S. Bank N.A. v Pickering-Robinson*, 197 AD3d 757 [2d Dept 2021]["However, while the Lee affidavit was sufficient to lay a proper foundation for the admission of a business record pursuant to CPLR 4518 (a)...Lee failed to identify the records upon which she relied in making the statements, and the plaintiff failed to submit copies of the records themselves."]; *Deutsche Bank Trust Co. Ams. v Miller*, 198 AD3d 867 [2d Dept 2021]["Moreover, even if Lee's affidavit set forth a proper foundation for the admissibility of the unspecified records he relied on...Lee failed to identify the records upon which [ ]he relied in making the statements, and the plaintiff failed to submit copies of the records themselves...It is the business record itself, not the foundational affidavit, that serves as proof of the matter asserted"][internal citations and quotation marks omitted]

Here, while Mr. Robsion avers that the note with an allonge that was firmly affixed thereto was delivered to "Plaintiff, Custodian or its Servicer on July 20, 2022" the same is conclusory and insufficient to meet plaintiff's burden. First, Mr. Robison's equivocal statements call into question the veracity of same. If plaintiff's records demonstrated the facts asserted, Mr. Robison would be able to aver to whom the note was actually delivered. Second and more importantly, the record proffered by Mr. Robison does not reflect that the allonge was firmly affixed to the note. In fact, the record makes no reference to an allonge at all. Nor does the record reflect exactly who received the original note.

Indeed, "[w]ithout business records proving the matter asserted, [plaintiff]'s "unsubstantiated and conclusory" statement, by itself, [is] insufficient..." *Wilmington Sav. Fund Socy., FSB v Kutch*, 202 AD3d 1030, 1033 [2d Dept 2022]; *JPMorgan Chase Bank, N.A. v Bonilla*, 227 AD3d 788, 790 [2d Dept 2024]["Without business records proving the matter asserted, Ranaldi's "unsubstantiated and conclusory" statement, by itself, was insufficient..."]

Accordingly, Mr. Ortega's unsubstantiated, conclusory and hearsay assertions are insufficient to demonstrate plaintiff had standing at the time the action was commenced. See *Nationstar Mtge., LLC v Calomarde,* 201 AD3d 940, 942 [2d Dept 2022] ["Although the plaintiff attached to the complaint copies of the note and an undated purported allonge endorsed in blank, the plaintiff did not demonstrate that the purported allonge, which was on a piece of paper completely separate from the note, was "so firmly affixed thereto as to become a part thereof," as required by UCC 3-202 (2)"]; See also *LNV Corp. v Almberg*, 194 AD3d 703, 704 [2d Dept 2021]["Here...the plaintiff failed, prima facie, to establish its standing to commence this action. The copy of the note submitted in support of the plaintiff's motion contained two additional pages, the first entitled "Allonge to Note" and the second entitled "Note Allonge." However, as the defendants correctly contend, the plaintiff did not submit any evidence to indicate that the purported allonges were so firmly affixed to the note so as to become a part thereof..."];

Therefore, plaintiff's motion must be denied without regard to the insufficiency of Attorney Goldman's opposition papers. See *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]["Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers"];*Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]["Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers"]; *Gregg v Key Food Supermarket*, 50 AD3d 1093 [2d Dept 2008]["Moreover, when the defendant fails to meets its burden, the motion must be denied without regard to the sufficiency of the plaintiff's opposition papers"]

## II. <u>Defendant's Motion For Reargument Is Denied</u>

"Motions for reargument are addressed to the sound discretion of the court which decided the prior motion and may be granted upon a showing that the court overlooked or misapprehended the facts or law or for some reason mistakenly arrived at its earlier decision" *Carrillo v PM Realty Group*, 16 AD3d 611 [2d Dept 2005]; *HSBC Bank USA v Halls*, 98 AD3d 718 [2d Dept 2012] [1]

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[1]The instant motion was referred to this Court after the Hon. Carolyn Mazzu Genovesi transferred to the Supreme Court Nassau County. For purposes of CPLR 2221[a] the underlying issue of forum shopping is thus not present herein.

"While the determination to grant leave to reargue lies within the sound discretion of the court…a motion for leave to reargue is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented" *Emigrant Bank v Kaufman*, 223 AD3d 650, 651-52 [2d Dept 2024][internal citations and quotation marks omitted]

Here, the Court did not overlook or misapprehend the facts or law in rendering its previous determination and Attorney Goldman's arguments are patently meritless, if not frivolous.

"On a cross motion for summary judgment dismissing the complaint based upon the plaintiff's alleged lack of standing, the burden is on the moving defendant to establish, prima facie, the plaintiff's lack of standing, rather than on the plaintiff to affirmatively establish its standing in order for the motion to be denied…To defeat a defendant's motion, the plaintiff has no burden of establishing its standing as a matter of law…[A] party cannot succeed on a motion for summary judgment by simply pointing out gaps in the opposing party's case" *U.S. Bank N.A. v Pickering-Robinson*, 197 AD3d 757 [2d Dept 2021][internal citations and quotation marks omitted];*Aurora Loan Services, LLC v Mercius*, 138 AD3d 650 [2d Dept 2016]["the Supreme Court erred in granting the defendant's cross motion for summary judgment dismissing the complaint insofar as asserted against him for lack of standing and to cancel the notice of pendency filed against the subject property. [T]he burden is on the moving defendant to establish, prima facie, the plaintiff's lack of standing, rather than on the plaintiff to affirmatively establish its standing in order for the motion to be denied. To defeat a defendant's motion, the plaintiff has no burden of establishing its standing as a matter of law…Here, the defendant, as the moving party, failed to make a prima facie showing that the plaintiff lacked standing"][internal citations and quotation marks omitted]

The Court expressly found that plaintiff failed to prove it had standing as a matter of law because of an evidentiary failure to demonstrate the allonge was firmly affixed to the note at the time the action was commenced. The Court further expressly found that a trial may not be necessary because plaintiff may be able to make a proper evidentiary showing with a successive motion. Attorney Goldman's contention that a plaintiff's failure to prove standing on a motion for summary mandates dismissal of the action when the note and alonge were annexed to the complaint and in the absence of affirmative proof the allonge was not firmly affixed is patently frivolous.

This Court notes yet again for the bar at large, it will not countenance a practice of inundating this Court with baseless or frivolous motions and arguments. This Court is determined to utilize all the tools at it's disposal, including admonitions and sanctions, to reduce the volume of poorly drafted, unsupported and often frivolous motions and/or arguments. See *East West Bank v. Gelb, Nathan*; Index No. 517613/2017 at NYSCEF Doc. 174

The Court has already requested Attorney Goldman show cause why sanctions should not be imposed on him for frivolous conduct. See *Bank Of New York Mellon, Et. Al. v. Bistritzky, Mordechai, et. Al*; Index No. 508444/2019 at NYSCEF Doc.___; See also *M&T Bank v Friedmann*, 217 AD3d 934 [2d Dept 2023]

Accordingly, it is hereby

**ORDERED**, that plaintiff's motion for summary judgment is DENIED with PREJUDICE; and it is further

**ORDERED**, that defendant's motion is DENIED in its entirety; and it is further

**ORDERED**, that the parties are directed to complete discovery and proceed to trial.

This constitutes the Decision and Order of the Court.

ENTER:

Hon. Menachem M. Mirocznik, JSC

KINGS COUNTY CLERK
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