U.S. Bank Trust Co., N.A. v Ortiz
2026 NY Slip Op 30562(U)
January 27, 2026
Supreme Court, Kings County
Docket Number: Index No. 511822/2023
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 27th of January 2026

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

U.S. Bank Trust Company, National Association, as Trustee, as successor-in-interest to U.S. Bank National Association, successor trustee to LaSalle Bank National Association, on behalf of the holders of Bear Stearns Asset Backed Securities I Trust 2007-HE7, Asset-Backed Certificates Series 2007-HE7,

Plaintiff,

-against-

Felix Ortiz; Et Al,

Defendants.

Index No. 511822/2023

Decision and Order
(Motion Seq. 3, 4, 5, 6, 7, 8 and 9)

Papers	Numbered
Notice of Motion (Seq. 3)	NYSCEF Doc. 100-104
Notice of Motion (Seq. 4)	NYSCEF Doc. 108-114
Letter (Seq. 4)	NYSCEF Doc. 116
Notice of Motion (Seq. 5)	NYSCEF Doc. 117-130
Opposition Papers (Seq. 3)	NYSCEF Doc. 131-137
Reply Papers (Seq. 3.)	NYSCEF Doc. 139
Supplemental Papers (Seq. 5)	NYSCEF Doc. 140-141
Notice of Motion (Seq. 6)	NYSCEF Doc. 168-181
Order to Show Cause (Seq. 7)	NYSCEF Doc. 145-152, 185-190
Notice of Cross-Motion/Opposition (Seq. 8)	NYSCEF Doc. 191-203
Sur-Reply (Seq. 3)	NYSCEF Doc. 204-205
ADA Letter	NYSCEF Doc. 206
Notice of Motion (Seq. 9)	NYSCEF Doc. 210-212
Letters (Seq. 7)	NYSCEF Doc. 215-217

Upon the foregoing papers, the motion(s) is/are determined in accordance with this Decision and Order as follows:

Relevant Procedural History

This action was commenced on April 20, 2023, seeking to foreclose a mortgage (the "mortgage") executed by defendant Felix Ortiz (the "defendant") encumbering the property known as 284 Jerome Street, Brooklyn, NY 11233 (the "property").

July 6, 2007, defendant executed the subject note and mortgage which encumbers the property.

On April 24, 2008, a previous foreclosure action was commenced entitled *Lasalle Bank National Association, et al v Felix Ortiz, et al* under Index No. 12721/2008 (the "2008 Action"). On January 21, 2011, the action was purportedly dismissed with prejudice for non-compliance with the administrative order requiring

On March 29, 2011, a second foreclosure action was commenced entitled *Bank of America, National Association et al v. Felix Ortiz et al* under Index No. 7132-2011 (the "2011 Action"). The action was dismissed on September 12, 2017 for non-compliance with RPAPL 1306.

On January 24, 2018, a third foreclosure action was commenced entitled *US Bank, N.A. Successor Trustee et al v, Felix Ortiz et al* under Index No. 501564/2018 (the "2011 Action"). On February 12, 2020, the parties stipulated to discontinue the action as settled as result of the not and mortgage being modified by a loan modification agreement. Defendant defaulted in payment under the terms of the modification agreement.

On November 22, 2023, defendant, pro se, joined issue with the filing of an answer which asserted various affirmative defenses including that plaintiff lacks standing and asserted a counterclaim for attorney's fees but did not assert a defense predicated on res judicata.

On November 27, 2023, Brooklyn Legal Services ("BLS") filed a limited notice of appearance to represent defendant for the residential settlement conferences.

Settlement conferences were held on September 19, 2023, October 24, 2023, January 4, 2024, and February 29, 2024, after which the matter was released from the settlement part.

On December 12, 2023, plaintiff filed a reply to defendant's counterclaim.

On September 27, 2024, plaintiff moved (Seq. 1) for summary judgment, to strike defendants answer, affirmative defenses and counterclaim, for a default judgment against the non-answering defendants and to amend the caption.

On November 14, 2024, BLS filed a notice of appearance on behalf of defendant.

On December 16, 2024, defendant opposed the motion, inter alia, because of plaintiff's alleged lack of standing, non-compliance with the notice provisions of the mortgage, RPAPL 1304 and RPAPL 1306. Defendant also purported to assert an additional counterclaim for against plaintiff for the sum of $1,929,140,000.00 "payable in real money (silver or gold)."

On December 20, 2024, upon request of defendant, BLS moved (Seq. 2) by order to show cause to be relieved as counsel for defendant.

On January 8, 2025, defendant filed a 54-page amended answer which was in actuality a supplemental opposition to plaintiff's motion for summary judgment and substantially related to plaintiff's alleged lack of standing.

On January 23, 2024, plaintiff rejected defendant papers asserting that defendant's time to amend his answer as of right expired.

On January 15, 2025, the motion (Seq. 2) was granted the Court relieved BLS as counsel for defendant stayed proceedings for 60 days for defendant to find alternate counsel.

On April 25, 2025, defendant sought to have the action removed to federal court.

On May 8, 2025, the Federal District Court issued memorandum and opinion remaining the case back to this Court and found defendant failed to comply with the procedural requirements and did not demonstrate the matter can be brought in federal court.

On May 15, 2025, the Court granted plaintiff's motion (Seq. 1) for summary judgment, struck defendant's answer, dismissed defendant's affirmative defenses and counterclaims with prejudice and issued an order of reference.

On May 21, 2025, defendant moved (Seq. 3) to stay the action, vacate the order granting summary judgment, for an evidentiary hearing on plaintiff's standing and alleged misrepresentations and to dismiss the action. Defendant argued the Court lacks jurisdiction and the case should proceed in federal court and that plaintiff lacks standing.

On May 27, 2025, defendant again attempted to remove the matter to federal court.

On June 6, 2025, the Federal District Court again remanded the case back to this Court because defendant still did not state a valid basis for removal and further found that it suffers from the near identical issues as the first notice of removal, defendant should have known the removal was improper and that further attempts may result in an order barring him from further filings.

On June 30, 2025, defendant moved (Seq. 4) to disqualify BLS, to strike the notices of appearance of BLS and to enjoin its participation in the action, to compelling counsel from BLS to submit a sworn mitigation affidavit and to impose sanctions on BLS in the amount of $10,000. The motion is plagued with numerous unsubstantiated and baseless assertions.

On August 24, 2025, defendant, again moved (Seq. 5) for dismissal, this time pursuant to CPLR 3211[a][3], [5], [7], [8] and to vacate the order granting summary judgment CPLR 5015[a][3] and [4] and various other relief claiming the action is barred by lack of standing, res judicata given a dismissal of previous 2008 action with prejudice, lack of jurisdiction, failure to state a cause of action and for alleged fraud and racketeering. Defendant also requests the Court impose sanctions on plaintiff and its counsel for its alleged fraudulent and frivolous conduct.

On August 27, 2025, plaintiff filed opposition to defendant's motion (Seq. 3). Plaintiff argues that this Court has subject matter jurisdiction, defendant waived personal jurisdictional objections and the federal court already rejected defendant's attempts at removal twice. Plaintiff further argues that defendant's motion is an improper collateral attack on the order granting summary judgment, the Court already rejected defendant's standing objections, the same is law of the case, that defendant does not seek to reargue or renew the order granting summary judgment, and notes that even of defendant did, plaintiff established its standing as a matter of law.

August 28, 2025, defendant filed reply (Seq. 3) arguing that the action is barred by res judicata, that he may still contest standing pursuant to RPAPL 1302-a, that plaintiff's filings are nullities and show systemic fraud, claims he is not under the dominion of the court which also lacks personal jurisdiction over defendant.

On August 30, 2025, defendant filed a supplemental affirmation in support of his motion (Seq. 5) seeking dismissal averring newly discovered evidence in support of his jurisdictional challenge.

On September 22, 2025, plaintiff served defendant with a notice of computation.

On September 30, 2025, defendant filed an emergency order to show cause seeking to again stay the action pursuant to CPLR 2201 and to vacate the order granting summary judgment and making substantially similar standing arguments made in his previously filed motions and additionally arguing the mortgage is void due to the alleged non-existence of the original lender and that Court's granting of summary judgment violated his due process rights.

On October 8, 2025, defendant filed another motion seeking, inter alia, to vacate the order granting summary judgment pursuant to CPLR 5015[a][2], [3], [4] and [5], to dismiss the action for lack of standing, jurisdiction and res judicata, to impose sanctions on plaintiff and its counsel and to refer plaintiff's counsel to the grievance committee, attorney general, SEC and the IRS.

On October 17, 2025, defendant commenced an action in United States District Court for the Middle District of North Carolina against plaintiff and its counsel. Said action was dismissed without prejudice on November 5, 2023.

On November 3, 2025, after initially declining to sign the order to show cause, after the filing of several additional affirmations, the Court executed the order to show cause (Seq. 7). Notably, the order to show cause did not seek interim relief.

On November 26, 2025, plaintiff cross-moved (Seq. 8) to deem defendant a vexatious litigant and to enjoin defendant from filing further motions or applications for relief in this action or any other action relating to the subject loan or property and to deny defendant's previous motions (Seq. 3-7). Plaintiff argues that defendant's repetitive motions are frivolous, harassment and are mere attempts to delay and obstruct the orderly prosecution of this action. In opposition to defendant's motions, plaintiff argues that all of defendants claims were adjudicated and are barred by law of the case given the previous grant of summary judgment which struck defendant's answer and each of defendant's affirmative defenses and counterclaim. Plaintiff further argues that defendant waived any claim of res judicata and fraud by not asserting same as an affirmative defense in his answer, that the defense is frivolous on its face given this action is predicated on his execution of a loan modification in 2020 and making numerous payments thereon to settle a 2018 action. Lastly, plaintiff argues that defendant was properly served, waived the defense by failing to timely seek dismissal and actively participating in this action on the merits and defendant's challenges to standing were adjudicated in connection with the summary judgment motion and in any case plaintiff established standing by annexing the note endorsed in blank to the complaint and separately through its affiant.

On December 2, 2025, plaintiff filed a sur-reply to defendant's motion (Seq. 3), reiterating the arguments made in connection with its cross-motion (Seq. 8)

All the pending motions were marked submitted on December 3, 2025.

On December 4, 2025, defendant filed a request for an ADA accommodation under the American With Disabilities Act.

On December 9, 2025, plaintiff served defendant and the referee with another notice of computation.

On December 15, 2025, defendant filed a motion (Seq. 9) seeking to impose sanctions and hold plaintiff's counsel in contempt for allegedly violating a stay issued by the Court on November 3, 2025 and to strike the notice of computation served by plaintiff.

On December 24, 2025, defendant filed opposition to plaintiff's cross-motion (Seq. 8) contending that plaintiff has not established he is a vexatious litigant and was allegedly filed in bad faith to silence defendant and deprive him of his constitutional rights to distract from plaintiff's alleged unlawful conduct, that res judicata was in fact raised as an affirmative defense his answer, is never waived, the Court must raise same sua sponte, that defendant is entitled to CPLR 5015 relief, that plaintiff and its counsel engaged in fraud and attorney misconduct and reiterating his previous arguments and contentions.

Defendant filed additional letters to the Court on December 24, 2025, December 25, 2025, and on January 6, 2026, reiterating his allegations regarding plaintiff's alleged violation of the stay allegedly issued by the Court on November 3, 2025 and an unauthorized sur-sur reply on February 2, 2026, which was not considered by the Court.

Discussion

I. Defendant's Motion to Disqualify His Previous Counsel and Related Relief Is Denied.

The record reflects the BLS withdrew from representation in this action pursuant to prior court order and has not appeared, filed papers, or represented any party in this matter since that withdrawal. Defendant has not demonstrated that counsel currently represents any party, has filed any operative papers affecting defendant's rights, or has otherwise participated in the litigation following withdrawal. Defendant's contentions to the contrary are frivolous. Therefore, defendant's motion for disqualification is denied as moot.

To the extent Defendant raises concerns regarding the propriety of a prior notice of appearance, alleged conflicts of interest, or counsel's conduct before withdrawal, those issues are **academic** and do not warrant disqualification or striking of papers where no current representation exists and no prejudice has been shown. The Court further declines to impose sanctions as the record does not establish frivolous conduct and in fact no such conduct occurred.

II. Defendant's Motions Seeking Relief Pursuant to CPLR 5015[a] Are Denied

CPLR 5015[a] provides in relevant part that "[t]he court which rendered a judgment or order may relieve a party from it upon such terms as may be just, on motion of any interested person with such notice as the court may direct, upon the ground of:...2. newly-discovered evidence...; or 3. fraud, misrepresentation, or other misconduct of an adverse party; or 4. lack of jurisdiction to render the judgment or order; or 5. reversal, modification or vacatur of a prior judgment or order upon which it is based."

"When a defendant...raises a jurisdictional objection pursuant to CPLR 5015(a)(4), the court is required to resolve the jurisdictional question before determining whether it is appropriate to grant a discretionary vacatur of [an order]." *Roberts v Anka*, 45 AD3d 752 [2d Dept 2007]; *Harrison v Schottenstein*, 228 AD3d 848, 850 [2d Dept 2024][That jurisdictional question must be resolved before determining whether it is appropriate to grant a discretionary vacatur of the [order]."]; *Wells Fargo Bank, NA v Spaulding*, 177 AD3d 817, 818 [2d Dept 2019]["A court may not rule on the excusable nature of a defendants default under CPLR 5015(a)(1) without first determining the jurisdictional question."]

"An appearance by a defendant in an action is deemed to be the equivalent of personal service of a summons upon him [or her], and therefore confers personal jurisdiction over him [or her], unless he [or she] asserts an objection to jurisdiction either by way of motion or in his [or her] answer" *Bank of New York Mellon v Gaston*, 241 AD3d 1242 [2d Dept 2025]

"A defendant appears formally in an action by serving an answer or a notice of appearance, or by making a motion which has the effect of extending the time to answer...A defendant may appear informally by actively litigating the action before the court...When a defendant participates in a lawsuit on the merits, he or she indicates an intention to submit to the court's jurisdiction over the action, and by appearing informally in this manner, the defendant confers in personam jurisdiction on the court" *U.S. Bank Tr., N.A. v Lane*, 241 AD3d 745, 746-47 [2d Dept 2025][internal citations and quotation marks omitted]; *BAC Home Loans Servicing, L.P. v Davis*, 241 AD3d 1231, 1232 [2d Dept 2025]["When a defendant participates in a lawsuit on the merits, he or she indicates an intention to submit to the court's jurisdiction over the action, and by appearing informally in this manner, the defendant confers in personam jurisdiction on the court."]

"[A]n objection that the summons and complaint ... was not properly served is waived if, having raised such an objection in a pleading, the objecting party does not move for judgment on that ground within sixty days after serving the pleading..." *Wells Fargo Bank, N.A. v Gross*, 202 AD3d 882, 885 [2d Dept 2022]; *US Bank, N.A. v Orlando*, 226 AD3d 946, 948 [2d Dept 2024]["[A]n objection that the summons and complaint ... was not properly served is waived if, having raised such an objection in a pleading, the objecting party does not move for judgment on that ground within sixty days after serving the pleading, unless the court extends the time upon the ground of undue hardship."]; *I-Fix-Screens-Com, Inc. v Ibrahem*, 238 AD3d 1011, 1014 [2d Dept 2025]["[A]n objection that the summons and complaint ... was not properly served is waived if, having raised such an objection in a pleading, the objecting party does not move for judgment on that ground within sixty days after serving the pleading, unless the court extends the time upon the ground of undue hardship"]

Here, defendant unquestionably appeared both formally as well as informally. Defendant formally appeared by serving an answer which did not raise an objection to personal jurisdiction

and in any case would be deemed to have informally appeared by opposing plaintiff's motion for summary judgment on the merits without raising such jurisdictional objection. Moreover, even if defendant had raised such objection in his answer, the same would still be waived given defendant's failure to move on this basis within the required sixty day limit. Therefore, defendant submitted to the Court's jurisdiction, waived any objections to personal jurisdiction.

To the extent, defendant's motions can be construed as seeking to vacate the order granting summary judgment due to a lack of subject matter jurisdiction, the same is baseless.

"The question of subject matter jurisdiction is a question of judicial power: whether the court has the power, conferred by the Constitution or statute, to entertain the case before it. Because New York's Supreme Court "is a court of original, unlimited and unqualified jurisdiction...it is competent to entertain all causes of action, including mortgage foreclosure actions." *Sec. Pac. Nat. Bank v Evans*, 31 AD3d 278 [1st Dept 2006][internal citations and quotation marks omitted]; *Wells Fargo Bank Minnesota, Nat. Ass'n v Mastropaolo*, 42 AD3d 239, 244 [2d Dept 2007]["The Supreme Court is a court of general jurisdiction, and it is competent to entertain all causes of action [ ] unless its jurisdiction has been specifically proscribed...The Supreme Court indisputably has the power to entertain mortgage foreclosure actions, like this one."][internal citations and quotation marks omitted]

"Standing and capacity to sue are related, but distinguishable, legal concepts...capacity requires an inquiry into the litigant's status, i.e., its power to appear and bring its grievance before the court...while standing requires an inquiry into whether the litigant has an interest in the claim at issue in the lawsuit that the law will recognize as a sufficient predicate for determining the issue at the litigant's request" *Wells Fargo Bank Minnesota, Nat. Ass'n v Mastropaolo*, 42 AD3d 239 [2d Dept 2007]

In *Wells Fargo Bank Minn., N.A. v. Mastropaolo*...this Court considered "whether a defense based on lack of standing is more akin to the defense that the plaintiff 'has not legal capacity to sue,' as set forth in CPLR 3211(a)(3), or to the nonwaivable defense that the court lacks subject matter jurisdiction, as set forth in CPLR 3211(a)(2). This Court determined that "[e]ven though the frequently invoked term 'jurisdictional' has been used occasionally to refer to standing, a plaintiff's lack of standing affects, at most, a court's power to render a judgment on the merits in the plaintiff's favor...This Court stated that a plaintiff's "alleged lack of standing at the time [the] action was commenced ... [is] not a jurisdictional defect that [is] 'so fundamental to the power of adjudication of a court' ... In reaching its conclusion, this Court cited to authority which described standing as " 'an aspect of justiciability which, when challenged, must be considered at the outset of any litigation." *GMAC Mtge., LLC v Winsome Coombs*, 191 AD3d 37, 44 [2d Dept 2020]

"[W]hether [a foreclosure] action is being pursued by the proper party is an issue separate from the subject matter of the action or proceeding, and does not affect the court's power to entertain the case before it" *Wells Fargo Bank, N.A. v Rooney*, 132 AD3d 980, 983 [2d Dept 2015]; *Wells Fargo Bank Minnesota, Nat. Ass'n v Mastropaolo*, 42 AD3d 239, 243 [2d Dept 2007]["Whether the action is being pursued by the proper party is an issue separate from the subject matter of the action or proceeding, and does not affect the court's power to entertain the case before it."]

Therefore, defendant jurisdictional challenges and his request to vacate the order granting summary judgment pursuant CPLR 5015[a][4] are denied.

Defendant's motions seeking to vacate the order granting summary judgment pursuant to CPLR 5015[a][2] due the alleged discovery of new evidence is also baseless.

"Newly discovered evidence is evidence which was in existence but undiscoverable with due diligence at the time of the original order or judgment...In order to succeed on a motion pursuant to CPLR 5015(a)(2) to vacate an order or judgment on the ground of newly discovered evidence, the movant must establish that the evidence could not have been discovered earlier through the exercise of due diligence...and that the newly discovered evidence would probably have produced a different result." *Wall St. Mortg. Bankers. Ltd. v Rodgers*, 148 AD3d 1088, 1089 [2d Dept 2017] [internal citations omitted]; *Chase Bank USA, N.A. v Laroche*, 208 AD3d 845 [2d Dept 2022]["Newly discovered evidence is evidence which was in existence but undiscoverable with due diligence at the time of the original order or judgment...In order to succeed on a motion pursuant to CPLR5015(a)(2) to vacate an order or judgment on the ground of newly discovered evidence, the movant must establish that the evidence could not have been discovered earlier through the exercise of due diligence and that the newly discovered evidence would probably have produced a different result"][internal citations omitted]

Here, all of the "new evidence" proffered by defendant, are not new and could have previously proffered earlier with the exercise of reasonable diligence. See *Deutsche Bank Natl. Tr. Co. v Morris*, 160 AD3d 613, 614 [2d Dept 2018][The purportedly newly discovered evidence was not newly discovered, as it had been proffered with [defendant]'s prior motion to vacate.... Moreover, [defendant] failed to establish that this purportedly newly discovered evidence could not have been discovered earlier, prior to the entry of the judgment of foreclosure and sale, through the exercise of due diligence"]; *US Bank N.A. v Eisler*, 188 AD3d 1288 [2d Dept 2020]["Here, the defendant failed to demonstrate that the purported newly discovered evidence, consisting of responses to written requests...could not have been discovered earlier in the action through the exercise of due diligence"]

Moreover, even if the additional "new evidence" had been timely proffered, the same would not change the outcome. As noted previously, defendant waived any jurisdictional challenges and defendant's failed to establish that the original lender allegedly did not exist, and even if true, is irrelevant given defendant's execution of the modification agreement in settling the 2018 Action. See *Nationstar Mtge., LLC v Paganini*, 191 AD3d 790 [2d Dept 2021]["In any event, the purported newly discovered evidence would not have produced a different result on Aurora's motion."]; *Chase Bank USA. N.A. v Laroche*, 208 AD3d 845, 847 [2d Dept 2022]["In any event, the defendant also failed to establish that the purportedly newly discovered evidence would have produced a different result."]

Therefore, defendant request to vacate the order granting summary judgment pursuant CPLR 5015[a][2] is denied.

Defendant's motions seeking to vacate the order granting summary judgment pursuant to CPLR 5015[a][3] due to alleged fraud is patently frivolous.

"To prevail on a motion pursuant to CPLR 5015(a)(3) to vacate an order granting summary judgment in a foreclosure action…the proponent must establish that the opponent procured the order…by fraud, misrepresentation, or other misconduct…[I]t is well established that a party seeking to set aside a judgment on the basis of fraud 'will not prevail by merely showing fraud in the underlying transaction but must show fraud in the very means by which the judgment was procured." *Rossrock Fund II. LP v Norlin Corp.*, 128 AD3d 1046 [2d Dept 2015][internal citations and quotation marks omitted; See also *CitiMortgage, Inc. v Kish*, 192 AD3d 659 [2d Dept 2021]

To establish entitlement to relief pursuant CPLR 5015[a][3] the moving party must established the fraud or misconduct by clear and convincing evidence. See *Cofresi v Cofresi*, 198 AD2d 321 [2d Dept 1993]["The defendant's remaining allegations failed to affirmatively establish fraud by clear and convincing evidence"]; *Deutsche Bank Natl. Tr. Co. v Gatti*, 184 AD3d 550, 551 [2d Dept 2020]["However, we also conclude that the defendant failed to demonstrate, by clear and convincing evidence, that the signature on the endorsement of the note was a forgery."]

Broad, conclusory and unsubstantiated allegations of fraud are insufficient warrant relief pursuant to CPLR 5015[a][3]. See *Bank of New York v Stradford*, 55 AD3d 765 [2d Dept 2008]["Furthermore, the appellants "offered nothing more than broad, unsubstantiated allegations of fraud on the part of [the] plaintiff"]; *Deutsche Bank Natl. Tr. Co. v Le-Mond*, 198 AD3d 610 [2d Dept 2021]["Here, the appellant's broad, conclusory, and unsubstantiated allegations of fraud failed to demonstrate that the plaintiff engaged in any fraud, misrepresentation, or other misconduct warranting vacatur of the order dated July 13, 2016, pursuant to CPLR 5015(a)(3)."]

Moreover, "[a]n order may not be vacated on the grounds of fraud, misrepresentation, or misconduct where the moving party had knowledge of the fraud, misrepresentation, or misconduct before the order was issued." *Citimortgage, Inc. v Roque*, 202 AD3d 1041 [2d Dept 2022]; *SNC Properties, LLC v DeMartino*, 185 AD3d 750, 752 [2d Dept 2020]["An order may not be vacated on the grounds of fraud or misconduct where, as in this case, the moving parties had knowledge of the fraud or misconduct before the order was issued."]; See also *Linder v Linder*, 297 AD2d 711 [2d Dept 2002]["Additionally, a final judgment may not be vacated on the grounds of fraud or misconduct where the moving party had knowledge of the fraud or misconduct before the entry of the final judgment"]

Finally, a "motion to vacate an order pursuant to CPLR 5015 cannot serve as a substitute for an appeal, or [to] remedy an error of law that could have been addressed on a prior appeal." *U.S. Bank, N.A. v Sartini*, 186 AD3d 649 [2d Dept 2020]["Here, the defendants could have raised the contentions they advanced on their CPLR 5015(a)(3) motion on a direct appeal from the…order granting the plaintiff's motion, inter alia, for summary judgment and an order of reference. The defendants' current arguments were not properly asserted on a motion pursuant to CPLR 5015(a)(3)"]; *Citigroup Glob. Markets, Inc. v Fiorilla*, 151 AD3d 665 [1st Dept 2017] ["Moreover, "[a] motion to vacate an order pursuant to CPLR 5015 cannot serve as a substitute for an appeal, or remedy an error of law that could have been addressed on a prior appeal"]

Here, defendant allegations of fraud fall woefully short of clear and convincing evidence, is based on allegations that defendant knew or should have known prior to entry of the order granting summary judgment and amount to nothing more than broad, conclusory and unsubstantiated allegations of fraud.

Therefore, defendant request to vacate the order granting summary judgment pursuant CPLR 5015[a][3] is denied.

Vacatur of an order or judgment pursuant to CPLR 5015(a)(5) is warranted where there has been a "reversal, modification or vacatur of a prior judgment or order upon which [the judgment] was based." As such, vacatur of the order...pursuant to CPLR 5015(a)(5) was only appropriate if the order upon which the order and judgment was based...was vacated." *Bank of New York Mellon Tr. Co., N.A. v Ahmed*, 243 AD3d 851 [2d Dept 2025]

Defendant does not explain why relief is warranted pursuant to CPLR 5015 is warranted. Indeed, the order granting summary judgment is valid, has not been vacated and it not vacated by this order.

Therefore, defendant's motions seeking to vacate the order granting summary judgment pursuant to CPLR 5015[a][5] is baseless.

III. Defendant's Motions Seeking Relief Pursuant to CPLR 3211[a] Are Denied

CPLR 3211[a] provides in relevant part that: "A party may move for judgment dismissing one or more causes of action asserted against him on the ground that:... 2. the court has not jurisdiction of the subject matter of the cause of action; or 3. the party asserting the cause of action has not legal capacity to sue; or...5. the cause of action may not be maintained because of arbitration and award, collateral estoppel, discharge in bankruptcy, infancy or other disability of the moving party, payment, release, res judicata, statute of limitations, or statute of frauds; or...7. the pleading fails to state a cause of action; or 8. the court has not jurisdiction of the person of the defendant..."

CPLR 3211[e] provides in relevant part that: "At any time ***before*** service of the responsive pleading is required, a party may move on one or more of the grounds set forth in subdivision (a) of this rule, and ***no more than one such motion shall be permitted***. Any objection or defense based upon a ground set forth in paragraphs one, three, four, five and six of subdivision (a) of this rule ***is waived unless raised either by such motion or in the responsive pleading***....an objection that the summons and complaint...was not properly served ***is waived if, having raised such an objection in a pleading, the objecting party does not move for judgment on that ground within sixty days after serving the pleading***...An objection based upon a ground specified in paragraph eight or nine of subdivision (a) of this rule ***is waived if a party moves on any of the grounds set forth in subdivision (a) of this rule without raising such objection or if, having made no objection under subdivision (a) of this rule, he or she does not raise such objection in the responsive pleading***..." [emphasis added]

A motion to dismiss a complaint pursuant to CPLR 3211(a) may be based on various grounds, including res judicata, collateral estoppel, lack of standing, and lack of personal jurisdiction (*see* CPLR 3211[a][1]-[11]). Such a motion must be made "before service of the responsive pleading is required" (CPLR 3211[e]), or it is untimely...Without more, a defendant waives the defenses of res judicata, collateral estoppel, and lack of standing if he or she fails to interpose an answer or file a timely pre-answer motion asserting those defenses." *U.S. Bank N.A. v Gilchrist*, 172 AD3d 1425 [2d Dept 2019].

First, defendant's motions to dismiss pursuant to CPLR 3211[a] are untimely. Defendant did not move prior to answering the complaint and did not move until after the Court granted plaintiff's motion for summary judgment over defendant's objections. Therefore, relief pursuant to CPLR 3211 is not available. See *Bennett v Hucke*, 64 AD3d 529 [2d Dept 2009]["As the plaintiff correctly contends, the motion of the defendants... pursuant to CPLR 3211 to dismiss the complaint was not made within the time period in which those defendants were required to serve an answer (*see* CPLR 3211[e]). Accordingly...the motion should have been denied as untimely."]; *Han v New York City Tr. Auth.*, 203 AD3d 511 [1st Dept 2022]["The motion to dismiss under CPLR 3211(a)(5), however, was not timely made, as required under CPLR 3211(e)"]; *Smith, Gambrell & Russell, LLP v 3 W. 16th St., LLC*, 220 AD3d 432, 433 [1st Dept 2023]["Defendant's post-answer motion to dismiss was not timely."]

For this reason alone, all of defendant's motions seeking relief pursuant to CPLR 3211[a] are all denied.

Second, in any case, as noted above, the Court has unqualified subject matter jurisdiction. *See Wells Fargo Bank Minnesota, Nat. Ass'n v Mastropaolo*, 42 AD3d 239, 244 [2d Dept 2007]["The Supreme Court is a court of general jurisdiction, and it is competent to entertain all causes of action [ ] unless its jurisdiction has been specifically proscribed...The Supreme Court indisputably has the power to entertain mortgage foreclosure actions, like this one."][internal citations and quotation marks omitted]

Therefore, relief pursuant to CPLR 3211[a][2] is denied.

Third, defendant's challenges to plaintiff's standing, that the action is barred by res judicata and that plaintiff allegedly failed to state a cause of action are meritless.

"The doctrine of the law of the case is a rule of practice, an articulation of sound policy that, when an issue is once judicially determined, that should be the end of the matter as far as Judges and courts of co-ordinate jurisdiction are concerned...Such a rule is essential to an orderly and seemly administration of justice in a court composed of several judges..." *U.S. Bank N.A. v Tenenbaum*, 228 AD3d 696 [2d Dept 2024]; *Bank of New York Mellon v Singh*, 205 AD3d 866, 867 [2d Dept 2022]["The doctrine of the law of the case seeks to prevent relitigation of issues of law that have already been determined at an earlier stage of the proceeding."]

Here, defendant raised res judicata and objections to plaintiff's standing in connection with the plaintiff's prior motion for summary judgment which was granted over defendant's objections. The Court also determined that plaintiff stated a cause of action and established same in granting summary judgment, from which no appeal was taken. Therefore, defendant's res judicata contentions and objections to plaintiff's standing are barred by law of the case and relief pursuant to CPLR 3211[a][3], CPLR 3211[a][5] and CPLR 3211[a][7] are denied.

In any case, plaintiff established it has standing, this action is not barred by res judicata and plaintiff's stated a valid cause of action.

"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]

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]

Here, plaintiff established it had standing by annexing a copy of the note, endorsed in blank to the complaint. Therefore, relief pursuant to CPLR 3211[a][3] is denied.

CPLR 3018[b] provides that "[a] party shall plead all matters which if not pleaded would be likely to take the adverse party by surprise or would raise issues of fact not appearing on the face of a prior pleading such as...collateral estoppel...fraud...res judicata."

"CPLR 3018, which governs responsive pleadings, draws a distinction between denials and affirmative defenses... Denials generally relate to allegations setting forth the essential elements that must be proved in order to sustain the particular cause of action and [t]hus, a mere denial of one or more elements of the cause of action will suffice to place them in issue...Conversely, a defendant must plead, as an affirmative defense, all matters which if not pleaded would be likely to take the adverse party by surprise or would raise issues of fact not appearing on the face of a prior pleading...Accordingly, where a defendant seeks to inject into the litigation matters [that] are not the plaintiff's burden to prove as part of the cause of action, those matters must be affirmatively pleaded as defenses...Failure to plead a defense that must be pleaded affirmatively under CPLR 3018(b) is a waiver of that defense, unless it is raised by a motion under CPLR 3211(a)." *GMAC Mtge., LLC v Winsome Coombs*, 191 AD3d 37 [2d Dept 2020][internal citations and quotation marks omitted]

Here, defendant did not raise res judicata as an affirmative defense in his answer or a timely motion to dismiss. Accordingly, the defense of res judicata is deemed waived. See *Wilmington Sav. Fund Socy., FSB v Mendez*, 240 AD3d 938 [2d Dept 2025]["CPLR 3018(b) requires a party to plead certain affirmative defenses...The failure to plead such a defense or to raise it in a timely motion pursuant to CPLR 3211(a) generally results in a waiver.... Here, the defendant did not raise the [defense]...in a timely motion pursuant to CPLR 3211(a) or in her answer and, thus, waived those defenses"][internal citations omitted]; *Paterno v Carroll*, 75 AD3d 625 [2d Dept 2010][res judicata was waived because he failed to assert it in his answer or in a motion made before service of the answer was required"]

In any case, "[u]nder the doctrine of res judicata, a disposition on the merits bars litigation between the same parties, or those in privity with them, of a cause of action arising out of the same transaction or series of transactions as a cause of action that either was raised or could have been raised in the prior proceeding...the doctrine applies only when a claim between the parties has been previously 'brought to a final conclusion." *Blue Sky, LLC v Jerry's Self Stor., LLC*, 145 AD3d

945 [2d Dept 2016][internal citations and quotation marks omitted]

Here, res judicata has no applicability. Plaintiff's cause of action is as result of defendant's default under the terms of the loan modification agreement and does not "arise out of the same transaction or series of transactions as a cause of action that either was raised or could have been raised in the prior proceeding"

Therefore, relief pursuant to CPLR 3211[a][5] is denied.

"On a motion pursuant to CPLR 3211(a)(7) to dismiss for failure to state a cause of action, the court must accept the facts alleged in the complaint as true, accord the plaintiff the benefit of every possible favorable inference and determine only whether the facts as alleged fit within any cognizable legal theory....Moreover, [w]here evidentiary material is submitted and considered on a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), and the motion is not converted into one for summary judgment, the question becomes whether the plaintiff has a cause of action, not whether the plaintiff has stated one, and unless it has been shown that a material fact as claimed by the plaintiff to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it, dismissal should not eventuate" *U.S. Bank N.A. v Herman*, 174 AD3d 831, 831-32 [2d Dept 2019]

"A facially adequate cause of action to foreclose a mortgage requires allegations regarding the existence of the mortgage, the unpaid note, and the defendant's default thereunder, which, if subsequently proven, will establish a prima facie case for relief...In order to place in issue any of these essential elements of the cause of action, a defendant need only deny them in the answer. However, as a general matter, a plaintiff need not establish its standing (i.e., that it held and/or owned the note at the time the action was commenced) as an essential element of the cause of action...Rather, it is only where the plaintiff's standing is placed in issue by the defendant that the plaintiff must shoulder the additional burden of establishing its standing to commence the action, a burden satisfied by evidence that it was the holder or assignee of the underlying note at the time the action was commenced." *US Bank N.A. v Nelson*, 169 AD3d 110, 113-14 [2d Dept 2019], *affd.* 36 NY3d 998 [2020]

Here, the complaint alleged the existence of the note, mortgage, modification agreement and that defendant defaulted thereunder. This sufficient to state claim to foreclose a mortgage. See *Wilmington Sav. Fund Socy., FSB v Matamoro*, 200 AD3d 79 [2d Dept 2021]["The allegations contained within the four corners of the complaint, which must be deemed to be true...and which need not allege standing, were sufficient to state a cause of action to foreclose upon a mortgage. Further, the defendants' evidence failed to sufficiently demonstrate the absence of standing, for reasons already set forth.]

Therefore, relief pursuant to CPLR 3211[a][7] is denied.

Lastly, as noted above, defendant unquestionably appeared both formally as well as informally and therefore consented to the court's jurisdiction and waived jurisdictional objections.

Defendant formally appeared by serving an answer which did not raise an objection to personal jurisdiction and in any case would be deemed to have informally appeared by opposing

plaintiff's motion for summary judgment on the merits without raising such objection. Moreover, even if defendant had raised such objection in his answer, the same would still be waived given defendant's failure to move on this basis within the required sixty day limit. Accordingly, defendant submitted to the Court's jurisdiction, waived any objections to personal jurisdiction.

Therefore, relief is not available pursuant to CPLR 3211[a][8]

IV. Defendant's Motion for a Stay Pursuant to CPLR 2201 Is Denied.

CPLR 2201 provides in relevant part that "the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just."

"A stay can be a drastic remedy, "on the simple basis that justice delayed is justice denied. It should therefore be refused unless the proponent shows good cause for granting it." 660 *Riverside Dr. Aldo Assoc. L.L.C. v Marte*, 178 Misc 2d 784 [Civ Ct 1998]

"Some excellent reason would have to be demonstrated before a judge is asked to bring to a halt a litigant's quest for a day in court" *In re Eshagian*, 48 Misc 3d 920 [Sur Ct 2015]

Here, defendant failed to demonstrate sufficient cause for this action to be stayed pursuant to CPLR 2201.

Therefore, the motion is denied.

V. Defendant's Motions For Sanctions and Contempt Are Frivolous and Denied.

Initially, defendant repetitive motions for sanctions and penalties against plaintiff, its counsel and defendant's former counsel are completely baseless.

"Conduct during litigation is frivolous and subject to sanction and/or the award of costs under 22 NYCRR 130-1.1 "if it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law or . . . it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another" *Miller v Cruise Fantasies, Ltd.*, 74 AD3d 919, 920-21 [2d Dept 2010][internal citations and quotation marks omitted]

"Frivolous conduct shall include the making of a frivolous motion for costs or sanctions." 22 NYCRR 130-1.1[c]; *Marshall v Marshall*, 198 AD3d 1288 [4th Dept 2021]["Indeed, plaintiff's frivolous request that we impose sanctions against defendant by itself qualifies as frivolous conduct."]; See also *Matter of Tercjak v Tercjak*, 49 AD3d 773, 773 [2d Dept 2008]["Court providently exercised its discretion in imposing sanctions and costs upon counsel...for making frivolous motions to impose sanctions and costs"]

"In determining whether the conduct undertaken was frivolous, the court shall consider...the circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct, and whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party" *Finley v Finley*, 233 AD3d 654 [2d Dept 2024]

Here, defendant has not identified any conduct that would arise to the level of frivolous conduct within the meaning of 22 NYCRR 130-1.1. Indeed, no such conduct occurred in this matter. On the contrary, it is defendant who has engaged in a pattern of frivolous, vexatious and harassing conduct.

Furthermore, contrary to defendant's contentions otherwise, the Court did NOT issue a restraining order on November 3, 2025. The order to show cause merely listed the relief defendant was seeking. Specifically, the November 3, 2025, order to show cause provided in relevant part:

> "Let Plaintiff, its agents, servants, employees, attorneys, and all persons acting on its behalf, shall show cause… why an order should not be entered pursuant to CPLR 2201 and 5015(a): 1. STAYING immediately and during the pendency of this motion, the enforcement of the Summary Judgment and Order of Reference entered May 15, 2023 (Hon. Genovesi, J.), and all subsequent proceedings, including any scheduled foreclosure sale."

Defendant conveniently omitted the relevant language from the order to show cause. The language referencing the stay was a recitation of the relief defendant ultimately sought. The order to show cause did not grant interim relief pending the hearing or determination of the order to show cause.

Therefore, defendant's requests for contempt and sanctions are denied in all respects.

VI. Plaintiff Cross-Motion For Injunctive Relief Is Granted

The law is well settled that while "[p]ublic policy mandates free access to the courts and zealous advocacy is an essential component of our legal system...However, where there has been an abuse of judicial process, the court may enjoin a litigant from further actions or motion practice without prior written approval of the court" *DiSilvio v Romanelli*, 150 AD3d 1078 [2d Dept. 2017]

Indeed, "a litigant can forfeit that right by abusing the judicial process through vexatious litigation" *CitiMortgage, Inc. v Weaver*, 197 AD3d 1090 [2d Dept 2021]["In such cases, it is not improper for the court to enjoin a litigant from bringing any further motions without its permission"]; See also *Dimery v Ulster Sav. Bank*, 82 AD3d 1034 [2d Dept 2011]["Here, however, the record reflects that the plaintiff forfeited that right by abusing the judicial process through vexatious litigation. Accordingly, it was not improper for the Supreme Court to enjoin the plaintiff from bringing any further motions regarding the subject matter of the instant action without its permission"]

Here, the record amply supports plaintiff's contention that defendant is a vexatious litigant and has engaged harassing and frivolous conduct. Therefore, plaintiff's cross-motion is granted.

Any other contentions raised by defendant has been considered by the Court and found to be without merit.

Accordingly, it is hereby

ORDERED, that defendants motions (Seq. 3, 4, 5, 6, 7 and 9) are hereby DENIED in all respects; and it is further

ORDERED, that plaintiff's cross-motion (Seq. 8) is GRANTED; and it is further

ORDERED, that defendant Feliz Ortiz is ENJOINED and FORBIDDEN from filing further pleadings, motions, orders to show cause or other applications for relief in this or any other action regarding the subject matter of this action, the subject note, mortgage or property without the prior leave of Court.

This constitutes the decision and order of the Court.

ENTER:

Hon. Menachem M. Mirocznik, JSC

KINGS COUNTY CLERK
FILED
2026 FEB 11 A 9:58