

US Bank Trust N.A. v Freund
2026 NY Slip Op 30595(U)
February 13, 2026
Supreme Court, Kings County
Docket Number: Index No. 508003/2024
Judge: Carolyn Walker-Diallo
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At an IAS Term, Part FRP4, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 320 Jay Street, Brooklyn, New York, on the 13th day of February 2026.

PRESENT:

HON. CAROLYN WALKER-DIALLO, J.S.C.

Index No.: 508003/2024

US BANK TRUST NATIONAL ASSOCIATION,
NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY
AS OWNER FOR VRMTG ASSET TRUST,

Plaintiff,

DECISION/ORDER

-against-

PHILIP FREUND a/k/a PHILLIP FREUND, et al.,

Defendants.

Recitation, as required by CPLR 2219 (a), of the papers considered in the review of these motions:

Papers

Numbered

Notice of Motion

NYSCEF Doc. Nos. 74-83

Notice of Cross-Motion

NYSCEF Doc. Nos. 84-85

Affirmation in Opposition and in Further Support of Motion

NYSCEF Doc. No. 87

Memorandum of Law in Reply

NYSCEF Doc. No. 88-89

Motion Sequences #2 & 3

Plaintiff commenced this action on March 20, 2024, seeking to foreclose on a mortgage as modified by an agreement executed by Philip Freund a/k/a Phillip Freund (“Defendant”) and Decedent Israel Gold. Plaintiff’s motion for summary judgment was granted by order entered on January 16, 2025. *See* Order of the Hon. Larry D. Martin, dated January 16, 2025, NYSCEF Doc. No. 69. Plaintiff now moves to confirm the Referee’s Report (“Report”) and for Judgment of Foreclosure and Sale (“Judgment”), arguing that the Report is substantially supported by the record

and therefore should be confirmed, and that the Court shall issue a Judgment for the full amount set forth in the Report.

Defendant cross-moves to reject the Report and for entry of a Judgment awarding only nominal damages of \$1.00, contending that Plaintiff failed to meet its burden of proving the amounts allegedly due with admissible evidence, as required on submission before the referee. Further, Defendant argues that the referee's findings are fundamentally flawed, in that they are based entirely upon an affirmation from Plaintiff's purported mortgage servicer that lacks proof of authority to act on Plaintiff's behalf, as the Limited Power of Attorney on which it relies is expressly conditioned upon an unproduced servicing agreement. Defendant further argues that the affiant fails to lay a proper foundation for admission of the business records under CPLR 4518, lacks personal knowledge of prior servicers' record-keeping practices, failed to authenticate the documents annexed, and relied on summaries prepared in anticipation of litigation rather than records created with an independent business purpose, thereby rendering the proofs inadmissible hearsay and violative of the best evidence rule. Finally, Defendant asserts that because Plaintiff was afforded a full and fair opportunity to prove damages to the referee and failed to do so, Plaintiff is only entitled to nominal damages, with the mortgage, Judgment, and notice of pendency subject to cancellation upon payment of the nominal sum prior to any scheduled foreclosure sale.

In opposition to the cross-motion and in further support of its motion, Plaintiff argues that Defendant's cross-motion is meritless because Defendant failed to submit any admissible evidence identifying specific errors in the referee's computations. Plaintiff provides that it established its prima facie entitlement to Judgment, which shifted the burden to Defendant, who failed to raise a factual or legal basis to defeat confirmation here. Further, Plaintiff asserts that the referee properly relied on the servicer's affirmation, which laid a sufficient foundation for the admission of the

records, including prior servicer records that were incorporated and relied upon. Finally, Plaintiff argues that the absence of the servicing agreement referenced in the power of attorney is not fatal, as the power of attorney itself adequately establishes authority, the servicing agreement contains proprietary information, and that the agreement can be provided if necessary.

Finally, in reply to Plaintiff's opposition papers and in further supports of its cross-motion, Defendant argues that the Report must be rejected in its entirety as it is solely based on inadmissible evidence, which Plaintiff failed to address in its opposition papers. Defendant maintains that the affirmation proffered by Plaintiff in support of its motion was executed by its purported servicer, whose authority depends on an unproduced servicing agreement that renders the affirmation unauthorized as a matter of law. Moreover, Defendant asserts that the affiant failed to establish his personal knowledge of the servicer's business practices for creating and incorporating records from other servicers, failed to identify the makers of such records, and failed to lay a proper foundation for their admission as business records. Finally, Defendant argues it was Plaintiff's burden to prove the amount due with admissible evidence and failed to meet its burden. For the foregoing reasons, Plaintiff's motion is DENIED and Defendant's cross-motion is GRANTED.

DISCUSSION

I. Plaintiff's Motion for a Judgment of Foreclosure and Sale is DENIED.

A plaintiff seeking a judgment of foreclosure and sale must submit evidence in admissible form of the amount due under the note and mortgage. "The report of a referee should be confirmed whenever the findings are substantially supported by the record, and the referee has clearly defined the issues and resolved matters of credibility." *Deutsche Bank Natl. Trust Co. v. Light*, 235 A.D.3d 946, 949 (2d Dep't 2025). "It is fundamental to the law of damages that one complaining of injury

has the burden of proving the extent of the harm suffered.” *Berley Indus., Inc. v. New York*, 45 N.Y.2d 683, 686 (1978). *See also Lewin v. Levine*, 146 A.D.3d 768, 769 (2d Dep’t 2017) (“It is fundamental to the law of damages that one complaining of injury has the burden of proving the extent of the harm suffered, must demonstrate actual damages, and must lay a basis for a reasonable estimate of the extent of the harm”). A hearing to compute the amount due under the note and mortgage is the functional equivalent of an inquest on damages, which must be based upon admissible evidence. *Wilmington Sav. Fund Socy. FSB v. Moriarty-Gentile*, 190 A.D.3d 890, 893 (2d Dep’t 2021). Without admissible evidence, the Court must find that the referee’s findings are not substantially supported by the record and deny a request to confirm the report. *Wells Fargo Bank, N.A. v. Campbell*, 196 A.D.3d 726 (2d Dep’t 2021).

“CPLR 4403 provides that, [u]pon the motion of any party . . . , the judge required to decide the issue may confirm or reject, in whole or in part, . . . the report of a referee to report.” *U.S. Bank N.A. v. Maher*, 219 A.D.3d 1372, 1374 (2d Dep’t 2023). Here, the Report is not substantially supported by the record. Specifically, the Report relies entirely on the affirmation of Scott MacKintosh, Assistant Secretary of Fay Servicing, LLC (“Fay”), Plaintiff’s purported attorney in fact, pursuant to a Limited Power of Attorney dated October 3, 2019. *See* Affirmation of Amount Due of Scott MacKintosh (“MacKintosh Aff.”) dated April 22, 2025, Limited Power of Attorney dated October 3, 2019, NYSCEF Doc. No. 81 at 1, 6.

First, the MacKintosh Affirmation is inadmissible as the power of attorney attached to Plaintiff’s motion papers is insufficient to demonstrate Fay’s authority to execute the affirmation on Plaintiff’s behalf. *See US Bank N.A. v. Cusati*, 185 A.D.3d 870 (2d Dep’t 2020), citing *HSBC Bank USA, N.A. v. Betts*, 67 A.D.3d 735, 888 N.Y.S.2d 203 (2d Dep’t 2009). Here, the power of attorney is expressly limited and only authorizes document execution if “such documents are

required or permitted under the terms of the Servicing Agreement.” See Limited Power of Attorney dated October 3, 2019, NYSCEF Doc. No. 81 at 6. However, Plaintiff’s counsel has not produced the Agreement as part of its opposition papers.¹ Therefore, the affiant’s purported authority to make representations on Plaintiff’s behalf is not established. *U.S. Bank N.A. v. Tesoriero*, 204 A.D.3d 1066 (2d Dep’t 2022).

Second, “[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.” *Citibank, N.A. v. Cabrera*, 130 A.D.3d 861, 861 (2d Dep’t 2015). Here, Mr. MacKintosh does not attest to personal knowledge of Fay’s procedures for incorporating records from prior servicers, does not identify the specific previous servicers, and annexes records from Rushmore Loan Management Services (“Rushmore”) that do not in fact appear to be “incorporated” into Fay’s records as they are separate from any of Fay’s alleged records. See MacKintosh Aff., NYSCEF Doc. No. 81 at 1, 152. Therefore, the records and Mr. MacKintosh’s testimony are inadmissible hearsay. See *e.g. PS Funding, Inc. v. 1641 Park Place, LLC*, 239 A.D.3d 681 (2d Dep’t 2025).

Third, the affiant fails to lay a sufficient foundation for the admission of the specific records. While Mr. MacKintosh states in conclusory terms that Fay maintains “business records” or “up-to-date electronic records” and refers to these as “loan records,” he does not lay a specific foundation for what is annexed as Exhibit F to Plaintiff’s motion, nor does he contend that what is annexed is actually a loan record. See Loan Records, NYSCEF Doc. No. 81 at 143. Exhibit F includes various documents including several summaries of charges and what appears to be Rushmore’s records. None of these documents are specifically authenticated, let alone with any

¹ Plaintiff counsel’s contention in opposition that the Servicing Agreement is proprietary and confidential is specious, as the Agreement could have been provided with necessary redactions. In any event, the statement of counsel lacks probative value and Plaintiff does not proffer a substantiating affidavit for this proposition.

detail. *See In re Leon R.R.*, 48 N.Y.2d 117, 122 (1979) (“Each report in the files and each of the statements contained in those reports were admissible only if they qualified as business records”), citing CPLR 4518 (a). Therefore, the records annexed are inadmissible. *See Citimortgage, Inc. v. Leitman*, 201 A.D.3d 864 (2d Dep’t 2022); *see also Vt. Comm’r of Banking & Ins. v. Welbilt Corp.*, 133 A.D.2d 396, 397 (2d Dep’t 1987) (“plaintiff sought to introduce the *entire* contents of the policy folders, which contained numerous extraneous documents totally unrelated to the instant claims, without demonstrating that each of the documents in the three files qualified as a business record pursuant to CPLR 4518”) (italics in original).

Fourth, if a proffered record qualifies as an “electronic record” as defined under State Technology Law 302 (2), the proponent must also provide sufficient information to establish that the proffered record “is a true and accurate representation” of the electronic record pursuant to CPLR 4518 (a). Here, the affiant provides that Fay’s records are electronic, but does not attest that the records annexed are true and accurate representations of such electronic records. This is particularly relevant here as the records attached appear to be from Rushmore. This Court agrees with the Honorable Derefim B. Neckles’s holding in *Fed. Natl. Mtge. Assn. v. NB 1168 Realty, LLC*, Sup. Ct., Kings Co., July 10, 2024, Neckles, J., index No. 18271/08, NYSCEF Doc. No. 137 at 3 (“The Harris Affidavit does not adequately address these criteria. Specifically, Ms. Harris did not attest that the records were an accurate representation of the electronic record as required by CPLR 4518 (a). Furthermore, there was no evidence provided that demonstrated that the initial entries were made by an individual under a business duty to report the information to the entrant”). *See also Palisades Collection, LLC v. Kedik*, 67 A.D.3d 1329 (2d Dep’t 2009).

Finally, Mr. MacKintosh does not attest that each participant in the creation of the purported records acted pursuant to a business duty, from the informant and declarant, to the final entrant.

“More than 85 years ago, in *Johnson v Lutz* (253 NY 124, 170 NE 517 [1930]), this Court imposed an additional requirement for admissibility that is not set forth in the statute—specifically, that [u]nless some other hearsay exception is available . . . , admission may only be granted where it is demonstrated that the informant has personal knowledge of the act, event or condition and he [or she] is under a business duty to report it to the entrant. Pursuant to this rule, [i]f the informant was not under a business duty to impart the information, but the entrant was under a business duty to obtain and record the statement, the entry is admissible to establish merely that the statement was made . . . [but] another hearsay exception is necessary in order to receive the statement *for its truth*.” *People v. Patterson*, 28 N.Y.3d 544, 550 (2016) (Internal quotation marks and citations omitted). “In addition, each participant in the chain producing the record, from the initial declarant to the final entrant, must be acting within the course of regular business conduct or the declaration must meet the test of some other hearsay exception. Thus, not only must the entrant be under a business duty to record the event, but the informant must be under a contemporaneous business duty to report the occurrence to the entrant as well. The reason underlying the business records exception fails and, hence, the statement is inadmissible hearsay if any of the participants in the chain is acting outside the scope of a business duty.” *In re Leon R.R.* 22 N.Y.2d at 122-123 (Internal citations omitted). Therefore, the records are inadmissible under *Johnson*, *Patterson*, and *Leon*.

While incorporated previous servicers’ records may be admissible, the requirements are not met here. It is well settled that the “mere filing of papers received from other entities, even if they are retained in the regular course of business, is insufficient to qualify the documents as business records” *Std. Textile Co. v. Natl. Equip. Rental, Ltd.*, 80 A.D.2d 911, 911(2d Dep’t 1981). The Court of Appeals explained in *People v. Cratsley*, 86 N.Y.2d 81, 90 (1995), that “[t]he reason for this rule is that [s]uch papers simply are not made in the regular course of business of the

recipient, who is in no position to provide the necessary foundation testimony as to the regularity and timeliness of their preparation or the source of information contained in the records. Nor, generally, would the recipient be aware whether the information was imparted by one under a ‘business duty’ to report to the entrant.” (Internal quotation and citation omitted). While it is true that “[i]t would clearly defeat the utility of CPLR 4518 to require the testimony of all persons involved in creating the record” (*Bank of N.Y. Mellon v. Gordon*, 171 A.D.3d 197, 205 [2d Dep’t 2019]), admissibility as a business record requires testimony as to the specific entity’s recordkeeping practices and procedures and the entrant and informant’s business duties. Here, there is no evidence or testimony that the previous servicers’ records were created for the successor servicer. *See Fed. Natl. Mtge. Assn.*, 18271/08, NYSCEF Doc. No. 137 at 3 (finding that although the affiant claimed that Nationstar incorporated and relied upon the records annexed, the requirements of CPLR 4518 (a) were not met, as the records must conform even if incorporated by a subsequent servicer).

Therefore, although Mr. MacKintosh recites the statutory language of CPLR 4518 (a) in a conclusory manner and describes Fay’s recordkeeping practices, he fails to provide the factual foundation required to submit the annexed documents as business records. The affirmation does not authenticate any specific exhibit, identify the makers of the records, or establish that each participant in the information chain acted under a business duty as required by the Court of Appeals, or explain the circumstances under which the records were created. He does not tie any individual exhibit, in particular the purported Rushmore payment history and summaries, to established business procedures, demonstrate that the documents were created at or near the time of the events recorded, or establish that the exhibits are true and accurate representations of the electronic records. *See 76-82 St. Marks, LLC v. Gluck*, 147 A.D.3d 1011, 1011 (2d Dep’t 2017)

(holding that “the proponent of the secondary evidence has a heavy burden of establishing, preliminarily to the court’s satisfaction, that it is a reliable and accurate portrayal of the original”). Nor does he show that the records were generated for an independent business purpose rather than in anticipation of litigation, or that the amounts claimed are accurate. *See Natl. States Elec. Corp. v. LFO Constr. Corp.*, 203 A.D.2d 49, 50 (1st Dep’t 1994) (excluding document from evidence where “the document was not prepared in the regular course of business so as to qualify for admission as a business record, but, rather, was prepared in anticipation of litigation”). Instead, the affirmation relies on conclusory, boilerplate assertions that somewhat track statutory language without supplying the specific facts required by controlling authority.

As a result, the proffered documents constitute inadmissible hearsay, the Report lacks an evidentiary basis, and Plaintiff’s motion to confirm the Report is DENIED as a matter of law. Moreover, Defendant’s cross-motion to reject the Report is GRANTED.

II. Defendant’s Cross-Motion for Judgment for Nominal Damages is GRANTED.

The Court now turns to Defendant’s cross-motion regarding entry of a Judgment for nominal damages. In *Citimortgage, Inc. v. Kidd*, 148 A.D.3d 767 (2d Dep’t 2017), the referee’s findings on the total due upon the mortgage were not substantially supported by the record, and the Appellate Division, Second Department, remitted the matter for a new report. However, *Kidd* and its progeny do not require unlimited Mulligans and endless litigation on a trial-and-error basis.

This Court agrees with the Honorable Menachem M. Mirocznik, in a case directly on point, that “[t]here is a significant distinction between what appears to be the principal enunciated in *Kidd* in remitting the matter back to the referee for [a] new report and permitting the submission of additional or new evidence which should have been submitted to the referee or the Court in the

first instance.” *U.S. Bank N.A. v. Schwartz*, 2025 NY Slip Op 25271 at 13 (Sup. Ct. Kings Co. 2025). As Judge Mirocznik notes, “[t]here is unfortunately no Appellate Authority addressing when it would be a proper, improvident, or an abuse of discretion, to order a new hearing under CPLR 4403.” *Id.* However, CPLR 2221 (e) and 5015 (a) (2) require that a new hearing for the submission of new, previously unrepresented evidence may only be ordered where a party can show that the new evidence was previously unavailable despite due diligence. “That rule is both sensible and dispositive here.

Plaintiff has already been afforded its right to prove its damages at the reference before the referee, not once, but twice. Plaintiff came up short. Under settled law, Plaintiff's inability to carry its burden does not entitle it to yet another attempt. To hold otherwise would subvert the finality of trials and convert the orderly administration of justice into an endless cycle of trial-and-error litigation, with the expense borne by the taxpayer and the burden borne by the courts.” *Id.* at 18. Therefore, a new hearing pursuant to CPLR 4403 for the submission of new, previously unrepresented evidence may only be ordered where a party can show that the new evidence was previously unavailable despite due diligence. *See Galiber v. Previte*, 40 N.Y.2d 822 (1976), citing *4 Weinstein-Korn-Miller*, NY Civ Prac, ¶4403; *HSBC v. Assanah*, 2025 NY Slip Op 32716(U) (Sup. Ct. Kings Co. 2025) (finding that “Plaintiff appears to be operating under the misapprehension that it can resubmit to the referee as many times as necessary until he comes around to its position. That is not so. The referee is correct that Plaintiff needed to provide all of the evidence that it wished to have considered and could not proffer additional evidence after he issued his report”). As plaintiff makes no such showing, and is not entitled to a new hearing. Accordingly, this Court, in its discretion, will not sua sponte award Plaintiff a new hearing pursuant to CPLR 4403, to the extent authority even exists for it to do so.

Further, principles of judicial economy preclude unlimited opportunities for plaintiffs to correct their unjustified failures to meet their burden of proof. “This is especially true when this Court has thousands of open foreclosure cases and hears approximately 75 motions on its weekly calendar ... this specific issue *actively* inundates this Court’s already burdened docket with repetitive motions seeking confirmation of reports based on consistently deficient papers.” *U.S. Bank N.A.*, 2025 NY Slip Op at 20; *see also Amos Fin. LLC v. Crapanzano*, 2022 NY Slip Op 34864(U) (Sup. Ct. Rockland Co. 2022) (declining to afford foreclosing bank fifth opportunity to establish amounts owing). As such, this Court joins Judge Mirocznik in the “hopes that the Appellate Division, the Court of Appeals or the Legislature will address this important issue from the perspective of judicial economy.” *U.S. Bank N.A.*, 2025 NY Slip Op at 23. This Court likewise experiences a heavy docket of dozens of repetitive, deficient foreclosure motions each week.

Plaintiff is entitled to nominal damages. A referee’s report serves the “function of an inquest on damages, which must be based upon admissible evidence.” *Wilmington Sav. Fund Socy., FSB*, 190 A.D.3d at 893; *see HSBC v. Cherestal*, 2025 NY Slip Op 30602(U) (Sup. Ct. Kings Co. 2025, Edwards, J.). Here, Plaintiff fails to prove its damages because the Report is not based on admissible evidence. Generally, post-trial, failure to prove a prima facie case will result in dismissal of the action with prejudice (*Emigrant Bank v. Solimano*, 209 A.D.3d 153 [2d Dep’t 2022], citing CPLR 5013). However, where as here, liability has been determined, it is the law of the case that some damages are owed. Thus, the appropriate remedy is nominal damages and not dismissal. Here, no party has moved for dismissal, and in any event, liability was established on summary judgment. Therefore, dismissal is inappropriate. Plaintiff is awarded nominal damages. *See Okeke v. Ewool*, 106 A.D.3d 709 (2d Dep’t 2013) (awarding \$1.00 nominal damages for failure to prove actual damages); *see also Weinrauch v. Kashkin*, 78 A.D.2d 852 (2d Dep’t 1980), *Lease*

Auto Plan, Inc. v. Technique Dental Lab Co., 49 A.D.2d 927 (2d Dep't 1975) (reversing dismissals and entering judgment for nominal damages upon failure to establish prima facie case on damages).

In opposition to Defendant's cross-motion inasmuch as it seeks nominal damages, Plaintiff's sole contention is that Defendant has cited no authority for the relief. The Court finds Plaintiff's argument is without merit. Plaintiff did not seek another evidentiary submission or a trial, and there is ample authority for this relief. Plaintiff is entitled to an award of nominal damages in the amount of \$1.00.

Foreclosure judgments must preserve the mortgagor's equitable right of redemption by providing for satisfaction of the mortgage upon full payment of the adjudged amount (*Grossman v. Pendant Realty Corp.*, 221 A.D.2d 240 (1st Dep't 1995)). Thus, consistent with *Grossman* and the common law right of redemption, Defendant may redeem by unconditionally tendering the \$1.00 nominal damages award before the foreclosure auction. Such payment may be made by tendering the award to Plaintiff, its counsel of record, or its current loan servicer by mail, wire, or other method, and upon such payment the mortgage lien shall be deemed satisfied and discharged of record. Finally, payment of the adjudged amount must also terminate the notice of pendency in this action. See e.g. *Nationstar Mtge., LLC v. Davis*, 240 A.D.3d 790 (2d Dep't 2025); see also *Bayview Loan Servicing, LLC v. Starr-Klein*, 193 A.D.3d 807 (2d Dep't 2021).

CONCLUSION

Accordingly, it is hereby

ORDERED, that Plaintiff's motion is DENIED and Defendant's cross-motion is GRANTED, and the Referee's Report is rejected. The Court has considered the additional

contentions of the parties not specifically addressed herein. To the extent that any relief requested was not addressed by the Court, it is hereby DENIED; and it is further

ORDERED, that a Judgment is hereby entered in favor of Plaintiff, fixing the amount due under the note and mortgage in the amount of \$1.00; and it is further

ORDERED AND ADJUDGED, that Defendant(s), their counsel, and any person or entity with the equity of redemption may redeem the property by the unconditional tender of payment of \$1.00 by mail, wire, or other method, to Plaintiff, its counsel of record (Knuckles & Manfro, LLP), or its current loan servicer (Fay Servicing, LLC) at any time prior to the foreclosure sale, and upon such tender, the (i) mortgage bearing date July 22, 1998, granted by Israel Gold (deceased) to GFI Mortgage Bankers Inc. to secure the sum of \$227,150.00, which was recorded on Reel 4351, Page 1810 in the Office of the County Clerk/City Register of Kings County on December 18, 1998; (ii) mortgage bearing date February 27, 2002, granted by Philip Freund and Israel Gold (deceased) to GFI Mortgage Bankers Inc. to secure the sum of \$81,103.71, which was recorded on Reel 5575, Page 1942 in the Office of the County Clerk/City Register of Kings County on April 19, 2002; and the (iii) consolidation, extension, and modification agreement dated February 27, 2002, granted by Philip Freund and Israel Gold (deceased) to GFI Mortgage Bankers Inc., which was recorded on Reel 5575, Page 1964 in the Office of the County Clerk/City Register of Kings County on April 19, 2002, wherein the mortgages specified under (i) and (ii) were consolidated to form a new, single lien in the amount of \$300,000.00 and which mortgages as consolidated were ultimately assigned to Plaintiff, as evidenced by the filing dated June 10, 2020 under CRFN 2020000189543, and recorded on July 2, 2020 with the Kings County Clerk/City Register, which, pursuant to this judgment, shall be deemed satisfied, cancelled, and discharged of record; and it is further

ORDERED, that the Notice of Pendency filed March 20, 2024 be cancelled, and the (i) mortgage bearing date July 22, 1998, granted by Israel Gold (deceased) to GFI Mortgage Bankers Inc. to secure the sum of \$227,150.00, which was recorded on Reel 4351, Page 1810 in the Office of the County Clerk/City Register of Kings County on December 18, 1998; (ii) mortgage bearing date February 27, 2002, granted by Philip Freund and Israel Gold (deceased) to GFI Mortgage Bankers Inc. to secure the sum of \$81,103.71, which was recorded on Reel 5575, Page 1942 in the Office of the County Clerk/City Register of Kings County on April 19, 2002; and the (iii) consolidation, extension, and modification agreement dated February 27, 2002, granted by Philip Freund and Israel Gold (deceased) to GFI Mortgage Bankers Inc., which was recorded on Reel 5575, Page 1964 in the Office of the County Clerk/City Register of Kings County on April 19, 2002, wherein the mortgages specified under (i) and (ii) were consolidated to form a new, single lien in the amount of \$300,000.00 and which mortgages as consolidated were ultimately assigned to Plaintiff, as evidenced by the filing dated June 10, 2020 under CRFN 2020000189543, and recorded on July 2, 2020 with the Kings County Clerk/City Register, which, pursuant to this Judgment, shall be deemed satisfied, cancelled, and discharged of record upon the presentation or filing on NYSCEF of a copy of an affirmation attesting to the unconditional tender of payment of \$1.00 by mail, wire, or other method to Plaintiff, its counsel of record (Knuckles & Manfro, LLP), or its current loan servicer (Fay Servicing, LLC) at any time prior to the foreclosure sale, and the Clerk and Office of the City Register shall note each cancellation, satisfaction, and discharge on its records; and it is further

ORDERED, that the Office of the City Register is directed to accept and record a certified copy of the Judgment, and accept and record a copy of the affirmation attesting to the unconditional tender of payment of \$1.00 by mail or otherwise to Plaintiff, its counsel of record (Knuckles &

Manfro, LLP), or its current loan servicer (Fay Servicing, LLC), against the property known as 1868 61st Street, Brooklyn, New York 11204, also known as Block 5526, Lot 34, and more particularly described in Schedule A annexed hereto, to mark its records accordingly.

This Constitutes the Decision and Order of the Court.

ENTER:



Hon. Cardyn Walker-Diallo, J.S.C.

**SCHEDULE A
DESCRIPTION**

Block 5526 and Lot 34

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at a point on the Southerly side of 61st Street, distant 100 feet Westerly from the corner formed by the intersection of the Southerly side of 61st Street with the Westerly side of 19th Avenue;

RUNNING THENCE Southerly and parallel with 19th Avenue, 100 feet;

THENCE Westerly and parallel with 61st Street, 25 feet;

THENCE Northerly and again parallel with 19th Avenue and part of the distance through a party wall, 100 feet to the Southerly side of 61st Street;

THENCE Easterly along the Southerly side of 61st Street, 25 feet to the point or place of BEGINNING,

Premises known as 1868 61st Street, Brooklyn, New York 11204