JPMorgan Chase Bank, N.A. v Lefkowitz
2026 NY Slip Op 31229(U)
March 26, 2026
Supreme Court, Kings County
Docket Number: Index No. 521304/2019
Judge: Menachem M. Mirocznik
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At IAS Part FRP5 of the Supreme Court of the State of New York, County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, NY 11201, on the 26th of March 2026

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

JPMorgan Chase Bank, National Association,

Plaintiff,

-against-

Shifra Lefkowitz; Yehuda Lefkowitz; Benjamin Schwartz; Elimelech Wagschal; Leopold Lefkowitz; Signature Bank; Citibank (South Dakota), NA; American Express Bank FSB; Board of Managers of The 412 Bedford Avenue Condominium; New York City Department of Finance; City of New York Environmental Control Board; City of New York Parking Violations Bureau; City of New York Transit Adjudication Bureau; "John Doe"; "John Doe"; "John Doe"; "John Doe",

Defendants.

Index No. 521304/2019

Decision, Order and Judgment (Motion Seq. 3 and 4)

Papers	Numbered
Notice of Motion	NYSCEF Doc. 83-91
Notice of Cross-Motion/Opposition Papers	NYSCEF Doc. 94-96
Opposition to Cross-Motion/Reply Papers	NYSCEF Doc. 98-99
Reply to Cross-Motion Papers	NYSCEF Doc. 100-101

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

Relevant Procedural and Factual History

This action was commenced on September 27, 2019, seeking to foreclose a mortgage (the "mortgage") executed by defendants Shifra Lefkowitz and Yehuda Lefkowitz (the "defendants"), which encumbers the property known as 412 Bedford Avenue, Unit 3, Brooklyn, NY 11249 (the "property").

The defendants did not timely answer or appear.

Settlement conferences were held on February 18, 2020 and March 11, 2020, after which the matter was released from the settlement part.

On August 1, 2023, the Court granted plaintiff's motion for default judgment and order of reference. The Court found that defendants' service objections had been waived by counsel's prior appearance. The mortgage was reformed to substitute the correct legal description, and the caption was amended. Referee Steven J. Baker, Esq. was appointed to compute the amount due pursuant to RPAPL §1321.

On March 15, 2024, the referee issued his purported report computing $362,624.51 as of December 4, 2023, consisting of $238,903.09 in principal and $123,721.42 in interest at variable rates. The referee's report was based solely on documentary evidence, principally the affidavit of Samara Narvaez-Avila ("Ms. Narvaez-Avila" or the "Narvaez-Avila Affidavit"), a Vice President — Document Execution of JPMorgan Chase Bank, N.A., sworn December 4, 2023.

On July 11, 2024, the Court granted plaintiff's motion to amend the summons and complaint to add Benjamin Schwartz, Elimelech Wagschal, and Leopold Lefkowitz as necessary party defendants.

Plaintiff now moves to confirm the report of the referee and for a judgment of foreclosure and sale and related relief (MS3). Plaintiff contends in effect that the report of the referee is substantially supported by the record and should therefore be confirmed.

Defendants oppose and cross-move to reject the report, contending it is not substantially supported by the record and relies on inadmissible hearsay, and seeking entry of a judgment for nominal damages in the sum of $1 and related relief (MS4). Specifically, defendants argue that Ms. Narvaez-Avila failed to properly identify the approximately 21 pages of documents appended between the affidavit and Exhibit A; failed to attest to personal knowledge of the practices and procedures for creating the records; failed to lay a factual foundation sufficient to authenticate each of the approximately 254 pages of exhibits; failed to attest that the informants and entrants acted under a business duty; failed to attest that electronic records are true and accurate representations; failed to provide evidence supporting the variable interest rate calculations over a ten-year delinquency; and that the only document specifically identified as showing amounts due — Exhibit D — reflects $200,481.15, which contradicts the referee's computation of $362,624.51. Defendants further argue that the proffered documents are litigation summaries inadmissible as business records, and that plaintiff failed to establish the reasonableness of the attorney fees and costs sought.

In opposition to the cross-motion and in further support of the motion, plaintiff argues that the referee's findings should be confirmed where substantially supported by the record; that Ms. Narvaez-Avila laid sufficient foundation for the business records, the review of the records "vests the affiant with personal knowledge"; that the $200,481.15 shown on Exhibit D represents the reinstatement amount for 122 past due payments, not the total amount owed; that defendants have not produced admissible evidence showing the computations were incorrect; and that the cross-motion for $1 nominal damages is "unprecedented" and would result in an unjust windfall to defendants despite their unrefuted default. Plaintiff further argues that even if the computation is inadequate, the Court should re-refer to the referee or perform its own computation rather than award nominal damages.

In reply, defendants argue that plaintiff's reliance on cases permitting hearsay in administrative hearings is misplaced; that plaintiff's failure to address the unidentified 21 pages of documents constitutes a concession; that plaintiff's silence regarding Exhibit D as a litigation summary is likewise a concession; and that plaintiff failed to address four specific evidentiary deficiencies: the absence of attestation to knowledge of creation practices, the absence of attestation that records were created per routine business practices, the absence of a business duty attestation, and the absence of an electronic record attestation. Defendants further cite this Court's own decision in *U.S. Bank N.A. as Tr. for CMLTI 2007-AR1 v Schwartz*, 2025 NY Slip Op 25271 [Sup Ct, Kings County, Dec. 8, 2025] in support of their request for $1 nominal damages.

Discussion

CPLR 4403 provides in relevant part that "[u]pon the motion of any party or on his own initiative, the judge required to decide the issue may confirm or reject, in whole or in part...the report of a referee to report; may make new findings with or without taking additional testimony; and may order a new trial or hearing...***Where no issues remain to be tried the court shall render decision directing judgment in the action***." [emphasis added]

Moreover, under CPLR 4403, the Court has the express authority to act "on its own initiative" regardless of whether parties so move. See *Breland v Motor Veh. Acc. Indem. Corp.*,24 AD2d 881 [2d Dept 1965]["Rule 4403 of the CPLR was specifically enacted, in part, to overrule the holding in Rosenfield v. Rosenfield, 272 App.Div. 547, 74 N.Y.S.2d 82, that the court must await a formal motion before confirming or rejecting a referee's report, and to reaffirm the court's power to act on its own initiative."]

"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...The referee's findings and recommendations are advisory only and have no binding effect on the court, which remains the ultimate arbiter of the dispute." *Citimortgage, Inc. v Kidd*, 148 AD3d 767 [2d Dept 2017][citations omitted]

A hearing for the purposes of computing the amount due under the note and mortgage—whether conducted before a referee or the court—is the procedural equivalent of an inquest on damages. See *Wilmington Sav. Fund Socy., FSB v Moriarty-Gentile*, 190 AD3d 890, 893 [2d Dept 2021]["The referee's report served the function of an inquest on damages, which must be based upon admissible evidence] *Wells Fargo Bank, N.A. v Bajnauth*, 241 AD3d 759 [2d Dept 2025]["At an inquest, the plaintiff bears the burden of setting forth a prima facie case as to [the amount due on the mortgage."], quoting *Bobbo Prop. Mgt., Inc. v Faulkner*, 235 AD3d 615 [2d Dept 2024];

Absent sufficient admissible evidentiary support, the Court is bound to find that "the referee's findings with respect to the total amount due upon the mortgage [a]re not substantially supported by the record" and must deny a request for its confirmation. *Wells Fargo Bank, N.A. v Campbell*, 196 AD3d 726, 727 [2d Dept 2021]) citing *U.S. Rof III Legal Tit. Trust 2015-1 v John*, 189 AD3d 1645 [2d Dept. 2020]

Pursuant to CPLR § 4403, any party may move to confirm or reject a referee's report, and the Court must reject a referee's report when it is not supported by admissible evidence. See *HSBC*

Bank USA, N.A. v Cherestal, 178 AD3d 680 [2d Dept 2019]; *JNG Constr., Ltd. v Roussopoulos*, 170 AD3d 1136 [2d Dept 2019] [To the extent the referee's report was not supported by admissible evidence, it "should…have been rejected."]

The Court notes that it may confirm the report *only* and *when*, the referees finding are substantially supported by the record. If the Court has the authority to reject a report "[u]pon the motion" or "on its own initiative", the Court must also independently determine whether the referee's report is substantially supported by the record even in the absence of motion of a party seeking to reject same. Otherwise, there would be no way for a Court to reject a referee's report "on its own initiative" rendering the language in the statute superfluous. CPLR 4403 does not suggest that this Court has a ministerial duty to rubberstamp unsupported reports.

Initially, plaintiff's contention that a party in default may not challenge the amounts due is without merit. While a party in default admits traversable allegations in the complaint, the quantum of damages is always subject to challenge. See *Wilmington Sav. Fund Socy., FSB v Moriarty-Gentile*, 190 AD3d 890, 892 [2d Dept 2021][" The fact that the defendants defaulted in appearing did not mean that they were precluded from contesting the amount owed."]; *Wells Fargo Bank, N.A. v Campbell*, 196 AD3d 726 [2d Dept 2021]["The fact that the defendant defaulted in appearing did not mean that she was precluded from contesting the amount owed."]; *McClelland v Climax Hosiery Mills*, 252 NY 347, 351 [1930] ["The defendant, by failing to answer, admits all traversable allegations contained in the complaint…An allegation of damage is not, however, a traversable allegation…It is not admitted by a defendant's failure to answer.][internal citations omitted]; *Reynolds Sec., Inc. v Underwriters Bank & Tr. Co.*, 44 NY2d 568, 572 [1978]["a [defaulting] defendant who has appeared is entitled to…a full opportunity to cross-examine witnesses, give testimony and offer proof in mitigation of damages."]

Moreover, plaintiff's contentions that defendant failed to submit an affidavit or other admissible evidence contradicting the referee's computation and that it need not comply with CPLR 4518 where the evidence "bears indicia of reliability" or is "relevant and highly probative" are baseless.

First, a plaintiff seeking a judgment of foreclosure and sale bears the burden of submitting evidence in admissible form of the amount due under the note and mortgage, the burden does not lay with defendant, the same burden all other civil plaintiffs face. See *Wilmington Sav. Fund Socy., FSB v Moriarty-Gentile*, 242 AD3d 1150, 1152 [2d Dept 2025]["At an inquest, the plaintiff bears the burden of setting forth a prima facie case as to [the amount due on the note]"] see also generally *Berley Industries, Inc. v City of New York*, 45 NY2d 683 [1978]["It is fundamental to the law of damages that one complaining of injury has the burden of proving the extent of the harm suffered."]; *Lewin v Levine*, 146 AD3d 768 [2d Dept 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."]

Second, CPLR 101 provides in relevant part that "[t]he civil practice law and rules shall govern the procedure in civil judicial proceedings in all courts of the state and before all judges, except where the procedure is regulated by inconsistent statute." The administrative law cases cited by plaintiff have no applicability in action to foreclose a mortgage which is governed by the CPLR.

The cases mandating strict compliance with CPLR 4518 for admissibility of business records are legion and have been strictly enforced. See e.g. *Bank of New York Mellon v Gordon*, 171 AD3d 197 [2d Dept 2019]; *IndyMac Fed. Bank, FSB v Vantassell*, 187 AD3d 725, 727 [2d Dept 2020]; *U.S. Bank N.A. v Kaur*, 177 AD3d 1016 [2d Dept 2019]; *Deutsche Bank Natl. Tr. Co. v Dennis*, 181 AD3d 864, 868-69 [2d Dept 2020]

Therefore, plaintiff's contentions are without merit.

Turning to the admissibility of plaintiff's evidence, defendant is correct that the referee's report is not substantially supported by the record and must be rejected. The referee's report relies entirely on the Narvaez-Avila Affidavit which is hearsay and is supported by inadmissible evidence lacking sufficient foundation thereby rendering the contentions "hearsay within hearsay". See *People v Ortega*, 15 NY3d 610 [2010]; *People v Patterson*, 28 NY3d 544 [2016]

"[T]o establish a foundation for the admission of a business record, the proponent of the record must satisfy the requirements identified in the statute (*see* CPLR 4518[a]). ***First***, the proponent must establish that the record be made in the regular course of business—essentially, that it reflect a routine, regularly conducted business activity, and that it be needed and relied on in the performance of functions of the business.... ***Second***, the proponent must also demonstrate that it be the regular course of such business to make the record ... essentially, that the record be made pursuant to established procedures for the routine, habitual, systematic making of such a record... ***Third,*** the proponent must establish that the record be made at or about the time of the event being recorded—essentially, that recollection be fairly accurate and the habit or routine of making the entries assured." *Bank of New York Mellon v Gordon*, 171 AD3d 197 [2d Dept 2019][internal citations and quotation marks omitted and emphasis added]

"In addition to these statutory requirements, the Court of Appeals has held 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" *Id.* citing *Matter of Leon RR*, 48 NY2d 117 [1979].

Lastly, if the proffered record is an "electronic record", the proponent must also provide sufficient information to establish that the proffered record "is a true and accurate representation" of the electronic record. See CPLR 4518[a]; See e.g. *Palisades Collection, LLC v Kedik*, 67 AD3d 1329 [4th Dept 2009]; *Speirs v Not Fade Away Tie Dye Co.*, 236 AD2d 531, 531 [2d Dept 1997].

For several reasons, the Court finds that plaintiff failed to sustain its prima facie burden of submitting evidence in admissible form demonstrating the amount due under the note and mortgage.

First, as correctly noted by defendants, Ms. Narvaez-Avila failed to specifically identify or incorporate the approximately 21 pages of documents appended between the affidavit and Exhibit A. These documents are not referenced anywhere in the affidavit, and no foundation has been laid for their admission. Indeed, the referee does not attest to having reviewed these records. See *e.g. Citimortgage, Inc. v Sultan*, 230 AD3d 1292 [2d Dept 2024]["Although the plaintiff submitted payment records allegedly relating to the defendant's mortgage loan in support of its motion, [plaintiff's affiant] did not indicate that those records were attached to, or otherwise incorporated

into, her affidavit. Rather, those records were attached as an exhibit to an affirmation of the plaintiff's attorney, and the attorney did not allege personal knowledge of the plaintiff's record-keeping practices and procedures…Under these circumstances, the plaintiff failed to lay the proper foundation for the admission of the payment records into evidence and failed to establish, prima facie, the defendant's default in payment"][internal citations omitted]; *See also Citimortgage, Inc. v Rooney*, 242 AD3d 695, 697 [2d Dept 2025] [the "business records were not identified by [plaintiff's affiant] or otherwise incorporated into[] her affidavit. Rather, those records were attached as an exhibit to [a letter] of the plaintiff's attorney, and the attorney did not allege personal knowledge of the plaintiff's record-keeping practices and procedures…Under these circumstances, the plaintiff failed to lay a proper foundation for the admission of the payment records into evidence, and the…affidavit regarding the amount due remained inadmissible hearsay…For this reason, the referee's findings were not substantially supported by the record"][internal citations and quotation marks omitted].

Therefore, alleged records attached before Exhibit A of the Narvaez-Avila are inadmissible and cannot be considered.

Additionally, the only document Ms. Narvaez-Avila specifically identified as showing amounts due — Exhibit D — reflects a total due of $200,481.15 which is substantially less than the $362,624.51 computed by the referee. While plaintiff's counsel explains this discrepancy as the reinstatement amount for 122 past due payments rather than the total amount owed, this explanation was offered only by plaintiff's attorney, not by a witness with personal knowledge and therefore lacks probative value. *Zuckerman v City of New York*, 49 NY2d 557, 563 [1980]["Such an affirmation by counsel is without evidentiary value and thus unavailing"]

Second, Ms. Narvaez-Avila attests to personal knowledge of how records are "kept and maintained" but does not positively aver familiarity with the business practices and procedures for ***creating*** the records attached to her affidavit. See e.g. *Deutsche Bank Natl. Tr. Co. v Dennis*, 181 AD3d 864, 868-69 [2d Dept 2020]["affidavit failed to establish a sufficient foundation for the admission of a business record pursuant to CPLR 4518(a) because, although he recited that the records upon which he relied were "regularly maintained by [the plaintiff] in the ordinary course of its business," he "did not indicate that they were made by their author (or authors, whoever they might be) pursuant to an established procedure for the routine, habitual, systematic making of records that would qualify them as trustworthy accounts," or that they "were the records regularly relied on in the business"]; See also *Nationstar HECM Acquisition Tr. 2015-2 v Andrews*, 167 AD3d 1025, 1027 [2d Dept 2018]["However, the plaintiff failed to demonstrate the admissibility of the records relied upon by Craycroft under the business records exception to the hearsay rule (*see* CPLR 4518[a]), since Craycroft did not clearly attest that he was personally familiar with the plaintiff's record-keeping practices and procedures."]; *San Antonio v 340 Ridge Tenants Corp.*, 204 AD3d 713 [2d Dept 2022]["However, the basis for [the Affiant's] knowledge of the tests were documents attached to his affidavit, and he failed to lay the proper foundation for the admission of those documents under the business records exception to the hearsay rule…since he failed to attest that he was personally familiar with Trex's record-keeping practices and procedures."]

Third, aside from the lack of any reference or integration of the records noted above, Ms. Narvaez-Avila fails to lay "a factual foundation sufficient to demonstrate [the proffered exhibits'] admissibility as business records." *U.S. Bank N.A. v Kaur*, 177 AD3d 1016 [2d Dept 2019]["The

documents comprising the plaintiff's exhibit 5 should not have been admitted into evidence because they were not properly certified or authenticated, and were not supported by a factual foundation sufficient to demonstrate their admissibility as business records"]

Approximately 254 pages of documents are purportedly authenticated by two conclusory sentences, without any description of their contents, source, or purpose. Ms. Narvaez-Avila is silent regarding the specific foundational requirements for each exhibit or the individual documents compiled as an exhibit, and there is no admissible evidence to find that any of the exhibits were made in the ordinary course of business. See *Vermont Com'r of Banking and Ins. v Welbilt Corp.*, 133 AD2d 396, 397 [2d Dept 1987] [entire contents of policy folders inadmissible without establishing that each individual record qualified as a business records under CPLR 4518]

There can be no question that each exhibit or piece of evidence would require separate foundation at trial, the absence of which would preclude its introduction. The standard of proof is not diminished when the defendant is denied the opportunity to cross-examine the plaintiff's witness. Indeed, CPLR 4320 expressly provides that "A referee to report shall conduct the trial in the same manner as a court trying an issue without a jury." See *Emigrant Bank v Solimano*, 209 AD3d 153, 160 [2d Dept 2022][holding a referee's hearing and report is the equivalent of a trial under CPLR 4320]

Simply because the Appellate Division has permitted the trial to be conducted on papers alone does not diminish the evidentiary standards or burden of proof. See generally *Wilmington Sav. Fund Socy. FSB v Oppitz*, 198 AD3d 1198, 1199 [3d Dept 2021]["[h]earings may be performed ... either on paper or by the taking of in-court evidence"] citing *Mark C. Dillon, 2020 Practice Commentaries, McKinney's Cons Laws of NY*, CPLR C4313

Fourth, Ms. Narvaez-Avila does not attest that the creation of the records attached to her affidavit or the information contained therein were provided by someone with a business duty to accurately record and enter the relevant information as required by the Court of Appeals. See *Matter of Leon RR*, 48 NY2d 117, 123 [1979]; *Bank of NY Mellon v Gordon*, 171 AD3d 197, 205 [2d Dept 2019].

Fifth, although conceding the subject records are "electronic records", Ms. Narvaez-Avila does not attest that the electronic records attached to her affidavit are a "true and accurate representation" of the electronic records. See *Palisades Collection, LLC v Kedik*, 67 AD3d 1329 [4th Dept 2009]; *Speirs v Not Fade Away Tie Dye Co.*, 236 AD2d 531 [2d Dept 1997].

Lastly, the subject loan is a line of credit which provides for a variable interest rate and a delinquency period spanning more than ten years. Given the various unauthenticated documents cannot be considered, plaintiff failed to establish with detailed admissible evidence of rate changes over time and that any funds were advanced under the subject line of credit. See *Urban Equity Partners, LLC v Aribisala*, 143 AD3d 887, 888 [2d Dept 2016]["The line of credit agreement submitted by the plaintiff merely indicated that Aribisala had a line of credit that he could use to obtain cash advances from National City. The plaintiff presented no evidence that Aribisala actually received any such cash advances."]; *Bank of NY Mellon v Singh*, 205 AD3d 866, 868 [2d Dept 2022]["the plaintiff failed to present evidence that the interest on the loan was calculated using the method set forth in the note, and the referee's computations, including the amount due

and owing and payments for taxes, insurance, and other advances, were premised upon unproduced business records."]

The absence of a proper evidentiary foundation for the subject records renders the Narvaez-Avila Affidavit's "factual assertions based on those records…inadmissible hearsay." *U.S. Bank N.A. v Simpson*, 216 AD3d 1043 [2d Dept 2023].

"Contrary to the plaintiff's assertion, a review of records maintained in the normal course of business does not vest an affiant with personal knowledge." *JPMorgan Chase Bank, N.A. v Grennan*, 175 AD3d 1513 [2d Dept 2019]

Therefore, the report of the referee is not substantially supported by the record, plaintiff failed to meet its prima facie burden on damages and the Court must reject the report.

Plaintiff also failed to substantiate its request for an award of attorney's fees.

"An award of reasonable attorneys' fees is within the sound discretion of the court, based upon such factors as the time and labor required, the difficulty of the issues involved, and the skill and effectiveness of counsel…the court must possess sufficient information upon which to make an informed assessment of the reasonable value of the legal services rendered…There must be a sufficient affidavit of services, detailing "the hours reasonably expended...and the prevailing hourly rate for similar legal work in the community" *SO/Bluestar, LLC v Canarsie Hotel Corp.*, 33 AD3d 986, 988 [2d Dept 2006][internal citations and quotation marks omitted].

"While it is true that "the reasonable hourly rate should be based on the customary fee charged for similar services by lawyers in the community with like experience and of comparable reputation to those by whom the prevailing party was represented", it is also true that " '[i]n most communities, the marketplace has set a value for the services of attorneys, and the hourly rate charged by an attorney for his or her services will normally reflect the training, background, experience and skill of the individual attorney' "*Getty Petroleum Corp. v G.M. Triple S. Corp.*, 187 AD2d 483, 483-84 [2d Dept 1992]

It has been held that the relevant factors to be weighed in the determination of the value of legal services include "(1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the 'undesirability' of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases." *Wilmington Tr. v Elmwood NYT Owner, LLC*, 2022 N.Y. Slip Op. 31189[U], 2 [N.Y. Sup Ct, New York County 2022]; See also *Simmons v. Government Employees Insurance Company*, 59 AD2d 468 [2d Dept 1977] citing *Jordan v. Freeman*, 40 AD2d 656 [1st Dept. 1972]

Here, plaintiff failed to proffer any, let alone "sufficient information upon which to make an informed assessment of the reasonable value of the legal services rendered". Therefore, the request for attorney's fees is denied. See *Retained Realty, Inc. v 1828 51, LLC*, 153 AD3d 1438, 1440 [2d Dept 2017]["However, there is no evidence in the record establishing the amount of

hours which were expended...the reasonableness of that amount, or the "customary fee charged for similar services by lawyers in the community with like experience and of comparable reputation"]

Defendants are also correct that upon rejection of the referee's report, plaintiff is entitled to a judgment for only nominal damages and for a provision in the judgment that provides that upon payment of the nominal amount, the mortgage and judgment are to be deemed satisfied, for the reasons stated in *U.S. Bank N.A. as Tr. for CMLTI 2007-AR1 v Schwartz*, 2025 NY Slip Op 25271 [Sup Ct, Kings Cty,2025] [Mirocznik, J.][see full discussion]; See also *US Bank Tr. Nat. Ass'n v Freund*, 2026 N.Y. Slip Op. 30595[U][[Sup Ct, Kings Cty 2026][Walker-Diallo, J.][adopting the holding in *Schwartz*]

Finally, plaintiff's moving papers[1] did not seek another hearing on damages and contrary to plaintiff's contentions, there is nothing inequitable about an award of nominal damages which is the natural consequence of plaintiff's lack of diligence, careless practice and what must be the equal application of the law.

The maxim is ancient and absolute: equity shadows the law. See *Seif v City of Long Beach*, 286 NY 382, 387-88 [1941]["this court has given emphatic warning that equitable powers of the courts may not be invoked to sanction disregard of statutory safeguards and restrictions."]; *Leibowits v Leibowits*, 93 AD2d 535, 546 [2d Dept 1983]["Courts possessed of equitable power no longer inaugurate attacks on legal doctrines; instead, they confine themselves for the most part to the application of substantive and procedural rules established by statute or evolved incrementally by judicial precedent."]; *Armstrong v Exceptional Child Ctr., Inc.*, 575 US 320, 327-28 [2015]["Courts of equity can no more disregard statutory and constitutional requirements and provisions than can courts of law."];

New York courts further follow the foundational principle that "equity aids the vigilant" and that "[e]quity requires that he who would invoke its aid must himself be diligent." *Mikulec v. United States*, 705 F.2d 599, 602 [2d Cir. 1983].

Plaintiff was not vigilant. Plaintiff was not diligent. A court of equity cannot override binding evidentiary rules simply because a powerful party finds the result inconvenient. The evidentiary requirements governing proof of damages in foreclosure proceedings are not bureaucratic technicalities to be brushed aside when a sophisticated institutional lender comes up short. They are the law. Plaintiff had every obligation to know them, meet them, and satisfy them. It did none of these things. No principle of equity rescues a party from the wreckage of its own ineptitude and litigation failures. Nominal damages are not a punishment visited upon Plaintiff by an unkind court. They are the law's measured response to a plaintiff that established a right but

[1] "The function of reply papers is to address arguments made in opposition to the position taken by the movant and not to permit the movant to introduce new arguments in support of, or new grounds or evidence for, the motion." *USAA Fed. Sav. Bank v Calvin*, 145 AD3d 704 [2d Dept 2016]; *TIG Ins. Co. v Pellegrini*, 258 AD2d 658 [2d Dept 1999][same]; See also *US Bank N.A. v Oliver*, 180 AD3d 843 [2d Dept 2020]["Contrary to the defendant's contention, the Supreme Court properly declined to review her contention that the complaint should be dismissed...since she sought this relief for the first time in her reply papers"]; *MTGLQ Inv'rs, L.P. v Makhnevich*, 201 AD3d 931, 932 [2d Dept 2022]["The court properly declined to review the defendant's contention that the complaint should be dismissed insofar as asserted against her...since she sought this relief for the first time in her reply papers"]

refused - or failed - to prove its entitlement to a specific remedy. Whatever prejudice exists here is entirely self-inflicted. Plaintiff was given the opportunity to marshal competent, admissible evidence. It squandered that opportunity. A court does not prejudice a litigant by holding it to its burden - it simply fulfills its most basic function.

Having squandered its opportunity before the referee and now in opposition to defendants' cross-motion, plaintiff was provided more than sufficient opportunity to demonstrate its damages. This Court should not be transformed into a testing ground where an institutional plaintiff flings papers at the Court until something finally sticks. The finality of judgments is not a procedural nicety — it is the bedrock upon which the entire justice system rests. Plaintiff was afforded a full and fair opportunity to prove its case. That it failed is not this Court's problem to remedy. The rules of evidence — authentication requirements, the business records exception— exist for precisely this situation: to prevent large money judgments from being entered on the basis of unreliable, unauthenticated, or otherwise deficient documentation. If Plaintiff's records are inadmissible, there is a reason. Granting a six-figure award on documents the law refuses to credit would not be equity, but its perversion.

Repeated inquests on damages are an abuse of the judicial process that consumes scarce court resources and undermines the orderly administration of justice. Each attempt compels a defendant to respond, the Court to review, and the resolution of this matter to be further delayed. This is precisely the type of litigation conduct that equity was never designed to reward.

Ultimately, the very concept of nominal damages contemplates that more might have been due, had admissible evidence of same been produced at the opportune moment. See *Freund v Washington Sq. Press, Inc.*, 34 NY2d 379, 383-84 [1974] ["Since the damages which would have compensated plaintiff for anticipated royalties were not proved with the required certainty, we agree with the dissent in the Appellate Division that nominal damages alone are recoverable. (Cf. *Manhattan Sav. Inst. v. Gottfried Baking Co.*, 286 N. Y. 398.) Though these are damages in name only and not at all compensatory, they are nevertheless awarded as a formal vindication of plaintiff's legal right to compensation which has not been given a sufficiently certain monetary valuation."]

The rules of evidence and the consequences of failing to meet one's burden apply with equal force to a pro se litigant and to a trillion-dollar financial institution. A struggling homeowner who failed to submit admissible evidence of damages would receive no equitable reprieve. Neither will Plaintiff. To create a special, more forgiving regime for institutional creditors — where the stakes are high enough to justify relaxed evidentiary standards — would be an affront to the equal administration of justice. The equal protection guarantees of the Federal and New York Constitutions command that similarly situated litigants be treated alike. A rule that excuses banks from the consequences of evidentiary failure while holding all other plaintiffs to those consequences is not merely bad policy — it is constitutionally suspect. This principle is entirely consistent with the uniform application of other rules that enforce finality without regard to the merits: statutes of limitations extinguish valid claims (see e.g., *Deutsche Bank Natl. Tr. Co. v Flagstar Capital Markets Corp.*, 32 NY3d 139, 151 [2018] [dismissing a billion dollar claim]); denials of new trials stand even when damages were contested; and default judgments are not disturbed simply because a defaulting party believes it had a strong defense. The law does not grade on a curve. Neither will this Court.

Accordingly, based on the foregoing, it is hereby:

ORDERED, that the motion (MS3) is DENIED, and the cross-motion (MS4) is GRANTED and the Referee's Report is hereby REJECTED; and it is further

ORDERED, that a Judgment of Foreclosure is executed herewith in favor of Plaintiff, fixing the amount due under the note and mortgage in the nominal amount of $1.00 and it is further

ORDERED AND ADJUDGED that Defendant(s), their counsel (New York Litigation Group, PLLC) or any person with the equity of redemption may redeem the Property with the unconditional tender of payment of $1 by mail or otherwise to Plaintiff (JPMorgan Chase Bank, National Association), or Plaintiff's counsel of record herein (LOGS Legal Group LLP f/k/a Shapiro, DiCaro & Barak, LLC) at any time prior to the foreclosure sale, and upon such tender the mortgage dated May 30, 2007 and securing a maximum sum of $240,000.00, recorded in the Office of the City Register of the City of New York on June 25, 2007 at CRFN: 2007000326981, along with this judgment, shall be, and shall be deemed, satisfied, cancelled and discharged of record; and it is further

ORDERED, that the Notices of Pendency [NYSCEF Doc. 3, 29, 52 and 92] be cancelled, and the mortgage dated May 30, 2007 and securing a maximum sum of $240,000.00, recorded in the Office of the City Register of the City of New York on June 25, 2007 at CRFN: 2007000326981, along with this judgment, be satisfied, cancelled and discharged of record upon the presentation or filing with NYSCEF of a copy of an affirmation attesting to the unconditional tender of payment of $1 by mail or otherwise to Plaintiff (JPMorgan Chase Bank, National Association), or Plaintiff's counsel of record herein (LOGS Legal Group LLP f/k/a Shapiro, DiCaro & Barak, 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 this Judgment, and accept and record a copy of the affirmation attesting to the unconditional tender of payment of $1 by mail or otherwise to Plaintiff (JPMorgan Chase Bank, National Association), or Plaintiff's counsel of record herein (LOGS Legal Group LLP f/k/a Shapiro, DiCaro & Barak, LLC), and to mark the land records accordingly.

The legal description of the mortgaged property referred to herein is annexed hereto as Schedule A.

This constitutes the Decision, Order and Judgment of the Court.

ENTER:

Hon. Menachem M. Mirocznik, JSC

Schedule A

Legal Description

The unit (The "Unit") known as Unit No. 3 in the premises known as 412 Bedford Avenue Condominium (The "Condominium") and by the Street Number412 Bedford Avenue, Borough of Brooklyn, County of Kings, City and State of New York, said Unit being designated and described as Unit No. 3 in the Declaration (The "Declaration") establishing a plan for condominium ownership of said premises under article 9-B of the Real Property Law of the State of New York (the "New York Condominium Act"), dated 3/25/96 and recorded in the Kings County Office of the Register of the City of New York (the "City Register's Office") on 4/16/96, in Reel 3693 Page 2079, and also designated as tax lot No. 1003 in Block No. 2131 of Section 8 of the Borough of Brooklyn on the Tax Map of the Real said building, certified Property Assessment Department of the City of New York and on the floor plans of by Maurice Brezeli Registered Architect and filed in the City Register's Office on 4/16/96 as Map No. 5200 and Condominium Plan No. 539. Together with an undivided 24% interest in the common elements.