

**SG Capital Partners LLC v Gotham Props. Group
LLC**

2026 NY Slip Op 31353(U)

March 20, 2026

Supreme Court, Kings County

Docket Number: Index No. 536179/2023

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 20th of March 2026

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

SG CAPITAL PARTNERS LLC,

Plaintiff,

-against-

GOTHAM PROPERTIES GROUP LLC; QUENESP ISAAC, MANAGER OF GOTHAM PROPERTIES GROUP LLC; COMMISSIONER OF LABOR STATE OF NEW YORK; WENIG SALTIEL LLP; NEW YORK CITY PARKING VIOLATIONS BUREAU; NEW YORK CITY ENVIRONMENTAL CONTROL BOARD; NEW YORK CITY TRANSIT ADJUDICATION BUREAU; NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE; NEW YORK CITY DEPARTMENT OF FINANCE; "JOHN DOE #1" through "JOHN DOE #12," the last twelve names being fictitious and unknown to plaintiff, the persons or parties intended being tenants, occupants, persons or corporations, if any, having or claiming an interest in or lien upon the premises, described in the complaint,

Defendants.

Index No. 536179/2023

**Decision and Order
(Motion Seq. 2)**

Papers	Numbered
Notice of Motion	NYSCEF Doc. 96-118
Opposition Papers	NYSCEF Doc. 119
Reply Papers	NYSCEF Doc. 120

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

Relevant Procedural and Factual History

This action was commenced on December 12, 2023, seeking to foreclose a mortgage (the "mortgage") executed by defendant Gotham Properties Group LLC (the "defendant") which encumbers the property known as 150 Halsey Street, Brooklyn, NY 11216 (the "property").

On February 6, 2024, defendant Wenig Saltiel LLP joined issue with the filing of an answer with counterclaim and cross-claim.

On April 12, 2024, defendants Gotham Properties Group LLC and Quenesp Isaac (together, the “defendants”), joined issue with the filing of an answer asserting four affirmative defenses: (1) lack of standing; (2) failure to comply with contractual conditions precedent; (3) failure to comply with statutory conditions precedent under RPAPL; and (4) that defendant Isaac signed only as a member of the borrower and bears no personal liability.

Settlement conferences were held on March 19, 2024 and April 10, 2024, and the matter was not settled.

On July 16, 2025, plaintiff’s prior motion for summary judgment was withdrawn by stipulation.

On September 25, 2025, plaintiff and defendant Wenig Saltiel LLP entered into a stipulation pursuant to which Wenig Saltiel irrevocably withdrew its answer with counterclaim, the judgment having been satisfied, without costs to either party.

Plaintiff now moves for summary judgment against defendants, to strike defendants’ answer, for default judgment against the non-answering defendants, to amend the caption, and for appointment of a referee to compute. The motion is supported by the affirmation of Patrick Pittman (“Pittman”), a purported Document Control Officer of Select Portfolio Servicing, Inc. (“SPS”), plaintiff’s servicer and alleged attorney-in-fact, and the affirmation of Barbara Campbell (“Campbell”), a Vice President of Deutsche Bank National Trust Company (“DBNTC”), plaintiff’s alleged document custodian.

Defendants oppose, arguing that defendant Isaac should be dismissed because he signed the note and mortgage only as the manager of the borrower and has no personal liability, and that plaintiff lacks standing because the custodial agreement predates the mortgage, no mortgage loan schedule was produced, and the data tape extraction is insufficient to establish that the subject loan is covered by the governing agreements. Defendants further argue that SPS lacks authority because the servicing agreement is unsigned.

In reply, plaintiff argues that defendant Isaac is properly named as a necessary party under NY LLCL 609, that standing is established by the note endorsed in blank annexed to the complaint, and that the limited power of attorney and servicing agreement are sufficient to establish SPS’s authority. Plaintiff further argues that defendants’ request to dismiss Isaac is procedurally improper absent a cross-motion and that the second and third affirmative defenses are abandoned for failure to address them in opposition.

Discussion

“Summary judgment is a “drastic remedy” that should be granted only where the moving party has tender[ed] sufficient evidence to demonstrate the absence of any material issue of fact...Even then, summary judgment should be granted only if, upon the moving party’s meeting this burden, the non-moving party fails to establish the existence of material issues of fact which require a trial of the action...Issue finding, not issue deciding, is the court’s purpose at the

summary judgment stage... Thus, [w]here the court entertains any doubt as to whether a triable issue of fact exists, summary judgment should be denied... When ruling on a motion for summary judgment, the deciding court must view the facts “in the light most favorable to the non-moving party” *U.S. Bank N.A. v DLJ Mtge. Capital, Inc.*, 38 NY3d 169 [2022][internal citations and quotation marks omitted]; See also *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Zuckerman v. New York*, 49 NY2d 557 [1980]

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

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

“A “holder” is “the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession... Pursuant to article 3 of the Uniform Commercial Code, a note can be endorsed, or signed over, to a new owner. A note can also be endorsed in blank, naming no specific payee, which makes it a bearer instrument under article 3 of the Uniform Commercial Code, so that any party that possesses the note has the legal authority to enforce it.” *U.S. Bank N.A. v Moulton*, 179 AD3d 734 [2d Dept 2020][internal citations and quotation marks omitted]; NY UCC 1-201(21); See also *U.S. Bank N.A. for Citigroup Mtge. Loan Tr., Inc., 2006-NC2 v Brody*, 156 AD3d 839 [2d Dept 2017][“A “holder” is “the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession”]

“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]

Contrary to plaintiff's contention, attaching the note to the complaint alone does not

establish the allonge was firmly affixed to the note at the time the action was commenced. See e.g. *Nationstar Mtge., LLC v Calomarde*, 201 AD3d 940, 942 [2d Dept 2022] [“Although the plaintiff attached to the complaint copies of the note and an undated purported allonge endorsed in blank, the plaintiff did not demonstrate that the purported allonge, which was on a piece of paper completely separate from the note, was “so firmly affixed thereto as to become a part thereof,” as required by UCC 3-202 (2)”];

It is undisputed that the note attached to the complaint contains an endorsement in blank on an allonge. Therefore, to demonstrate standing plaintiff was required to demonstrate that subject allonges were “so firmly affixed thereto as to become a part thereof” at the time the action was commenced. However, the complaint does not allege the existence of the allonge let alone allege that it was firmly affixed to the note.

Moreover, Ms. Cambel does not attest the allonge is firmly affixed to the note and a review of the reports annexed to Ms. Cambel’s affidavit does not reference the allonge. Nor is Ms. Campbel listed amongst the approved signatories to custodial agreement in Exhibit 4.

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

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

Accordingly, Mr. Cook’s conclusory and hearsay assertions are insufficient to demonstrate plaintiff had standing at the time the action was commenced. See e.g. *Nationstar Mtge., LLC v Calomarde*, 201 AD3d 940, 942 [2d Dept 2022] [“Although the plaintiff attached to the complaint copies of the note and an undated purported allonge endorsed in blank, the plaintiff did not demonstrate that the purported allonge, which was on a piece of paper completely separate from the note, was “so firmly affixed thereto as to become a part thereof,” as

required by UCC 3-202 (2)"]; See also *LNV Corp. v Almborg*, 194 AD3d 703, 704 [2d Dept 2021][“Here...the plaintiff failed, prima facie, to establish its standing to commence this action. The copy of the note submitted in support of the plaintiff’s motion contained two additional pages, the first entitled “Allonge to Note” and the second entitled “Note Allonge.” However, as the defendants correctly contend, the plaintiff did not submit any evidence to indicate that the purported allonges were so firmly affixed to the note so as to become a part thereof...”]

Lastly, defendant Isaac is not an obligor under the note and plaintiff has not explained what claim, if any, is being asserted as against defendant Isaac. Nor does plaintiff explain how NY LLCL 609 is applicable or renders defendant Isaac a necessary or proper party to these proceedings.

The parties’ remaining contentions are without merit.

Accordingly, plaintiff’s motion must be denied without regard to the sufficiency of the opposition papers. See *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985][“Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers”]; *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986][“Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers”] See also *Caliber Home Loans, Inc. v Squaw*, 190 AD3d 926 [2d Dept 2021][affirming denial of unopposed motion for summary judgment on RPAPL 1304 grounds]; *Murray v Ardsley Union Free School Dist.*, 162 AD3d 890, 891 [2d Dept 2018][affirming denial of motion for summary judgment “notwithstanding the [opponent’s] failure to submit opposing papers”]

The parties’ remaining contentions need not be reached in light of the Court’s determinations.

Accordingly, it is hereby

ORDERED, that plaintiff’s motion is DENIED with PREJUDICE; and it is further

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

This constitutes the decision and order of the Court.

ENTER:

Hon. Menachem M. Mirocznik, JSC

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FILED
KINGS COUNTY CLERK