

U.S. Bank NA v Golger

2026 NY Slip Op 31623(U)

April 13, 2026

Supreme Court, Kings County

Docket Number: Index No. 502757/2015

Judge: Anne J. Swern

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At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 13th day of April 2026

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

U.S. BANK NA, SUCCESSOR TRUSTEE TO BANK OF AMERICA, NA, SUCCESSOR IN INTEREST TO LASALLE BANK NA, AS TRUSTEE, ON BEHALF OF THE HOLDERS OF THE WAMU MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-AR15,

DECISION & ORDER

Index No.: 502757/2015

Plaintiff,

Against

VYACHESLAV M. GOLGER; NEW YORK CITY PARKING VIOLATIONS BUREAU; NEW YORK CITY TRANSIT ADJUDICATION BUREAU; JAWAM INC D/B/A EMPIRE BAIL BONDS; CRIMINAL COURT OF THE CITY OF NEW YORK; NEW YORK CITY ENVIRONMENTAL CONTROL BOARD; “JOHN DOES” AND “JANE DOES”, said names being fictitious, parties intended being possible tenants or occupants of premises and corporations, other entities or person who have claim or may claim, a lien against, or other interest in, the premises

Defendants.

Appearances:

Kyle S. Stefanczyk, Esq. and Charles Miller, Esq., *Attorneys for Plaintiff*
Peter Katsikas, Mediation Corporate Representative, JP Morgan Chase
Patrick Pittman, Select Portfolio Services

Erik Ikhilov, Esq. and Andrei Popescu, Esq., *Attorneys for Defendant*

Background

On or about 9/7/2006, defendant Vyacheslav M. Golger (“Golger” or “defendant”) executed a Consolidation, Extension and Modification Agreement (“CEMA”) and a Consolidated Note (“Note”) in favor of Washington Mutual Bank, FA (WaMu) to create a single

lien in the amount \$520,000.00 against the property located at 2293 Coney Island Avenue, Brooklyn, New York 11223.

Defendant defaulted on the loan by failing to make the payment due on 5/1/2010 and subsequent payments to bring the loan current. Plaintiff commenced this foreclosure action on 3/10/2015 and defendant served an answer on 4/14/2015. Plaintiff moved for summary judgment on 8/15/2018 requesting dismissal of defendant's answer with prejudice and appointing a referee to compute the amounts due and owing. By an order dated 2/17/2019, Justice Noach Dear denied the motion with prejudice, holding that,

It is undisputed that the note was lost prior to plaintiff's alleged acquisition thereof (and, seemingly, shortly after execution). As such plaintiff cannot rely on possession and must rely on assignments – and has not established a complete chain of assignments of the note from WaMu to Plaintiff. Parties to complete discovery and proceed to trial.

Justice Dear's decision framed the issue for trial, to wit: whether plaintiff had standing to commence this action through a valid and complete chain of assignments of the Consolidated Note dated 9/7/2006.

Trial June 3, 2025

Both parties waived opening statements. Plaintiff's Exhibits "1" through "10" and "12" through "32" were admitted in evidence; Exhibit "11" was marked for identification. Defendant's Exhibits "B" and "F" were admitted in evidence; Exhibits "A" and "C" through "E" were marked for identification. Plaintiff called two witnesses. After the testimony was concluded, both parties rested. At the conclusion of the trial, the Court granted the parties' request to submit post-trial briefs in lieu of closing arguments on the record. Defendant's motion to dismiss this action was denied.

The first witness called by plaintiff was Peter Katsikas, who is currently employed by JPMorgan Chase Bank, N.A. in Jacksonville, Florida. He was a former employee of Washington Mutual Savings Bank (WaMu) from approximately 2002 until 9/25/2008. (pp. 30-31).¹ JPMorgan Chase acquired WaMu effective 9/26/2008. (pp. 29-30). Chase incorporated WaMu's records into their record keeping system. (p.30). Therefore, the witness had access to all WaMu loan records as a Chase employee (p. 32). Currently, he is "Mediation Corporate Representative." As such, he reviews books and records to prepare for trial testimony and attends mediations. (p.11).

The witness is familiar with Chase's daily business practices for the creation, maintenance and storage of loan servicing records ("the boarding of loans"). When a loan comes in for servicing, it is boarded in JPMorgan Chase Custody Services, Inc.² The loan documents are split into two files, *i.e.*, 1) the collateral file, that includes original notes, mortgages, modification agreements, assignments, allonges, and lost note affidavits, and 2) the credit file, that includes origination documents and all correspondence (outgoing and incoming). These documents are then digitized and stored in a software system or depository; the witness has access to the stored documents. (pp. 12-13).

The witness personally reviewed Golger's loan records. The Consolidation Extension Modification Agreement (CEMA) and the Consolidated Note were signed by Golger. The CEMA was for \$520,000.00. (Ex. 5 and 6). The CEMA and Note consolidated the mortgage dated 9/7/2006 with four previous mortgages dated 9/26/1997 (\$171,000.00), 10/25/2002 (\$82,367.08), 6/17/2004 (\$158,941.09) and 11/7/2005 (\$76,559.85) (Ex. 5, Ex. A "List of Mortgages, Notes & Agreements").

¹ The numbers in the parenthesis refer to the trial transcript.

² During the witness's testimony, he referred to this daily business practice as the "boarding of loans."

The witness reviewed a Pooling and Servicing Agreement (PSA) dated 10/1/2006 between WaMu Asset Acceptance Corp. (Depositor), Washington Mutual Bank, (Servicer), LaSalle Bank N.A, as Trustee and Christiana Bank & Trust Company, as Delaware Trustee that created the WaMu Mortgage Pass-Through Certificates Series 2006-AR15 Trust (Ex. 7). This document was created by WaMu and kept in the regular course of JPMorgan Chase's business. (pp. 21-25). Washington Savings Bank (not WaMu Asset Acceptance Corp.) was the servicer of this loan before JPMorgan Chase Bank [acquired WaMu on 9/26/2008] (pp. 24:23-25, 25:1-2).

In September 2008, WaMu became insolvent and went into receivership through the FDIC (p. 25:15-25) (*see* Purchase and Assumption Agreement ["PAA"] between FDIC and JPMorgan Chase, Ex. 9). The PPA documents that WaMu's assets and liabilities were transferred through the FDIC to Chase and then boarded by JP Morgan Chase Bank. The Pooling & Servicing Agreement (PSA) memorialized the [mortgage] loans that are placed in a specific trust. The original Trustee for defendant's mortgage loan was LaSalle Bank National Association. (pp. 33-35; Ex. 7 and 8). Effective 10/17/2008, LaSalle merged into Bank of America, making the latter the new Trustee for the pooled loans. (p. 49; Ex. 10).

JPMorgan's records include the Lost Note Affidavit from WaMu dated 10/2/2006 (p. 68; Ex. 15). Based on the WaMu Lost Note Affidavit, JPMorgan Chase executed an affidavit dated 1/24/2023 concerning the lost note and confirmed that the original note was not in the file received by JPMorgan Chase when it took over the servicing of defendant's loan (pp. 69-70; Ex. 21). Defendant's loan was still in default when it was transferred to Portfolio Services, Inc. (SPS).

The second witness, Patrick Pittman, the Litigation Director for SPS, reviewed Golger's loan documents before testifying. (p.98). SPS is authorized to act on plaintiff's behalf pursuant

to two Limited Power of Attorney (LPOA) concerning Golger's mortgage loan (Ex. 24). One LPOA is from JP Morgan Chase to SPS to act as a "sub-servicer" and the other is from plaintiff to act on its behalf. (pp. 99-101).

The SPS Financial Breakdown Summary demonstrates that the unpaid principal balance is \$540,388.11, with accrued interest as of 5/21/2025 of \$223,038.56, an escrow balance of taxes and insurance \$132,146.55, and expenses paid outside the escrow items of \$5,038.74. The total amount due is \$898,693.11 as of 5/31/2025 (Ex. 25; pp. 106-107).

Findings of Fact and Conclusions of Law

It is well established that "[A] plaintiff establishes its standing in a mortgage foreclosure action by demonstrating that, when the action was commenced, it was either the holder or assignee of the underlying note. Either a written assignment of the underlying note or the physical delivery of the note prior to the commencement of the foreclosure action is sufficient to transfer the obligation, and the mortgage passes with the debt as an inseparable incident" (*Bank of New York Mellon v Selig*, 213 AD3d 894, 895-896 [2d Dept 2023]). A Pooling and Servicing Agreement, together with the mortgage loan schedule identifying the loan at issue, establishes that an assignee is the lawful owner of the note (*id.*). However, "where the plaintiff seeks to enforce a note that is lost, destroyed, or stolen, the plaintiff is required to submit due proof of ownership, the facts which prevent its production of the note and its terms" (*Deutsche Bank National Trust Company v Kreitzer*, 203 AD3d 800, 802 [2d Dept 2022]; *U.S. Bank Trust, N.A. v Rose*, 176 AD3d 1012, 1015 [2d Dept 2019]; *Bank of America, N.A. v Sebrow*, 180 AD3d 982, 985 [2d Dept 2020]).

The Court finds that although the Lost Note Affidavit dated 10/2/2006 does not explain the terms of the note or when or how the note was lost between execution of the note on

9/7/2006 and 10/2/2006 (*U.S. Bank Trust, N.A. v Rose*, 176 AD3d 1015; *Deutsche Bank Nat'l Tr. Co. v Anderson*, 161 AD3d 1044), defendant waived any objection to its authenticity and the facts recited therein by stipulating the affidavit into evidence (p.67).

However, the Court finds that plaintiff failed to establish ownership of the note through a complete chain of assignments based on the WaMu Lost Note Affidavit. Effective 10/17/2008, LaSalle merged into Bank of America (Ex. 10). The Assignment and Assumption Agreement transferring the Note from Bank of America to plaintiff was marked for identification as plaintiff's Exhibit 11 but not admitted into evidence. Without Exhibit 11 authenticated and admitted in evidence, plaintiff failed to prove beyond a preponderance of the evidence, an uninterrupted chain of *valid* assignments to establish standing in accordance with Justice Dear's decision dated 2/17/2019. According to the decision, plaintiff was required to prove at trial that the Lost Note Affidavit and a copy of the Consolidated Note dated 9/7/2006, were transferred to plaintiff through a complete chain of assignments. (*Wells Fargo Bank, N.A. v Farfan*, 203 AD3d 1107, 1109 [2d Dept 2025]). Justice Dear's decision was clear -- plaintiff could not establish standing merely by demonstrating it was in possession of the WaMu Lost Note Affidavit and a copy of the Consolidated Note.³

Therefore, the Court finds by a preponderance of the evidence that plaintiff was not the assignee and holder of the note, because plaintiff failed to establish that the immediate predecessor in the chain of assignments, Bank of America, issued a valid assignment of the subject note to plaintiff before the commencement of this action (*Wells Fargo Bank, N.A. v Farfan*, 203 AD3d 1109 [A valid chain of assignments of mortgage ending with the plaintiff's alleged predecessor in interest must indicate that the subject note was assigned together with the

³ See the "Kings Supreme Court Exhibit Sheet" of all evidence marked at trial. (NYSCEF 116).

subject mortgage. Otherwise, plaintiff fails to establish standing as an assignee prior to commencement.]; *Wilmington Savings Fund Society, FSB v Matamoro*, 200 AD3d 91 [If a plaintiff cannot establish direct privity with the debtor as the original lender or by physical possession of the note, a plaintiff must establish a valid assignment of the note prior to commencing an action.]).

Based on the foregoing, the parties' remaining arguments are academic. Accordingly, it is hereby

ORDERED, ADJUDGED AND DECREED that this action is dismissed in its entirety as plaintiff has failed to establish standing through a chain of assignments of the Consolidated Note dated 9/7/2006 to foreclose defendant's mortgage, and it is further

ORDERED, ADJUDGED AND DECREED that the Kings County Clerk be and is hereby directed to cancel the notices of pendency of this action filed by plaintiffs herein, filed on or about 3/10/2015, 3/9/2018, 3/8/2021 and 4/10/2024 (NYSCEF 3, 47, 96 and 104) against the real property known as 2293 Coney Island Avenue, Brooklyn, New York 11223, and by Block #7290 5626, Lot #57, and to make a note to that effect on the margin of the records of the notice of pendency referring to this Order, and it is further

ORDERED, ADJUDGED AND DECREED that the Clerk shall enter judgment dismissing this action, and it is further

ORDERED, ADJUDGED AND DECREED that defendant shall submit a proposed judgment to the Clerk of the Court, together with a bill of costs.

This constitutes the decision, order and judgment of the Court.

ENTER:

A handwritten signature in blue ink, appearing to be 'AS', written over a horizontal line.

Hon. Anne J. Swern, J.S.C.

Dated: 4/13/2026