PRODUCTION OF THE ORIGINAL NOTE AND ENDORSEMENTS WAS "MATERIAL AND NECESSARY" TO THE DETERMINATION WHETHER THE BANK HAS STANDING TO BRING THE FORECLOSURE ACTION, DEFENDANT'S MOTION TO COMPEL DISCOVERY SHOULD HAVE BEEN GRANTED (SECOND DEPT).

The Second Department, reversing Supreme Court, determined defendant's motion pursuant to CPLR 3124 to compel the bank in this foreclosure action to produce the original note and endorsements should have been granted. Defendant had challenged the bank's standing to bring the foreclosure action and the production of the original note and endorsements was "material and necessary" to resolve the standing question:

> It is undisputed that a copy of the underlying note was annexed to the complaint. However, it cannot be ascertained from the copy of the note provided by the plaintiff whether the separate page that bears the endorsement in blank was stamped on the back of the note, as alleged by the plaintiff, or on an allonge, and if on an allonge, whether the allonge was "so firmly affixed as to become a part thereof," as required under UCC 3-202(2). Since the answers to these questions are "material and necessary" to the defense of lack of standing, the Supreme Court should have granted that branch of the defendant's motion which was pursuant to CPLR 3124 to compel the plaintiff to produce the original note and endorsements ... . Bayview Loan Servicing, LLC v Charleston, 2019 NY Slip Op 06463, Second Dept 9-11-19