an intended third-party beneficiary of the mortgage and (2) it had breached the mortgage by failing to pay the plaintiff the alleged balance owed for the repair work. The defendant further denied the plaintiff's substantive allegations in support of count two. In addition, by way of its first special defense, the defendant alleged that it was not a party to the proceeds contract and that the mortgage expressly identified Lopez as the sole obligor with respect to contracts with third parties he entered into for the repair of the property following a loss.[5]

On April 20, 2022, the defendant filed a motion for summary judgment as to both counts of the operative complaint. The defendant's motion was accompanied by a memorandum of law, exhibits, including a copy of the mortgage, and a business records affidavit executed by an assistant vice president of the defendant, Stephanie A. Saporita (Saporita affidavit), with additional exhibits appended thereto. In addressing the plaintiff's breach of contract claim, the defendant argued that (1) there was no genuine issue of material fact that (a) it was not a party to the proceeds contract and (b) the plaintiff was not a party to the note or the mortgage, and (2) the express language of the note and the mortgage demonstrated no intent for the plaintiff to be a third-party beneficiary thereof. In addition, the defendant argued that there was no genuine issue of material fact that it was not unjustly enriched by its application of the proceeds to the outstanding mortgage loan balance.

On May 23, 2022, the plaintiff filed a memorandum of law in opposition to the defendant's motion for summary judgment, which was accompanied by the personal affidavit of the plaintiff's managing member, William Leone (Leone affidavit), and a copy of a portion of the mortgage. The plaintiff argued that the defendant was not entitled to summary judgment as to (1) either count of the operative complaint because the evidence

[5] The defendant asserted thirteen additional special defenses, which are not relevant to the issues on appeal.

submitted in support of its motion for summary judgment, including the Saporita affidavit, was "inappropriate and insufficient," (2) count one because there was a genuine issue of material fact as to whether the mortgage conferred third-party beneficiary status on the plaintiff, and (3) count two because (a) unjust enrichment is an equitable claim not suitable for adjudication by way of a motion for summary judgment and (b) the record demonstrated genuine issues of material fact. On June 6, 2022, the defendant filed a reply brief, accompanied by a supplemental affidavit of its counsel, Attorney Pierre-Yves Kolakowski (Kolakowski affidavit), with additional exhibits attached thereto.

On June 24, 2022, the court heard oral argument on the defendant's motion. On August 16, 2022, the court, *Shah*, *J.*, issued a memorandum of decision granting the defendant's motion for summary judgment as to both counts of the operative complaint. Addressing count one, the court determined that, on the basis of the clear and unambiguous language of the note and the mortgage, the plaintiff was not an intended third-party beneficiary thereof and that the plaintiff failed to show the existence of a material fact in dispute. With regard to count two, the court concluded "that the plaintiff . . . failed to raise any genuine issues of material fact given the evidence submitted by the defendant." On August 30, 2022, the plaintiff filed a motion to reargue, which the court denied on September 8, 2022. This appeal followed. Additional procedural history will be provided as necessary.

I

The plaintiff first claims that the trial court erred in granting the defendant's motion for summary judgment as to both counts of the operative complaint because the supporting affidavits submitted by the defendant, i.e., the Saporita affidavit and the Kolakowski affidavit, did not satisfy the requirements of Practice Book § 17-46 and the common law. As to the Saporita affidavit, we disagree on the merits; as to the Kolakowski affidavit, we conclude that the plaintiff's claim is unpreserved.

A

We first turn to the plaintiff's contention that the Saporita affidavit did not constitute competent evidence pursuant to Practice Book § 17-46. Specifically, the plaintiff contends that the Saporita affidavit did not affirmatively show that Saporita possessed personal knowledge of, or was competent to aver to, the facts contained therein as she did not witness the execution of, nor personally execute, any documents relating to Lopez and the defendant, and she had not been personally involved in the matters between Lopez and the defendant. In response, the defendant relies on the business records exception to the hearsay rule to argue that the Saporita affidavit and the exhibits annexed thereto constituted competent evidence supporting the defendant's motion for summary judgment. We agree with the defendant.

We begin by setting forth the well settled legal principles and standard of review governing our resolution of this claim. Summary judgment "shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Practice Book § 17-49. "Generally, [o]ur review of the trial court's decision to grant the . . . motion for summary judgment is plenary. . . . When presented with an evidentiary issue, as in this case, our standard of review depends on the specific nature of the claim presented. . . . Thus, [t]o the extent a trial court's admission of evidence is based on an interpretation of [law], our standard of review is plenary. For example, whether a challenged statement properly may be classified as hearsay and whether a hearsay exception properly is identified are legal questions demanding plenary review. . . . A trial court's decision to admit evidence, if premised on a correct view of the law, however, calls for the abuse of discretion standard of review." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *Midland Funding, LLC* v. *Mitchell-James*, 163 Conn. App. 648, 652–53, 137 A.3d 1 (2016).

Practice Book § 17-46 provides: "Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto." "Section 17-46 sets forth three requirements necessary to permit the consideration of material contained in affidavits submitted in a summary judgment proceeding. The material must: (1) be based on personal knowledge; (2) constitute facts that would be admissible at trial; and (3) affirmatively show that the affiant is competent to testify to the matters stated in the affidavit. . . . Affidavits that fail to meet the criteria of . . . § 17-46 are defective and may not be considered to support the judgment." (Citation omitted; internal quotation marks omitted.) *Atlantic St. Heritage Associates, LLC* v. *Atlantic Realty Co.*, 216 Conn. App. 530, 550, 285 A.3d 1128 (2022).

"Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. . . . Unless subject to an exception, hearsay is inadmissible. . . . If the proffered evidence consists of business records, the court must determine whether the documents satisfy the modest requirements under [General Statutes] § 52-180[6] to admit them under the business records exception to the hearsay rule. . . .

[6] General Statutes § 52-180 provides in relevant part: "(a) Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence or event, shall be admissible as evidence of the act, transaction, occurrence or event, if the trial judge finds that it was made in the regular course of any business, and that it was the regular course of the business to make the writing or record at the time of the act, transaction, occurrence or event or within a reasonable time thereafter.

"(b) The writing or record shall not be rendered inadmissible by (1) a party's failure to produce as witnesses the person or persons who made the writing or record, or who have personal knowledge of the act, transaction, occurrence, or event recorded or (2) the party's failure to show that such persons are unavailable as witnesses. Either of such facts and all other circumstances of the making of the writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect the weight of the evidence, but not to affect its admissibility. . . ."

"To admit evidence under the business record exception to the hearsay rule, a trial court judge must first find that the record satisfies each of the three conditions set forth in . . . § 52-180. The court must determine, before concluding that it is admissible, that the record was made in the regular course of business, that it was in the regular course of such business to make such a record, and that it was made at the time of the act described in the report, or within a reasonable time thereafter. . . . [B]usiness records may be authenticated by the testimony of one familiar with the books of the concern, such as a custodian or supervisor, who has not made the record or seen it made, that the offered writing is actually part of the records of business." (Citations omitted; footnote added; internal quotation marks omitted.) *HSBC Bank USA, National Assn.* v. *Gilbert*, 200 Conn. App. 335, 348–49, 238 A.3d 784 (2020). Alternatively, the authentication of a business record "may be satisfied by sworn certification of the custodian of the record or other qualified witness attesting to the following: (1) The affiant is the duly authorized custodian of the records or another qualified witness who has and is acting with authority to make the certification; (2) The record was made in the regular course of business, that it was the regular course of such business to make such a record, and that it was made at the time of the act described in the report, or within a reasonable time thereafter, as required by General Statutes § 52-180; (3) The information contained in the record was based on the entrant's own observation or on information of others whose business duty it was to transmit it to the entrant; and (4) To the best of the certifying person's knowledge, after reasonable inquiry, the record or copy thereof is an accurate version of the record that is in the possession, custody or control of the certifying person." Conn. Code Evid. § 9-3A (a).

The following additional procedural history is relevant to our resolution of this claim. In support of its motion for summary judgment, the defendant submitted the Saporita affidavit accompanied by thirteen exhibits,

including copies of (1) the endorsed note, (2) a July 10, 2018 letter addressed to the defendant from Lopez notifying the defendant of the fire and providing the defendant with a copy of the proceeds contract, (3) payment records, and (4) email correspondence reflecting Trusty's request that the defendant apply the balance of the proceeds to the outstanding mortgage loan balance. Saporita attested that the defendant was the mortgage loan servicer, that she, as an assistant vice president of the defendant, was authorized to make the affidavit, and that she had personal knowledge of the facts and matters stated therein. Saporita further attested that, in the regular performance of her job responsibilities, she "[is] familiar with the types of records maintained by [the defendant] in connection with mortgage loans serviced by [the defendant] and/or its predecessor by merger . . . including the loan here at issue." Additionally, she attested that she had access to, and personally reviewed, business records kept in the ordinary course of the defendant's regularly conducted business activities, including the defendant's regularly kept business records pertaining to the property. Saporita also attested that, on the basis of her review of the aforementioned records, (1) Lopez and the plaintiff had entered into the proceeds contract for the restoration of the property, (2) on July 10, 2018, Lopez notified the defendant of the fire and property loss and provided the defendant with a copy of the proceeds contract, (3) the defendant made payments out of the proceeds to the plaintiff, and (4) the defendant was asked by Trusty to apply the remainder of the proceeds to the unpaid mortgage loan balance.[7]

[7] In its memorandum of decision, the court acknowledged the plaintiff's objections to the annexed exhibits, stating that it "review[ed] the evidence submitted by both parties" to reach the conclusion that no issue of material fact was in dispute. Although the court did not expressly make findings that the exhibits fell within the business records exception to the rule against hearsay and, therefore, were admissible, there is nothing in the record to suggest that it relied on the defendant's evidence as a result of an incorrect application of law. Rather, our review of the record reveals that the court