

Bank of N.Y. Mellon Trust Co., N.A. v Beache
2026 NY Slip Op 30690(U)
January 27, 2026
Supreme Court, Kings County
Docket Number: Index No. 533105/2023
Judge: Menachem M. Mirocznik
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At IAS Part FRP5 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, NY 11201, on the 21st of January 2026

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

The Bank of New York Mellon Trust Company, N.A. fka The Bank of New York Trust Company, N.A., as Trustee for Chase Mortgage Finance Corporation Multi-Class Mortgage Pass-through Certificates Chaseflex Trust Series 2007-1,

Plaintiff,

-against-

Marcia B. Beache aka Marcia Beverly Beache; Merle Beache; "JOHN DOE" AND "JANE DOE" said names being fictitious, it being the intention of Plaintiff to designate any and all occupants, tenants, persons or corporations, if any, having or claiming an interest in or lien upon the premises being foreclosed herein,

Defendants.

Index No. **533105/2023**

**Decision, Order and Judgment
(Motion Seq. 1 and 2)**

Papers	Numbered
Notice of Motion (Seq. 1)	NYSCEF Doc. 19-25
Opposition Papers (Seq. 1)	NYSCEF Doc. 31-47
Reply Papers (Seq. 1)	NYSCEF Doc. 49
Decision and Order (Seq. 1)	NYSCEF Doc. 50
Notice of Motion (Seq. 2)	NYSCEF Doc. 52-60
Decision and Order (Seq. 1)	NYSCEF Doc. 65
Opposition Papers (Seq. 2)	NYSCEF Doc. 66-67
Reply Papers (Seq. 2)	NYSCEF Doc. 71

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

Procedural History

This action was commenced on November 10, 2023, seeking to foreclose a mortgage (the "mortgage") executed by defendant Marcia B. Beache (the "defendant") encumbering the real property known as 1414 East 69th Street, Brooklyn, NY 11234 (the "property").

On August 19, 2008, a previous foreclosure action (“previous foreclosure action”) was commenced by plaintiff’s predecessor in interest entitled *The Bank of New York Mellon Trust Company, N.A. et al v. Marcia B. Beache et al* under Index No. 5552/2009. On June 13, 2023, the previous foreclosure action was dismissed due to the failure to comply with RPAPL 1304.

On January 10, 2024, defendant joined issue with the filing of an answer which asserted various affirmative defenses including lack of personal jurisdiction and that enforcement the mortgage is barred by the statute of limitations.

On August 5, 2024, the Court granted defendant’s motion to dismiss the action for lack of personal jurisdiction to the extent that a traverse hearing was scheduled and adjourned the motion pending the outcome of the traverse hearing.

On August 19, 2025, plaintiff the instant motion for an extension of time to serve defendant in accordance with CPLR 306-b. Plaintiff contends that an extension of time is warranted for good cause and in the interest of justice.

On September 29, 2025, upon the parties stipulation for the hearing to be conducted on a hear and determine basis, the traverse was sustained and the Court found that defendant was not served and the Court lacks jurisdiction over defendant.

Defendant opposes the motion arguing that an extension of time pursuant to CPLR 306-b cannot extend plaintiff’s time to serve under CPLR 205-a and an extension is not permitted because the statute of limitations expired prior to commencement of this action.

In reply, plaintiff contends that this action was timely commenced permitted by CPLR 205-a. because this action was commenced within six months of the dismissal of the previous action and defendant was timely served even though it was later found defective.

Discussion

CPLR 306-b provides in relevant part “Service of the summons and complaint...shall be made within one hundred twenty days after the commencement of the action...If service is not made upon a defendant within the time provided in this section, the court, upon motion, shall dismiss the action without prejudice as to that defendant, or upon good cause shown or in the interest of justice, extend the time for service.”

“Pursuant to CPLR 306–b, a court may, in the exercise of discretion, grant a motion for an extension of time within which to effect service for good cause shown or in the interest of justice...Good cause’ and ‘interest of justice’ are two separate and independent statutory standards...To establish good cause, a plaintiff must demonstrate reasonable diligence in attempting service. Good cause will not exist where a plaintiff fails to make any effort at service ... or fails to make at least a reasonably diligent effort at service. By contrast, good cause may be found to exist where the plaintiff’s failure to timely serve process is a result of circumstances beyond the plaintiff’s control.” *State of New York Mtge. Agency v Braun*, 182 AD3d 63 [2d Dept 2020]

However, where the statute of limitations has expired the “Court lack[s] the authority to extend the plaintiffs’ time to serve the [defendant] pursuant to CPLR 306-b.” *Henriquez v Inserra Supermarkets, Inc.*, 68 AD3d 927, 928 [2d Dept 2009]; *Deutsche Bank Natl. Tr. Co. v Booker*, 221 AD3d 579, 582 [2d Dept 2023][“Since the action was time-barred, the court was without authority to extend the plaintiff’s time to serve the summons and complaint upon the defendant.”]; *Quinones v Neighborhood Youth and Family Services, Inc.*, 71 AD3d 1106 [2d Dept 2010][Same]

It is undisputed that the complaint filed on August 19, 2008 in the previous foreclosure action accelerated all sums due under the note and mortgage and was dismissed on June 13, 2023 due to non-compliance with RPAPL 1304. This action was not commenced until November 10, 2023 more than six years after the note and mortgage were accelerated. Therefore, defendant demonstrated prima facie this action is untimely.

However, plaintiff contends that this action is not barred by the statute of limitations because it was timely commenced pursuant to CPLR 205-a.

“Pursuant to CPLR 205–a, where, as here, an action upon an instrument described under CPLR 213(4) is timely commenced and is not terminated on certain enumerated grounds, “the original plaintiff ... may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months following the termination, provided that the new action would have been timely commenced” and that “service upon the original defendant is *completed* within such six-month period”... Notably, under CPLR 205(a), in order to qualify for the six-month extension, service need only be “effected” within the six-month period... In contrast, in enacting CPLR 205–a, the Legislature chose to require that service upon the defendant be “completed” within the six-month period.” *Deutsche Bank Natl. Tr. Co. v Heitner*, 226 AD3d 967 [2d Dept 2024]

Here, defendant was not served within six months of the dismissal of the previous action. The Court already found that it lacks jurisdiction over defendant because defendant was never served. Contrary to plaintiff’s specious contentions the fact that it attempted service is irrelevant and insufficient. See e.g. *Henriquez v Inserra Supermarkets, Inc.*, 68 AD3d 927 [2d Dept 2009]

Nor can an extension of time pursuant to CPLR 306-b extend the time to serve defendant under CPLR 205-a.

“Discretionary extensions of time to effect service under CPLR 306–b do not “negate or nullify” the filing and service requirements of CPLR 205(a)”. *Mira v Media*, 222 AD3d 528, 529 [1st Dept 2023]; See also *Welsh v United Parcels Serv., Inc.*, 24-CV-3876 (AMD) (PK), 2025 WL 754039, at *4 [EDNY Mar. 10, 2025][“In short, the Court may extend the time to serve under CPLR § 306-b in the interest of justice, but that discretionary authority does not allow the Court to extend the six-month service deadline set by the legislature in CPLR § 205(a)”]; *Moyle v United Parcels Serv., Inc.*, 24-CV-3874 (CBA), 2025 WL 1952457, at *3 [EDNY July 16, 2025][CPLR 306-b “is an unrelated statute. It establishes a 120-day period for a plaintiff to serve a defendant after filing his complaint; it has nothing to do with what a plaintiff must do to render timely an otherwise untimely complaint. In fact, the Appellate Division has since rejected the viability of

such an extension.”] citing *Mira v Media*, 222 AD3d 528, 529 [1st Dept 2023] and *U.S. Bank N.A. v Derissaint*, 193 AD3d 790 [2d Dept 2021][“contrary to the plaintiff’s contention, the Supreme Court could not have extended the time to serve the defendant” where the CPLR 205(a) period had elapsed]

The simple fact is that service on defendant was not “completed” as required by CPLR 205-a. Therefore, the savings provision is inapplicable, and this action is time barred. See *Deutsche Bank Natl. Tr. Co. v Zak*, 235 AD3d 839 [2d Dept 2025]; *Deutsche Bank Natl. Tr. Co. v Heitner*, 226 AD3d 967 [2d Dept 2024]; *Wells Fargo Bank, N.A. v Brandt*, 230 AD3d 623 [2d Dept 2024]

Accordingly, plaintiff’s motion must be denied.

Given that the Court lacks jurisdiction over defendant as determined by the referee after the completion of the traverse hearing, the action must be dismissed. “Where, as here, a referee was appointed to hear and determine, the referee possesses all the powers of a court in performing a like function and the referee’s decision shall stand as the decision of a court.” *Makmudova v Cohen*, 216 AD3d 935 [2d Dept 2023][citation and quotation marks omitted]

Therefore, defendant’s motion seeking dismissal of the complaint for lack of personal jurisdiction is granted.

Lastly, given the dismissal of the complaint, the notices of pendency filed herein must also be cancelled. See CPLR 6514; See also generally, *Nationstar Mtge., LLC v Davis*, 240 AD3d 790 [2d Dept 2025]; *Bayview Loan Servicing, LLC v Starr-Klein*, 193 AD3d 807 [2d Dept 2021]

Accordingly, it is hereby

ORDERED AND ADJUDGED, that defendant’s motion to dismiss the action is GRANTED and this action is dismissed; and it is further

ORDERED, that plaintiff’s motion to for an extension of time to serve defendants pursuant to CPLR 306-b is DENIED; and it is further

ORDERED, the Clerk is directed to cancel Notice of Pendency filed on November 10, 2023.

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

ENTER:



Hon. Menachem M. Mirocznik, JSC