

Bethpage Fed. Credit Union v Basakinci
2026 NY Slip Op 31144(U)
March 20, 2026
Supreme Court, New York County
Docket Number: Index No. 850190/2022
Judge: Francis A. Kahn III
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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. FRANCIS A. KAHN, III PART 32

Justice

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INDEX NO. 850190/2022

BETHPAGE FEDERAL CREDIT UNION,

MOTION DATE

Plaintiff,

MOTION SEQ. NO. 003 004

- v -

METE BASAKINCI, THE BOARD OF MANAGERS OF THE
19-25 WEST 20TH STREET CONDOMINIUM, UNITED
STATES OF AMERICA - INTERNAL REVENUE SERVICE,
NEW YORK STATE DEPARTMENT OF TAXATION AND
FINANCE, NEW YORK CITY ENVIRONMENTAL
CONTROL BOARD, NEW YORK CITY PARKING
VIOLATIONS BUREAU, NEW YORK CITY TRANSIT
ADJUDICATION BUREAU, JOHN DOE #1 THROUGH
JOHN DOE #12,

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 62, 63, 64, 65, 66,
67, 68, 69, 70, 71, 72, 73

were read on this motion to/for VACATE/LIFT - STAY

The following e-filed documents, listed by NYSCEF document number (Motion 004) 74, 75, 76, 77, 78,
79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 98

were read on this motion to/for JUDGMENT - FORECLOSURE & SALE

Upon the foregoing documents, the motions are determined as follows:

In this action, Plaintiff, Bethpage Federal Credit Union ("Bethpage"), seeks to foreclose on a residential
mortgage encumbering real property, a condominium unit, located at 21 West 20th Street, Unit 6, New York,
New York. Defendant, Mete Basakinci, ("Basakinci") the borrower, gave an initial mortgage to Bethpage, the
lender, to secure a loan with an original principal amount of \$2,115,000.00, which is memorialized by a note.
The note and mortgage are both dated April 15, 2016. Plaintiff commenced this action and pled that Defendants
defaulted in repayment on or about April 1, 2019. All the Defendants defaulted in appearing. By order of this
Court, dated February 15, 2023, Plaintiff's motion for default judgment against all the Defendants and
appointment of a referee to compute was granted without opposition.

Unbeknownst to this Court, and apparently Plaintiff, Defendant Basakinci filed a Chapter 11 bankruptcy
petition on January 5, 2023, and failed to file proof of same on NYSCEF. On June 9, 2023, Plaintiff's counsel
filed a letter notifying the Court of the filing and a copy of the SDNY Bankruptcy Court docket. This matter
was then stayed by order of this Court, dated June 13, 2023, pending the outcome of the bankruptcy matter.

Now, Defendant Basakinci moves to vacate the bankruptcy stay and to renew this Court's September 26,
2025, decision (Mot Seq No. 2), and upon renewal vacate the default judgment against Basakinci and dismiss
the complaint due to a lack of personal jurisdiction. Plaintiff opposes the motion and moves, by separate notice
of motion, to also vacate the February 15, 2023, order, for a default judgment, appointment of a referee to

compute, to amend the caption and to deem “the Department of Financial Services “Step 2 Filing” timely filed, *nunc pro tunc*, as of September 28, 2022”. Defendant Basakinci opposes this motion.

The branch of the motion to vacate the stay in this matter is granted based upon submission of the notice of dismissal of the bankruptcy petition filed by Basakinci. The branches of both motions to vacate this Court’s order dated February 15, 2023, are granted on consent as both parties sought this relief. This relief is also mandated since the motion was made, and the order was issued, while a statutory bankruptcy stay was in effect (see 11 USC §362[a]; *Wells Fargo Bank, N.A. v Ranalli*, 140 AD3d 1156, 1158 [2d Dept 2016]; *Josovich v Ceylan*, 133 AD3d 570 [2d Dept 2015])¹. “Any non-ministerial or ‘[j]udicial actions taken against a debtor are void ab initio, absent relief from the automatic stay” (*Emigrant Sav. Bank v Rappaport*, 20 AD3d 502, 503 [2d Dept 2005][citations omitted]).

Turing to Plaintiff’s motion for a default judgment and order of reference, “[a]n applicant for a default judgment against a defendant must submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting defendant’s failure to answer or appear” (*Deutsche Bank Natl. Trust Co. v Silverman*, 178 AD3d 898, 899 [2d Dept 2019]). A plaintiff needs “only [to] allege enough facts to enable a court to determine that a viable cause of action exists” (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). Plaintiff established *prima facie* its entitlement to a default judgment by submitting proof, via the affirmation of Susan Chandler (“Chandler”), a Manager of Plaintiff, along with corroborating documentation, which demonstrated the mortgage, the unpaid note, proof of service on each Defendant as well as their failure to timely appear or answer (see CPLR §3215[f]; *SRMOF II 2012-1 Trust v Tella*, 139 AD3d 599, 600 [1st Dept 2016]; *U.S. Bank Natl. Assn. v Wolnerman*, 135 AD3d 850 [2d Dept 2016]; see also *Deutsche Bank Natl. Trust Co. v Silverman*, 178 AD3d 898 [2d Dept 2019]).

“To defeat a facially adequate CPLR 3215 motion, a defendant must show either that there was no default, or that it has a reasonable excuse for its delay and a potentially meritorious defense” (*Deutsche Bank Natl. Trust Co. v Silverman*, 178 AD3d 898, 901 [2d Dept 2020], citing *US Bank N.A. v Dorestant*, 131 AD3d 467, 470 [2d Dept 2015]; see also CPLR §5015[a][1]; *Bear Stern-Asset-Backed Sec. I Trust 2006 v Ceesay*, 180 AD3d 504 [1st Dept 2020]). However, a defendant is not required to meet these requisites if there is a lack of jurisdiction (see CPLR §5015[a][4]; *Avis Rent a Car Sys., LLC v Scaramellino*, 161 AD3d 572 [1st Dept 2018]). As such, a court is required to resolve the jurisdictional issue before considering whether to grant a discretionary vacatur of the default (see eg *Caba v Rai*, 63 AD3d 578, 581, n.1 [1st Dept 2009]; *Kondaaur Capital Corp. v McAuliffe*, 156 AD3d 778, 779 [2d Dept 2017]).

“Ordinarily, the affidavit of a process server constitutes a *prima facie* showing of proper service, but when a defendant submits a sworn denial of receipt of service containing specific facts to refute the statements in the affidavit of the process server, the *prima facie* showing is rebutted and the plaintiff must establish personal jurisdiction by a preponderance of the evidence at a hearing” (*Wells Fargo Bank, NA v Spaulding*, 177 AD3d 817, 819 [2d Dept 2019] [citation and internal quotation marks omitted]; see also *NYCTL 1998-1 Trust v Rabinowitz*, 7 AD3d 459 [1st Dept 2004]).

In his affidavit, the process server avers that on November 7, 2022, service on Defendant Basakinci was made by serving the summons and complaint upon a woman who provided the name Sarah Osmar, identified as a Co-Tenant and person of suitable age and discretion, at 28 Kendalls Lane, Southampton, NY 11968. The process server also averred that location was Defendant Basakinci’s “place of residence within the state”.

¹ The issuance of the default order, as well as a substantial portion of both motions, could have been avoided had Defendant Basakinci, or his counsel, bothered to simply e-file the notice of the filing of the bankruptcy petition.

Lastly, the process server attested that the served documents were mailed the next day, November 8, 2022, to the same address. This affidavit is sufficient on its face to establish a presumption of proper service under CPLR §308[2] (*see eg Rivera v Corrections Officer L. Banks*, 135 AD3d 621 [1st Dept 2016]; *Hulse v Wirth*, 175 AD3d 1276, 1277 [2d Dept 2019]).

“In order to warrant a hearing to determine the validity of service of process, the denial of service must be substantiated by specific, detailed facts that contradict the affidavit of service” (*Deutsche Bank Natl. Trust Co. v Kenol*, 205 AD3d 1004 [2d Dept 2022]; *see also Bank of Am., N.A. v Diaz*, 160 AD3d 457, 458 [1st Dept 2018]; *NYCTL 1998-1 Trust & Bank of N.Y. v Rabinowitz*, 7 AD3d 459, 460 [1st Dept 2004]). Basakinci’s assertion in his affirmation, that he never resided at the premises where service was made, and was residing at a hotel in Manhattan at the time of service is insufficient to rebut the presumption of proper service as it is entirely conclusory and not corroborated by any documentary evidence (*see eg American Home Mtge. Acceptance, Inc. v Lubonty*, 188 AD3d 767 [2d Dept 2020]). Naked denials of receipt of service are insufficient to rebut the presumption of proper service (*see Nazarian v. Monaco Imports, Ltd.*, 255 AD2d 265 [1st Dept 1998]; *see also Aames Capital Corp. v Ford*, 294 AD2d 134 [1st Dept 2002]).

To the extent Defendants seek a discretionary vacatur of their default under CPLR §5015[a][1], that branch of the motion fails. Since the only excuse is premised on a lack of service, based on the foregoing findings, it is unavailing (*see Wells Fargo Bank, N.A. v Leonardo*, 167 AD3d 816, 817 [2d Dept 2018]; *Deutsche Bank Natl. Trust Co. v White*, 110 AD3d 759 [2d Dept 2013]). Any request for an extension of time to serve an answer under CPLR §3012[d] fails for the same reason (*see Bank of N.Y. Mellon v Tedesco*, 174 AD3d 490, 491 [2d Dept 2019]).

Accordingly, it is

ORDERED that Defendant Basakinci’s motion to vacate the bankruptcy stay is granted and the stay is vacated; and it is further

ORDERED that the branches of both parties’ motions to vacate this Court’s order dated February 15, 2023, are granted; and it is further

ORDERED that the motion for a default judgment against the Defendants is granted; and it is

ORDERED that that **Doron Leiby, Esq., 32 Broadway, 13th Floor, New York, New York 10004 – 212-227-4200** is hereby appointed Referee in accordance with RPAPL § 1321 to compute the amount due to Plaintiff and examine whether the tax parcel can be sold in parcels; and it is further

ORDERED that in the discretion of the Referee, a hearing may be held, and testimony taken; and it is further

ORDERED that by accepting this appointment the Referee certifies that he is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2 (c) (“Disqualifications from appointment”), and §36.2 (d) (“Limitations on appointments based upon compensation”), and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall immediately notify the Appointing Judge; and it is further

ORDERED that, pursuant to CPLR 8003(a), and in the discretion of the court, a fee of \$350 shall be paid to the Referee for the computation of the amount due and upon the filing of his report and the Referee shall

not request or accept additional compensation for the computation unless it has been fixed by the court in accordance with CPLR 8003(b); and it is further

ORDERED that the Referee is prohibited from accepting or retaining any funds for himself or paying funds to himself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED that if the Referee holds a hearing or is required to perform other significant services in issuing the report, the Referee may seek additional compensation at the Referee's usual and customary hourly rate; and it is further

ORDERED that plaintiff shall forward all necessary documents to the Referee and to defendants who have appeared in this case within 30 days of the date of this order and shall promptly respond to every inquiry made by the referee (promptly means within two business days); and it is further

ORDERED that if defendant(s) have objections, they must submit them to the referee within 14 days of the mailing of plaintiff's submissions; and include these objections to the Court if opposing the motion for a judgment of foreclosure and sale; and it is further

ORDERED the failure by defendants to submit objections to the referee shall be deemed a waiver of objections before the Court on an application for a judgment of foreclosure and sale; and it is further

ORDERED that plaintiff must bring a motion for a judgment of foreclosure and sale within 30 days of receipt of the referee's report; and it is further

ORDERED that if plaintiff fails to meet these deadlines, then the Court may sua sponte vacate this order and direct plaintiff to move again for an order of reference and the Court may sua sponte toll interest depending on whether the delays are due to plaintiff's failure to move this litigation forward; and it further

ORDERED, that FOURLEAF FEDERAL CREDIT UNION F/K/A BETHPAGE FEDERAL CREDIT UNION be substituted into the caption in the place and stead of Plaintiff, and, following such substitution, that the Clerk of the Court amend the docket and electronic docket accordingly; and it is further

ORDERED that the caption of this action be amended to reflect that the names of defendants "JOHN DOE No.1" through "JOHN DOE No. 12" be severed and stricken from the caption herein and that the action be discontinued as to them; and it is further

ORDERED, that the amended caption shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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FOURLEAF FEDERAL CREDIT UNION F/K/A
BETHPAGE FEDERAL CREDIT UNION,

Plaintiff,

-against-

METE BASAKINCI; THE BOARD OF MANAGERS OF THE 19-25 WEST 20TH STREET CONDOMINIUM; UNITED STATES OF AMERICA - INTERNAL REVENUE SERVICE; NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE; NEW YORK CITY ENVIRONMENTAL CONTROL BOARD; NEW YORK CITY PARKING VIOLATIONS BUREAU; NEW YORK CITY TRANSIT ADJUDICATION BUREAU,

Defendants.

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and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being removed pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address (www.nycourts.gov/supctmanh)); and it is further

ORDERED that Plaintiff shall serve a copy of this Order with notice of entry on all parties and persons entitled to notice, including the Referee appointed herein.

ORDERED that the Department of Financial Services "Step 2 Filing" which was performed by Plaintiff should be deemed timely filed, nunc pro tunc, as of September 28, 2022; and it is further

All parties are to appear for a virtual conference via Microsoft Teams on August 6, 2026, at 10:00 a.m. If a motion for judgment of foreclosure and sale has been filed Plaintiff may contact the Part Clerk (SFC-Part32-Clerk@nycourts.gov) in writing to request that the conference be cancelled. If a motion has not been made, then a conference is required to explore the reasons for the delay.

Servicing Agent: Four Leaf Federal Credit Union – Phone No. 866-546-2935.

3/20/2026

DATE

CHECK ONE:

CASE DISPOSED

X

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

X

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

X

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

FRANCIS KAHN III, A.J.S.C.
HON. FRANCIS A. KAHN III
J.S.C.