

**U.S. Bank N.A. v Langner**

2023 NY Slip Op 32083(U)

May 24, 2023

Supreme Court, Kings County

Docket Number: Index No. 505091/2013

Judge: Lawrence Knipel

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FRP 3 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 24<sup>th</sup> day of May, 2023.

P R E S E N T:

HON. LAWRENCE KNIPEL,

Justice.

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U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE  
FOR TERWIN MORTGAGE TRUST 2004-11HE ASSET-  
BACKED CERTIFICATES SERIES 2004-11HE,

Plaintiff,

- against -

Index No. 505091/13

REUVEN LANGNER; U.S. BANK NATIONAL  
ASSOCIATION AS TRUSTEE FOR THE HOLDERS OF  
TERWIN MORTGAGE TRUST 2004-18SL, ASSET-  
BACKED CERTIFICATES TMTS SERIES 2004-18SL;  
NEW YORK CITY TRANSIT ADJUDICATION BUREAU;  
NEW YORK CITY ENVIRONMENTAL CONTROL BOARD;  
NEW YORK CITY PARKING VIOLATIONS BUREAU;  
CONGREGATION SHONEH HALOCHOS; "JOHN DOE",

Defendants.

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The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/  
Petition/Cross Motion and  
Affidavits (Affirmations) Annexed \_\_\_\_\_

80-83, 85-104 114-125,  
129-131 138-161 169-181

Opposing Affidavits (Affirmations) \_\_\_\_\_

138-161, 165, 182

Reply Affidavits (Affirmations) \_\_\_\_\_

165, 166-167, 183

Upon the foregoing papers in this action to foreclose a mortgage on the property at 1719 56th Street in Brooklyn (Property), which has been used as a synagogue for two decades, plaintiff U.S. Bank National Association as Trustee for Terwin Mortgage Trust 2004-11HE Asset-Backed Certificates Series 2004-11HE (US Bank Trust) moves (in

motion sequence [mot. seq.] three) for an order: (1) confirming the referee's July 9, 2019 report (July 2019 Referee Report); (2) granting it a judgment of foreclosure and sale, pursuant to RPAPL 1351; and (3) directing the distribution of the sale proceeds, pursuant to RPAPL 1354.

Defendant Congregation Shoneh Halochos (the Congregation) moves (mot. seq. four), by order to show cause (OSC), for an order: (1) granting it leave to intervene in this action to the extent of seeking dismissal for lack of proper service and/or seeking a stay; (2) dismissing the complaint for improper service of process, pursuant to CPLR 3211 (a) (8); (3) vacating the May 1, 2019 Order of Reference; or, alternatively, (4) dismissing this action as against the Congregation only and, pending the determination as to the ownership of the Property in an unresolved, related action entitled *Congregation Shoneh Holochos v Reuven Langner*, Kings County index No. 507/19 (Pending Related Action), staying any foreclosure sale and proceedings in the instant action.

Plaintiff US Bank Trust cross-moves (mot. seq. five) for an order (1) denying the Congregation's OSC, or, alternatively (2) granting it an extension of time within which to serve the Congregation with process, pursuant to CPLR 306-b and 2004, should this court find that service of process upon the Congregation was not proper.

Defendant Reuven Langner (Langner) cross-moves (mot. seq. six) for an order, pursuant to CPLR 5015 (a) (4), vacating and setting aside the May 1, 2019 Order of Reference and the July 2019 Referee Report on the ground that the summons and complaint was never served upon him and the court lacks personal jurisdiction over him.

### **Background**

On May 1, 2019, the court (Dear, J.) issued an Order of Reference and Default Judgment. On October 7, 2019, just prior to the Covid 19 pandemic, US Bank Trust moved (mot. seq. three) to confirm the July 9, 2019 Referee Report and for a judgment of foreclosure and sale (NYSCEF Doc No. 80), which was stayed during the Covid pandemic. The July 2019 Referee Report in the record states that “the amount . . . due to the Plaintiff to be the sum of \$925,807.58 *as of July 07, 2019*” (NYSCEF Doc No. 99 [emphasis added]). Unfortunately, during the pandemic stay, the July 2019 Referee Report became stale. Regardless, US Bank Trust’s motion to confirm the July 2019 Referee Report and for a judgment of foreclosure and sale has also been rendered moot, since vacatur of the May 1, 2019 Order of Reference and Default Judgment is warranted.

On April 6, 2022, the Congregation moved (under mot. seq. four), by OSC, for an order vacating the May 1, 2019 Order of Reference and Default Judgment, pursuant to CPLR 5015 (a) (4), alleging that the Congregation was improperly served with process as “John Doe #1” on September 30, 2013, by the process server’s delivery of the pleadings to “‘John Doe,’ (REFUSED NAME) RABBI[.]” as an “AUTHORIZED AGENT” of the Congregation “corporation” (*see* NYSCEF Doc No. 12). The Congregation now seeks dismissal, pursuant to CPLR 3211 (a) (8), or, alternatively, a stay of this foreclosure action “pending the determination as to ownership of the [P]roperty . . .” in the Pending Related Action (NYSCEF Doc No. 130).

The Congregation argues that service upon the Rabbi at the Property as “John Doe #1” was defective, as a matter of law, because the Second Department has specifically held that the “Congregation is a domestic religious corporation . . .” that must be served in accordance with CPLR 311 (a) (1) and Religious Corporations Law § 2-b (1) (c) (*see Mortgage Electronic Registration Systems, Inc. v Congregation Shoneh Halochos*, 189 AD3d 820, 823 [2020]; *see also* NYSCEF Doc No. 118).

While the Congregation seeks dismissal, pursuant to CPLR 3211 (a) (8), US Bank Trust cross-moves (mot. seq. five) for an order denying the Congregation’s OSC, or, alternatively, for an extension of time to serve the Congregation with process, pursuant to CPLR 306-b and 2004 (*see* NYSCEF Doc No. 138). The Second Department has held that, under these circumstances, “CPLR 306-b permits a court, in the exercise of its discretion, to extend the time to serve process upon good cause shown or in the interest of justice” (*Mortgage Electronic Registration Systems, Inc. v Congregation Shoneh Halochos*, 189 AD3d 820 at 824). Thus, in the interest of justice, that branch of US Bank Trust’s cross motion seeking an extension of time to properly serve the Congregation with process is granted.

Finally, defendant Langner’s cross motion (mot. seq. six) for an order, pursuant to CPLR 5015 (a) (4), vacating and setting aside the May 1, 2019 Order of Reference and Default Judgment and the July 2019 Referee Report “on the grounds that the Summons and Complaint was never served upon [him] . . .” (*see* NYSCEF Doc No. 169) is denied.

Langner previously cross-moved to dismiss the complaint, pursuant to CPLR 3211 (a) (8), for lack of personal jurisdiction, based on his claim that he resided in Israel at the time that the process server allegedly served him at his mother's residence. The court (Martin, J.) granted Langner's dismissal motion, which was subsequently reversed by the Appellate Division, Second Department, which held that:

"The Supreme Court should not have granted the defendant's cross motion pursuant to CPLR 3211 (a) (8) to dismiss the complaint insofar as asserted against him. 'Ordinarily, a process server's affidavit of service establishes a prima facie case as to the method of service and, therefore, gives rise to a presumption of proper service' . . . '[W]here there is a sworn denial that a defendant was served with process, the affidavit of service is rebutted, and the plaintiff must establish jurisdiction at a hearing by a preponderance of the evidence' . . .

"Here, the process server's affidavit established, prima facie, that service was validly made pursuant to CPLR 308 (2) . . . The affirmation submitted by the defendant in support of his cross motion failed to rebut the process server's affidavit because the affirmation was not in admissible form. '[A]ny person who, for religious or other reasons, wishes to use an affirmation as an alternative to a sworn statement may do so,' but such affirmation 'must be made before a notary public or other authorized official,' and the affirmant must 'be answerable for the crime of perjury should he make a false statement' . . . Furthermore, an affirmation from a person physically located outside the geographic boundaries of the United States must comply with the additional formalities of CPLR 2309 (c), and must, in substance, affirm that the statement is true under the penalties of perjury under the laws of New York (*see* CPLR 2106 [b]). While the defendant's identity was verified by an unauthorized official in Israel acting in the capacity of a notary, the affirmation itself failed to indicate that the statements made therein were true under the penalties of perjury. Therefore, the affirmation was without

probative value, and the Supreme Court should have denied the defendant's cross motion to dismiss the complaint insofar as asserted against him" (*U.S. Bank National Assoc. v Langner*, 168 AD3d 1021, 1023-1024 [2019] [internal citations omitted]).

Notice of entry of the foregoing appellate decision was e-filed on February 18, 2019 (*see* NYSCEF Doc Nos. 63 and 64). Defendant Langner failed to answer the complaint within 10 days, as required by CPLR 3211 (f).<sup>1</sup> Langner also failed to appeal from the Second Department's finding that US Bank Trust made a prima facie showing that it properly served Langner with process and its rejection and denial of his jurisdictional dismissal motion. Accordingly, it is

**ORDERED** that US Bank Trust's motion (mot. seq. three) is denied as moot; and it is further

**ORDERED** that the Congregation's motion (mot. seq. four) is only granted to the extent that the May 1, 2019 Order of Reference and Default Judgment is vacated, pursuant to CPLR 5015 (a) (4); the motion is otherwise denied, yet that branch of the motion seeking a stay of this action pending the determination of ownership of the Property in the Pending Related Action is denied without prejudice and with leave to renew upon proper papers that demonstrate and detail the status of the Pending Related Action; and it is further

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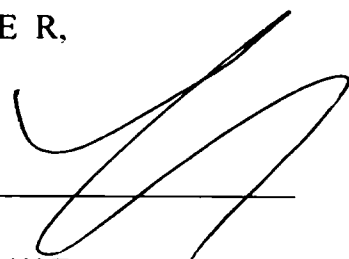
<sup>1</sup> CPLR 3211 (f) provides that "[s]ervice of a notice of motion under subdivision (a) or (b) before service of a pleading responsive to the cause of action or defense sought to be dismissed extends the time to serve the pleading until ten days after service of notice of entry of the order."

**ORDERED** that US Bank Trust's cross motion (mot. seq. five) is only granted to the extent that US Bank Trust is granted an extension of time to serve the Congregation and must do so within 45 days of service of this decision and order with notice of entry thereof; the cross motion is otherwise denied; and it is further

**ORDERED** that defendant Langner's motion (mot. seq. six) to vacate his default, pursuant to CPLR 5015 (a) (4), based on improper service of process is denied.

This constitutes the decision and order of the court.

E N T E R,



J. S. C.

**HON. LAWRENCE KNIPEL  
SUPREME COURT JUSTICE**