

JPMorgan Chase Bank, N.A. v Mariners Gate, LLC

2025 NY Slip Op 31573(U)

April 3, 2025

Supreme Court, New York County

Docket Number: Index No. 850355/2024

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

-----X

INDEX NO. 850355/2024

JPMORGAN CHASE BANK, N.A.,

MOTION DATE _____

Plaintiff,

MOTION SEQ. NO. 001

- v -

MARINERS GATE, LLC, YITZHAK PASTREICH, W
FINANCIAL REIT, LTD., PARADIGM CF CORP., NEW
YORK STATE DEPARTMENT OF TAXATION AND
FINANCE, NEW YORK CITY DEPARTMENT OF
TAXATION AND FINANCE, JOHN DOES

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60

were read on this motion to/for

JUDGMENT - DEFAULT

Upon the foregoing documents, the motion and cross-motion are determined as follows:

The within action is to foreclose on a mortgage encumbering a parcel of real property located 547-553 West 270 Street, a/k/a 548 West 28th Street, New York, New York. The mortgage at issue was given by Defendant Mariners Gate, LLC (“Mariners”) to non-party First Republic Bank (“First”). The mortgage secures a note with an original principal amount of \$30,000,000.00. The note and mortgage, both dated April 17, 2019, were executed by James Y.A. Pastreich (“Pastreich”) as President of Mariners. Concomitantly with the note and mortgage, the parties also executed a loan agreement. Defendant Yitzhak Pastreich executed guarantees of the indebtedness. Plaintiff commenced this action wherein it pled in the complaint that Defendants defaulted in repayment of the indebtedness beginning on or about July 1, 2023. Defendants Mariners and Pastreich defaulted in appearing. Now, Plaintiff moves for a default judgment against the non-appearing Defendants, appointing a referee to compute and to amend the caption. Defendants Mariners and Pastreich oppose the motion.

As to Plaintiff’s motion, “[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 affidavit of Andrew S. Bergman (“Bergman”), authorized officer, Special Credits Lead of Plaintiff 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-I 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]). Thus, a court is required to resolve any jurisdictional issue before considering whether to grant a discretionary vacatur of the default (*see eg Kondaur Capital Corp. v McAuliffe*, 156 AD3d 778, 779 [2d Dept 2017]; *Caba v Rai*, 63 AD3d 578, 581, n.1 [1st Dept 2009]).

Generally, “[a] process server's affidavit of service constitutes prima facie evidence of proper service and, therefore, gives rise to a presumption of proper service” (*Bethpage Fed. Credit Union v Grant*, 178 AD3d 997, 997 [2d Dept 2019]). Plaintiff filed two affidavits of service from Nicholai Aaron Granados, both dated October 2, 2024, attesting to service of the summons and complaint and other documents on Mariners, presumably pursuant to CPLR §311-a, and upon Pastreich, ostensibly pursuant to CPLR §308[2]. These affidavits facially establish service was made upon Mariners and Pastreich (*see eg Rivera v Corrections Officer L. Banks*, 135 AD3d 621 [1st Dept 2016]; *Hulse v Wirth*, 175 AD3d 1276, 1277 [2d Dept 2019]; *see also Cowley Holdings Servs. Inc. v Prodigy Network, LLC*, ___AD3d___, 2021 NY Slip Op 51058[U][Sup Ct NY Cty 2021]).

To rebut the presumption of proper service, an affidavit of the person served containing a nonconclusory denial of service which specifically contradicts the process server's version of events must be proffered (*see 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]). Here, Defendants failed to tender any affidavit of their own. Instead, all that was submitted was an affirmation of their counsel who failed to attest to personal knowledge of the facts regarding service of the summons and complaint.

As lack of jurisdiction was the only argument raised as a reasonable excuse, to the extent the motion was made under CPLR §5015[a][1], it also fails. Absent a reasonable excuse, the Court need not determine whether Defendants have presented a meritorious defense to the action (*see Pina v Jobar U.S.A. LLC*, 104 AD3d 544, 545 [1st Dept 2013]; *Buro Happold Consulting Engrs., PC. v RMJM*, 107 AD3d 602, 602 [1st Dept 2013]). In any event, Movants failed to establish the existence of a meritorious defense as the proposed answer annexed to the motion is not verified by a person with knowledge of the facts (*see Karalis v New Dimensions HR, Inc.*, 105 AD3d 707, 708 [2d Dept 2013]). For the same reasons, the branch of the motion to compel Plaintiff to accept a late answer from Defendants pursuant to CPLR §3012[d] fails (*see Bank of N.Y. Mellon v Tedesco*, 174 AD3d 490, 491 [2d Dept 2019])["To extend the time to answer the complaint and to compel the plaintiff to accept an untimely answer as timely, a defendant must provide a reasonable excuse for the delay and demonstrate a potentially meritorious defense to the action"].

The branch of Plaintiff's motion for a default judgment against the other non-appearing parties is granted (*see* CPLR §3215; *SRMOF II 2012-I Trust v Tella*, 139 AD3d 599, 600 [1st Dept 2016]).

The branch of Plaintiff's motion to amend the caption is granted (*see generally* CPLR §3025; *JP Morgan Chase Bank, N.A. v Laszio*, 169 AD3d 885, 887 [2d Dept 2019]).

Accordingly, it is

ORDERED that the motion for a default judgment against the non-appearing parties and the appointment of a referee to compute is granted; and it is further

ORDERED that **Clark Whitsett, Esq., 66-05 Woodhaven Blvd., Rego Park, New York 11374 – 718-850-0003** 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 "John Doe" be removed as a party defendant in this action and that the caption of this action be amended; 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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JPMorgan Chase Bank, N.A.,

Plaintiff,

-against-

Mariners Gate, LLC; Yitzhak Pastreich; W
Financial REIT, Ltd.; Paradigm CF Corp.
(f/k/a Mercury Capital Corp.); New York State
Department of Taxation and Finance; New
York City Department of Taxation and
Finance,

Defendants.
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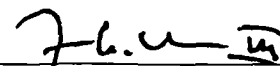
and it is further

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/suptctmanh)); 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.

All parties are to appear for a virtual conference via Microsoft Teams on **August 6, 2025, at 10:40 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.

<u>4/3/2025</u> DATE			 FRANCIS KAHN, III, A.J.S.C. HON. FRANCIS A. KAHN III J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> REFERENCE
			<input checked="" type="checkbox"/> FIDUCIARY APPOINTMENT