

**SRP 2012-4, LLC v Harris**

2025 NY Slip Op 32871(U)

July 8, 2025

Supreme Court, Kings County

Docket Number: Index No. 502964/2014

Judge: Cenceria P. Edwards

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At an IAS Term, Part FRP1, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 8th day of July, 2025.

P R E S E N T:

HON. CENCERIA P. EDWARDS, CPA,

Justice.

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SRP 2012-4, LLC,

Plaintiff(s),

-against-

WILLIE HARRIS a/k/a/ WILLIE FAY HARRIS; TRAVIS HARRIS,  
et. al,

Defendant(s).

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**ORDER**

Motion Calendar: 10/9/2024  
Motion Cal. #(s): 1  
  
Index #: 502964/2014  
Mot. Seq. #(s): 3

The following e-filed papers read herein:

NYSCEF Doc. Nos.:

Order to Show Cause, Affidavits (Affirmations), and Exhibits _____	_____ 92-101 _____
Opposing Affidavits (Affirmations) and Exhibits _____	_____ 106-113 _____
Reply Affidavits (Affirmations) and Exhibits _____	_____ N/A _____

Upon the foregoing papers in this action to foreclose a mortgage encumbering the residential property located at 715 Bushwick Avenue in Brooklyn (Block 3215, Lot 4), defendant Travis Harris (“Defendant”) moves for an order staying the auction scheduled for September 19, 2024, vacating the judgment of foreclosure and sale, and dismissing the complaint based upon an alleged lack of personal jurisdiction. Alternatively, Defendant seeks to vacate his default pursuant to CPLR 317 and leave to file a late answer. Plaintiff opposes the motion.

***Background Facts and Procedural History***

Plaintiff commenced the instant foreclosure action on April 4, 2014. All defendants were allegedly served with the summons and complaint but, other than HSBC Bank<sup>1</sup>, defaulted in

<sup>1</sup> HSBC and Plaintiff later resolved their differences, and the answer was withdrawn by stipulation (*see* NYSCEF Doc. #63).

answering. Plaintiff's motions for an order of reference and for a judgment of foreclosure and sale were granted, each without opposition, on December 16, 2016 and January 24, 2018, respectively.

An auction was scheduled for April 26, 2018. It did not go forward, however, as Defendant filed bankruptcy two days prior to the sale. Pursuant to the documentary evidence proffered by Plaintiff, the bankruptcy proceedings terminated in March 2022 upon Defendant's failure to continue making payments pursuant to a repayment plan.

A second auction was scheduled for May 23, 2024. Defendant again filed bankruptcy, but this time the case was automatically dismissed two months later as deficient.

Plaintiff then calendared a sale for September 19, 2024. This Court signed the instant order to show cause ("OSC"), however, on that date and stayed the auction pending the hearing of Defendant's motion.

Per his moving papers, Defendant argues that Plaintiff failed to properly serve him with the summons and complaint. While his counsel admits that Defendant resides at the service address, he alleges that the process server failed to exercise due diligence before resorting to affix and mail service. More specifically, counsel notes that no attempts were made at his client's place of business. In the alternative, he argues that Defendant's default should be vacated pursuant to CPLR 317 as he lacked notice of this action in time to defend and has potentially meritorious defenses (RPAPL 1304, LLC Law 808, etc.). Counsel also suggests that this action must be dismissed pursuant to RPAPL 1351 as the auction was not held within 90 days of the grant of judgment of foreclosure and sale.

Plaintiff counters that the OSC and supporting motion papers were not properly served upon it and, as such, the Court lacks jurisdiction to address Defendant's motion. Even were that not so, it argues, the supporting affidavit signed by Harris does not relate to this action – the names and facts included therein do not relate to this case.<sup>2</sup> Plaintiff also asserts that service of process was proper as the process server made numerous attempts to serve Defendant with the summons and complaint, including at night and on the weekend. Further, Plaintiff proffers documentary evidence – a stipulation signed by Defendant in 2018 within the bankruptcy proceeding – acknowledging the judgment of foreclosure and sale and entering into a repayment

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<sup>2</sup> Defendant's counsel uploaded a new affidavit after opposition was filed and the motion argued before the Court. Plaintiff rejected it and no motion was made to compel its acceptance. (*See* NYSCEF Doc. #s 114-116.)

plan to resolve this action. As such, he clearly was aware of this action no later than that time but did not seek to vacate his default until 2024.

### *Analysis*

Pursuant to the signed OSC, “personal and email or fax service ... on the Plaintiff’s attorneys ... on or before 2:00 pm on the 19<sup>th</sup> day of September, 2024” was required (*see* NYSCEF Doc. #100). The only proof of service uploaded, is a copy of the order with a handwritten notation “Service Acknowledged” signed by the referee. There is no evidence in the record that Plaintiff’s counsel was served by personal service at all, let alone before the tight deadline.<sup>3</sup> As such, this Court lacks jurisdiction to hear Defendant’s motion (*see Serrao v Slope Storage*, 223 AD3d 927, 927 [2d Dept 2024]). In the interest of judicial economy, however, the Court will nonetheless address Defendant’s arguments, since the OSC also directed service by email and the record shows that Plaintiff received NYSCEF “email service notifications” for the signed order and supporting papers before the deadline (*see id.* [noting that, pursuant to CPLR 2001, “the court has the power to disregard a technical defect in service when no substantial right of the opposing party is prejudiced], citing *Ruffin v Lion Corp.*, 15 NY3d 578, 582 [2010] and *Young v City of New York*, 164 AD3d 711, 713 [2d Dept 2018]).<sup>4</sup>

Plaintiff is correct that the affidavit signed by Defendant and notarized by his counsel, while listing the correct caption and index number, is totally unrelated to this action – describing Defendant as “proposed intervenor” and “the surviving daughter and sole heir of the deceased defendant Karan Singh,” seeking a stay of an auction scheduled for September 6, 2024, and seeking vacatur of an order of reference dated September 21, 2016 and a judgment of foreclosure and sale dated April 17, 2019 (*see* NYSCEF Doc. #94). Put differently, the substance of the affidavit clearly pertains to a different case and offers no support for his motion.

The legal arguments advanced by Defendant’s counsel are also unavailing. Pursuant to the affidavit of service, attempts to serve Defendant at the subject premises were made on: Monday, April 28, 2014 at 2:00 p.m.; Wednesday, April 30, 2014 at 7:21 a.m.; Friday, May 2, 2014 at 9:41 p.m.; Saturday, May 3, 2014 at 4:27 p.m.; Friday, May 9, 2014 at 2:14 p.m.; Thursday, May 15, 2014 at 7:04 a.m.; and Friday, May 16, 2014 at 7:18 p.m.; all prior to the

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<sup>3</sup> The signed order to show cause was uploaded just over two hours before the deadline to personally serve it.

<sup>4</sup> The Court is cognizant that Defendant will otherwise file a new order to show cause with the same arguments when Plaintiff reschedules that auction.

server affixing the summons and complaint to the door of the premises on Saturday, May 17, 2014 at 1:20 p.m. (*see* NYSCEF Doc. #98). As noted by Plaintiff, these attempts were made at various times of day on different days of the week, including early morning, late night, and on the weekend. That is sufficient to meet the due diligence requirement (*see Wilmington Trust Co v Gewirtz*, 193 AD3d 1110, 1112 [2d Dept 2021] [four attempts including late evening, afternoon, and early morning on weekdays, and an evening on the weekend, found sufficient]; *see also, County of Nassau v Gallagher*, 43 AD3d 972, 974 [2d Dept 2007] [four attempts including “on a late weekday evening” and “on an early Saturday morning” found sufficient, without need to attempt to serve at workplace]). Likewise, Defendant’s bare denial of knowledge of the action in time to defend is insufficient under CPLR 317 (*see Goldfarb v Zhukov*, 145 AD3d 757, 758-759 [2d Dept 2016]).

The initial auction was scheduled within 90 days of entry of the judgment of foreclosure and sale. Though it was cancelled due to Defendant’s bankruptcy filing, the original scheduling complied with RPAPL 1351 (*see Wells Fargo v Malik*, 203 AD3d 1110, 1112 [2d Dept 2022]). Further, no case law has been proffered to support that an untimely sale mandates dismissal. To the contrary, courts have discretion to extend the time in which to hold the sale, particularly where, as here, a sale was initially scheduled to occur within the 90-day period, but stayed due to a defendant’s bankruptcy filing, and there has been no showing of prejudice to the defendant (*see e.g., id.; BNY Mellon v Ramsamooj*, 219 AD3d 1402, 1403 [2d Dept 2023]).

### *Conclusion*

Accordingly, the above-referenced motion by Defendant (motion sequence #3) is DENIED in its entirety.

The foregoing constitutes the Decision and Order of this Court.

**ENTER,**

**Dated:** July 8, 2025



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**Hon. Cenceria P. Edwards, JSC, CPA**