

**Trustees of the N.Y. City Dist. Council of Carpenters
Pension Fund v Flagstar Bancorp, Inc.**

2025 NY Slip Op 33219(U)

August 26, 2025

Supreme Court, New York County

Docket Number: Index No. 652904/2024

Judge: Leslie A. Stroth

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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. LESLIE A. STROTH PART 12M

Justice

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INDEX NO. 652904/2024

TRUSTEES OF THE NEW YORK CITY DISTRICT
COUNCIL OF CARPENTERS PENSION FUND,

MOTION DATE 06/30/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

FLAGSTAR BANCORP, INC.,

DECISION + ORDER ON
MOTION

Defendant.

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FLAGSTAR BANCORP, INC.

Third-Party
Index No. 595977/2024

Third-Party Plaintiff,

-against-

NGUYEN CUSTOM WOODWORKING, LLC

Third-Party Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16,
17, 18, 19, 20, 21, 22, 23, 24, 25

were read on this motion to/for JUDGMENT - DEFAULT

This action was commenced on June 7, 2024, when the Trustees of the New York City
District Council of Carpenters Pension Fund ("Trustees NY") filed a summons and complaint
against Flagstar Bancorp, Inc. d/b/a Flagstar Bank, N.A. ("Flagstar"), asserting conversion
claims arising from a judgment in federal court against Nguyen Custom Woodworking, LLC
("Nguyen Custom") for employer withdrawal liability. Flagstar answered the complaint and, on
September 27, 2024, filed a third-party summons and complaint against Nguyen Custom based
on its default under an account agreement.

Nguyen Custom was served on December 5, 2024, through the New York Secretary of State pursuant to CPLR § 311 and BCL § 306(b)(1). However, the affidavit of service was not filed until March 3, 2025, due to an alleged attorney inadvertent error. On January 1, 2025, Trustees NY and Flagstar entered into a settlement discontinuing the Trustees NY claims against Flagstar, but that discontinuance did not affect Flagstar's third-party claims against Nguyen Custom. Nguyen Custom has not appeared or answered, and more than thirty days have elapsed since service.

In Motion Sequence 001, Flagstar moves for (1) an extension of time to file the affidavit of service *nunc pro tunc* related to the instant default motion and (2) for default judgment pursuant to CPLR 3215 against Third-Party Defendant Nguyen Custom.

Turning first to the branch of Defendant/Third Part Plaintiff Flagstar's motion seeking an extension of time to serve an affidavit of service of the third-party Summons and Complaint in connection with its motion for default judgement *nunc pro tunc*. CPLR 306-b sets forth the service requirements and timing thereof, and specifically provides that "[i]f 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."

Courts have interpreted the "good cause shown" and "interest of justice" standards in CPLR 306-b as "two separate standards by which to measure an application for an extension of time to serve" (*Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95, 104 [2001]). Courts routinely grant extensions for service in cases where "defendants have not demonstrated any prejudice." (*Hernandez v Abdul-Salaam*, 93 AD3d 522 [1st Dept 2012]).

Here, Flagstar demonstrates that they timely effectuated service, but failed to timely file an affidavit of service allegedly due to an inadvertent error. There is no prejudice to Third-Party Defendant Nguyen Custom Woodworking, LLC as it relates to service, given that the service itself was timely. As such, the court finds that Flagstar's motion should be considered in the interest of justice, as there is no prejudice to defendant for the late filing of the affidavit of service.

Having granted an extension of time for filing of the affidavit of service, it is ordered that Defendant/Third Part Plaintiff, Flagstar's unopposed motion for default judgment against Third-Party Defendant Nguyen Custom is granted.

When a third-party defendant fails to appear or answer, a third-party plaintiff may seek a default judgment against that third-party defendant (CPLR 3215 [a]). "On a motion for leave to enter a default judgment pursuant to CPLR 3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting its claim, and proof of the defaulting party's default in answering or appearing" (*Atlantic Cas. Ins. Co. v RJNJ Servs., Inc.*, 89 AD3d 649, 651 [2d Dept 2011]).

Here, Third-Party Plaintiff submits the summons and complaint, proof of service of the summons and complaint, an affidavit of service of the instant motion, correspondence with copy of the settlement check at issue, and account agreement which collectively constitute proof of the facts constituting its claim as well as proof that Third-Party Defendant has failed to answer or appear. It is hereby;

ORDERED that the affidavit of service of the Third-Party Summons and Complaint upon Third-Party Defendant Nguyen Custom Woodworking, LLC shall be considered timely, *nunc pro tunc*; and it is further

ORDERED, that within 30 days of entry of this order, Defendant/Third Party Plaintiff, Flagstar Bancorp, Inc. d/b/a/ Flagstar Bank, N.A.'s ("Flagstar") shall serve a copy of this order upon all parties, with notice of entry, and shall file such notice via NYSCEF; and it is further

ORDERED, that the County Clerk is directed to enter judgment against Third-Party Defendant Nguyen Custom Woodworking, LLC. in the amount of \$50,000 plus costs and disbursements related to this action.

The foregoing constitutes the decision and order of the court.

8/26/2025
DATE

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION **J.S.C.**

APPLICATION: GRANTED DENIED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER FIDUCIARY APPOINTMENT REFERENCE

INCLUDES TRANSFER/REASSIGN

Leslie A. Stroth
HON. LESLIE A. STROTH