

**JP Morgan Chase Bank, N.A. v Wynter**

2025 NY Slip Op 33231(U)

July 1, 2025

Supreme Court, Kings County

Docket Number: Index No. 500463/2019

Judge: Derefim B. Neckles

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FSMP 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, 11201 on the 1st day of July, 2025.

P R E S E N T:

HON. DEREKIM B. NECKLES,

Acting Justice.

✓ -----X  
JP MORGAN CHASE BANK, N.A.,

Plaintiff,

Ms #s 4, 5, 6 + 7

- against -

Index No. 500463/2019 ✓

✓ RUPERT A, WYNTER, JPMORGAN CHASE BANK, N.A., BANCO POPULAR NORTH AMERICA, ET AL,

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Affidavits Annexed (Mot. Seq. 4)	<u>70-95</u>
Notice of Cross-Motion/Affidavits Annexed (Mot. Seq. 5)	<u>99-111</u>
Opposition Affirmation to Cross-Motion (Mot. Seq. 5)	<u>118-132</u>
Reply Affirmation to Opposition to Cross-Motion (Mot. Seq. 5)	<u>134</u>
JHO/Referee Report	<u>140</u>
Notice of Motion/Affidavits Annexed (Mot. Seq. 6)	<u>142-150</u>
Notice of Cross-Motion/Affidavits Annexed (Mot. Seq. 7)	<u>151-157</u>
Opposition Affirmation to Cross-Motion (Mot. Seq. 7)	<u>159-160</u>
Reply Affirmation to Opposition to Cross-Motion (Mot. Seq. 7)	<u>162</u>

Upon the foregoing papers in this proceeding, plaintiff moves (under mot. seq. 4) for an order (1) confirming the referee's report, (2) granting a judgment of foreclosure and sale, and (3) directing the distribution of sale proceeds. Defendant Rupert A. Wynter cross-moves (under mot. seq. 5) for an order (1) denying plaintiff's motion to confirm the referee's report and for a judgment of foreclosure and sale, (2) granting defendant's motion

to vacate the order of reference and default judgment pursuant to CPLR §5015(a)(4), §50515(a)(1), or §317, and (3) granting defendant leave to serve and file a late answer pursuant to CPLR §3012(d).

Plaintiff moves (under mot. seq. 6) for an order confirming the referee's report and recommendation upholding service upon defendant Rupert Wynter. Defendant cross-moves (under mot. seq. 7) for an order rejecting the referee's report and denying plaintiff's motion to confirm the referee's report.

### *Background*

Plaintiff commenced the instant action on January 8, 2019 to foreclose on the mortgage encumbering the subject property located at 1204 E 72nd Street, Brooklyn, New York. Plaintiff moved for a default judgment and order of reference on August 21, 2019, and it was granted by the court on November 18, 2019. Plaintiff then moved to confirm the referee's report and for a judgment of foreclosure and sale on November 7, 2022. Defendant cross-moved to vacate the order of reference, on the grounds of lack of personal jurisdiction and plaintiff's failure to comply with RPAPL §1304.

By order dated August 11, 2023, the court referred the matter for a traverse hearing and adjourned the motions. A traverse hearing was held on September 24, 2024, and Special Referee Sunshine issued a report and recommendation on December 9, 2024, recommending that service was proper, and jurisdiction was obtained over Rupert Wynter and Jane Doe.

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Plaintiff now moves to confirm the referee report and defendant cross-moves to reject the referee's report because it is not substantially supported by the record.

### *Discussion*

#### **I. Vacatur of default**

In order for a defendant to successfully vacate a default judgment against them, the defendant needs to prove: (1) A reasonable excuse for their default and (2) the existence of a potentially meritorious position (CPLR §5015[a][1]). Here, defendant asserts the lack of notice of the instant action, as his reasonable excuse for his default in appearing in the action. A hearing was held to determine whether defendant was properly served in this action, and after testimony and evidence, Special Referee Sunshine, recommended that the service was in fact proper, and the court obtained jurisdiction over defendant.

Special Referee Sunshine points to inconsistent testimony from defendant. Plaintiff's process server provided evidence that that he served three individuals at the subject property. Defendant testified that he lived in the middle unit with his daughter and girlfriend, and the lower unit was occupied by his sister, and a tenant occupied the upper unit. Defendant stated that no one resided in the building in 2019, due to damage from Superstorm Sandy in 2012. Defendant offered photo evidence of the damage to the home from 2024 but stated that the building still appeared that way in 2019.

On cross-examination, plaintiff brought to defendant's attention, the fact that his sister had accepted service on behalf of multiple individuals in a 2015 foreclosure action, further proving that individuals were living at the property after 2012.

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Accordingly, the court finds that defendant has not offered a reasonable excuse to justify vacatur of his default in appearing in this action.

## II. Referee's Report

In support of his cross-motion, defendant asserts that Special Referee Sunshine's report should be rejected because her findings are not substantially supported by the record. Defendant contends that the record proves that no one was living at the property at the time of service and therefore no one could have possibly accepted service on behalf of the defendant.

Here, the court agrees with Special Referee Sunshine, in that photos from 2024 showing damage to the property, do not prove that damage occurred in 2012, and therefore no one was living at the property at the time of service. The court finds that the Special Referee's recommendations are substantially supported by the testimony and evidence presented at the hearing.

Accordingly, it is

**ORDERED** that plaintiff's motion (mot. seq. 4) to confirm the referee's report and for a judgment of foreclosure and sale is granted in all respects. Long form order to follow; and it is further

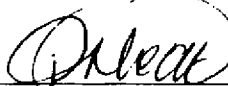
**ORDERED** that defendant's cross-motion (mot. seq. 5) to vacate the order of reference is denied in all respects; and it is further

**ORDERED** that plaintiff's motion to confirm the referee's report (mot. seq. 6) is granted in all respects; and it is further.

**ORDERED** that defendant's cross-motion (mot. seq. 7) to reject the referee's report is denied in all respects.

This constitutes the decision and order of the court.

E N T E R,



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HON. DEREFIM B. NECKLES

A. J. S. C.

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