

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

2025 NY Slip Op 33741(U)

September 26, 2025

Supreme Court, Kings County

Docket Number: Index No. 515995/2019

Judge: Menachem M. Mirocznik

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This opinion is uncorrected and not selected for official publication.

At IAS Part FRP5 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, NY 11201, on the 26th of September 2025

**PRESENT:** HON. MENACHEM M. MIROCZNIK  
JUSTICE OF THE SUPREME COURT

U.S. BANK NATIONAL ASSOCIATION, TRUSTEE FOR STRUCTURED ASSET SECURITIES CORPORATION MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-W1

Plaintiff,

-against-

ALTHEA WARREN HOMEX FUNDING CORP. "JOHN DOE #1" through "JOHN DOE #12," the last twelve names being fictitious and unknown to plaintiff, the persons or parties intended being the tenants, occupants, persons or corporations, if any, having or claiming an interest in or lien upon the Subject Property described in the Complaint

Defendants.

Index No. 515995/2019

**Decision, Order and Judgment (Motion Seq. 2 and 3)**

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KINGS COUNTY CLERK  
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Papers	Numbered
Notice of Motion	NYSCEF Doc. 41-46
Notice of Cross-Motion/Opposition	Pro Se Hard Copy Submission
Reply	NYSCEF Doc. 47

Upon the foregoing papers, the motion and cross-motion are determined in accordance with this Decision and Order as follows:

**Procedural History**

This action was commenced on July 22, 2019. Defendant Althea Warren was allegedly served with the summons and complaint by substituted service on her alleged son Marvin Warrant on July 26, 2019. However, the affidavit of service of Darren Pinder failed to allege that the summons and complaint were additionally mailed to defendant Althea Warren as required by CPLR 308(2). Plaintiff also submitted an affidavit of service of Darren Pinder alleging service on Marvin Warren as a John Defendant but failed to allege that Mr. Warren was an occupant, tenant or otherwise had an interest in the premises for which he would qualify as a John Doe defendant in this action.

Although service was incomplete on defendant, plaintiff nonetheless moved for a default judgment and order of reference. By order dated July 19, 2023, the Court denied the motion finding that plaintiff failed to establish proper service on defendant Althea Warren and that Marvin Warren was properly served as a John Doe defendant. The Court also found that the affidavit of mailing of Victoria Rehak alleging the mailing of the summons pursuant to CPLR 3215(g) failed to satisfy the mailing requirement of CPLR 308(2) in as much as the mailing only contained a copy of the summons while CPLR 308(2) requires mailing of the summons and complaint.

Curiously, approximately eight months later, on March 14, 2024 plaintiff uploaded an "Amended Affidavit of Service by Mail" of Victoria Rehak dated March 12, 2024 which alleged Ms. Rehak mailed a copy of the summons and complaint on July 29, 2019.

Now almost 11 months later, plaintiff moves to extend the time to serve defendant Althea Warren pursuant to CPLR 306-b and CPLR 2004 and to "validate the Notice of Pendency". In support of the motion, plaintiff submits solely the affirmation of counsel in support of the motion. Plaintiff's counsel avers that after the action was commenced plaintiff provided the summons and complaint to its vendor Nationwide Court Service, Inc. ("NCS") for service. Plaintiff's counsel further avers that prior to the court's issuance of the order denying its motion for default judgment and order of reference, plaintiff directed NCS to file amended affidavits of service but the "Amended Affidavit of Service by Mail" of Victoria Rehak was not filed until March 14, 2024 after the court denied the motion for default judgment and further avers that process server Darren Pinder refused to file an amended affidavit of service. Plaintiff's counsel does not state her basis of knowledge for any of the facts and does not provide an affidavit of fact from NCS to substantiate her contentions. Nor does plaintiff's counsel attest to when it instructed NCS to file the amended affidavits of service or explain why it did not withdraw the motion for default judgment if it knew service was not complete on defendant Althea Warren.

Defendant Althea Warren, pro se opposes the motion to extend the time to serve and cross-moves to dismiss the action because the Court lacks jurisdiction over her and plaintiff failed to serve her within 120 days as required by CPLR 306-b. Defendant contends she did not have notice of this action until September 2024.

### Discussion

CPLR 306-b provides in relevant part "Service of the summons and complaint ... shall be made within one hundred twenty days after the commencement of the action.. If 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."

CPLR 308(2) provides for service of process "by delivering the summons within the state to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served and by either mailing the summons to the person to be served at his or her last known residence or by mailing the summons by first class mail to the person to be served at his or her actual place of business in an envelope bearing the legend "personal and confidential" and not indicating on the outside thereof, by return address or

otherwise, that the communication is from an attorney or concerns an action against the person to be served, such delivery and mailing to be effected within twenty days of each other; proof of such service shall be filed with the clerk of the court designated in the summons within twenty days of either such delivery or mailing, whichever is effected later; service shall be complete ten days after such filing.. "

When service requires multiple steps all such steps must be completed within 120 days to comply with CPLR 306-b. See *Qing Dong v Chen Mao Kao*, 115 AD3d 839, 840 [2d Dept 2014]

Here, it is undisputed that plaintiff did not complete service within 120 days. The amended affidavit of Victoria Rehak was not filed for over five years and is not accompanied by any other proof or records that shows Ms. Rehak actually mailed the complaint as alleged. Therefore, defendant established prima facie entitlement to dismissal in the absence of an extension of time for good cause or in the interest of justice.

"Pursuant to CPLR 306-b, a court may, in the exercise of discretion, grant a motion for an extension of time within which to effect service for good cause shown or in the interest of justice ... Good cause' and 'interest of justice' are two separate and independent statutory standards ... To establish good cause, a plaintiff must demonstrate reasonable diligence in attempting service. Good cause will not exist where a plaintiff fails to make any effort at service ... or fails to make at least a reasonably diligent effort at service. By contrast, good cause may be found to exist where the plaintiffs failure to timely serve process is a result of circumstances beyond the plaintiffs control *State of New York Mtge. Agency v Braun*, 182 AD3d 63 [2d Dept 2020]

Here, plaintiff failed to show reasonable diligence in its service on defendant. The affidavit of service on its face did not show that service on defendant was completed, in as much as the mailing component was absent from the affidavit of service. Nor was the initial affidavit of service of Victoria Rehak sufficient to show diligence in as much as the initial affidavit of service by mail was expressly made pursuant to CPLR 3215 which only requires additional service of the summons and not the complaint. See CPLR 3215(g)(3)(i). Additionally, circumstances herein were entirely in plaintiffs control. Plaintiff also fails to provide an affidavit of NCS with business records showing the mailing actually occurred and was intended to occur. Plaintiff simply does not substantiate any of the facts surrounding its failure to timely complete service.

Plaintiffs contentions are more akin to law office failure is not a proper basis for extension for good cause pursuant to CPLR 306-b. See *Rodriguez v Consol. Edison Co. of New York, Inc.*, 163 AD3d 734 [2d Dept 2018]

Therefore, plaintiff failed to demonstrate an extension should be granted for good cause.

"If good cause for an extension is not established, courts must consider the broader interest of justice standard of CPLR 306-b... In considering the interest of justice standard, "the court may consider diligence, or lack thereof, along with any other relevant factor in making its determination, including expiration of the Statute of Limitations, the meritorious nature of the cause of action, the length of delay in service, the promptness of a plaintiffs request for the

extension of time, and prejudice to defendant." *State of New York Mtge. Agency v Braun*, 182 AD3d 63, 66-67 [2d Dept 2020]; "No one factor is determinative-the calculus of the court's decision is dependent on the competing interests of the litigants and a clearly expressed desire by the Legislature that the interests of justice be served" *Wells Fargo Bank, NA v Barrella*, 166 AD3d 711 [2d Dept 2018]

Here, an extension in the interest of justice is not warranted. Defendant attests to not having notice of this action until September 2024, over five years after commencement of this action. "Where the plaintiffs delay in serving a defendant is protracted, and the defendant has no notice of the action for a protracted period of time, an inference of substantial prejudice arises" *Id*

Additionally, plaintiff was extremely dilatory in this matter and demonstrated a complete lack of diligence in seeking to remedy the alleged defects, does not explain when the defects were discovered and when it took corrective action. Plaintiff waited eight months before filing the amended affidavit of Ms. Rehak after the Court denied its motion for default judgment. Plaintiff then waited close to 11 months before moving for an extension of time to serve defendant. Accordingly, the Court in its discretion determines that an extension of time in the interest of justice is not warranted. See generally *Pierre v Grueso*, 219 AD3d 1535 [2d Dept 2023]; *Prof- 2013-M4 Legal Tit. Tr. 2015-1 v Morales*, 211 AD3d 866 [2d Dept 2022]; *Marrano v Holtsville Fire Dist.*, 210 AD3d 754 [2d Dept 2022]

Lastly, given the dismissal of the complaint, the notices of pendency filed herein must also be cancelled. See generally, *Nationstar Mtge., LLC v Davis*, 2025 NY Slip Op 04253 (2d Dept July 23, 2025); *Bayview Loan Servicing, LLC v Starr-Klein*, 193 AD3d 807 (2d Dept 2021)

Accordingly, it is hereby


ORDERED, that plaintiff's motion to for an extension of time to serve defendant pursuant to CPLR 306-b is DENIED; and it is further

ORDERED AND ADJUDGED, that defendant's motion to dismiss the action is GRANTED and this action is dismissed; and it is further

ORDERED, the Clerk is directed to cancel Notices of Pendency filed on July 22, 2019 and February 20, 2023

This constitutes the decision and order of the Court.

ENTER:

  
Hon. Menachem M. Mirocznik, JSC

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