

**PHH Mtge. Corp. v Unknown Heirs of the
Estate of Adassa Tracey**

2025 NY Slip Op 34248(U)

October 27, 2025

Supreme Court, Kings County

Docket Number: Index No. 514090/2024

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 27th of October 2025

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

<p>PHH MORTGAGE CORPORATION</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">-against-</p> <p>UNKNOWN HEIRS OF THE ESTATE OF ADASSA TRACEY A/K/AADASSAHAYE; UNITED STATES OF AMERICA; CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD; THE CHASE MANHATTAN BANK (NATIONAL ASSOCIATION); UNITED STATES OF AMERICA O/B/O INTERNAL REVENUE SERVICE; NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE; "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.</p>
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Index No. 514090/2024

**Decision and Order
(Motion Seq. 1)**

Papers	Numbered
Notice of Motion	NYSCEF Doc. 21-30

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

Procedural History

This action was commenced on May 21, 2024 against the Unknown Heirs of the Estate of Adassa Tracey A/K/A Adassa Haye. Annexed to the complaint is the death certificate of Adassa Tracey A/K/A Adassa Haye which was annexed to complaint reflects that she died on November 23, 2023. A review of the affidavits of service filed in this matter reveal that Maxine Tracey was served as an unknown heir on June 8, 2024, Sangela Savery was served as an unknown heir on July 6, 2024 and Alfred Haye was served as an unknown heir March 27, 2025.

On May 22, 2025, plaintiff filed the instant motion seeking to (i) amend the complaint pursuant to CPLR 3025(b), (ii) extending the time to serve the summons and complaint pursuant to CPLR 306-b for an additionally 120 days (iii) granting service of the supplemental summons and amended complaint on the Unknown Heirs of the Estate of Adassa Tracey A/K/A Adassa Haye by publication (iv) Granting Plaintiff leave to name Maxine Tracey, Heir-At-Law; Alfred Haye, Heir-At-Law; and Sangela Savery, Heir-At-law as necessary defendant and (v) Granting Plaintiff leave to serve a Supplemental Summons and Amended Complaint, by regular mail, upon all party defendants who have been served with the original Summons and Complaint, at the last known address for said defendant.

Discussion

"CPLR 1024 permits "[a] party who is ignorant, in whole or in part, of the name or identity of a person who may properly be made a party" to "proceed against such person as an unknown party by designating so much of his name and identity as is known. If the name or remainder of the name becomes known all subsequent proceedings shall be taken under the true name and all prior proceedings shall be deemed amended accordingly." *U.S. Bank NA. v Losner*, 145 AD3d 935 [2d Dept 2016].

"The New York State Legislature has recognized that there are circumstances where a party is ignorant, in whole or in part, of the identity of a person who should be made a party to an action. CPLR 1024 allows for the commencement of an action against an unknown party "by designating so much of his name and identity as is known... The use of CPLR 1024 presents many pitfalls. One pitfall is that parties are not to resort to the "Jane Doe" procedure unless they exercise due diligence ... to identify the defendant by name and, despite such efforts, are unable to do so... Any failure to exercise due diligence to ascertain the "Jane Doe's" name subjects the complaint to dismissal as to that party" *Bumpus v New York City Tr. Auth.*, 66 AD3d 26 [2d Dept 2009].

"The enactment of CPLR 306-b placed plaintiffs wishing to commence actions against "Jane Doe" defendants in an unenviable position that did not previously exist. By virtue of CPLR 306-b, plaintiffs were required to ascertain the identity of unknown "Jane Doe" parties and to serve process upon them, within 120 days from filing" *Id.*

"The harshness of CPLR 306-b under these circumstances is ameliorated, in appropriate instances, by the "good cause" and "interest of justice" exceptions to CPLR 306-b." *Id.*

"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 plaintiff's 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 of the unknown heirs other than Maxine Tracey, Sangela Savery and Alfred Haye, by publication and for its service on Alfred

Haye who was not served until March 27, 2025 long after the 120 days deadline. Plaintiff was aware of its need to serve the unknown heirs by publication when it filed the summons and complaint and yet did not make the instant application for over a year. 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. "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 leave to serve by publication and does not explain the protracted delay. It is not clear from plaintiffs submission when it discovered the identities of Alfred Haye and Sangela Savery. It appears that its initial surrogates search occurred May 23, 2024 and plaintiff still waited close to year to file the instant application. Nor does plaintiff contend the statute of limitations has run. 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 Dis.*, 210 AD3d 754 [2d Dept 2022].

Therefore, plaintiffs request for an extension of time serve any unknown heirs and Alfred Haye pursuant to CPLR 306-b is denied and the request to for leave to serve the unknown heirs by publication is denied as moot.

Plaintiff requests for leave to serve supplemental summons and amended complaint to assert it is not seeking a deficiency judgment against the decedent's estate and to add the known heirs is denied as academic. The known heirs were already parties and were served with process as "unknown heirs" and the original complaint did not name the decedent's estate or seek a deficiency judgment against same.

However, plaintiff' request to, in effect, amend the caption to add Maxine Tracey, Alfred Haye and Sangela Savery who were formerly served as "unknown heirs" is granted pursuant to CPLR 1024. However, it does not follow that the Court has jurisdiction over Alfred Haye or any of the unknown heirs.

Accordingly, it is hereby

ORDERED, that plaintiff's motion is granted solely to the extent that the caption be amended and is otherwise denied; and it is further

ORDERED that the caption is hereby amended to read:

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS**

PHH MORTGAGE CORPORATION

Index No. 514090/2024

Plaintiff,

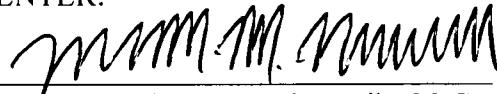
-against-

UNKNOWN HEIRS OF THE ESTATE OF ADASSA TRACEY A/K/AADASSA HAYE; MAXINE TRACEY, HEIR-AT-LAW; ALFRED HAYE, HEIR-AT-LAW; SANGELA SAVERY, HEIR-AT-LAW; UNITED STATES OF AMERICA; CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD; THE CHASE MANHATTAN BANK (NATIONAL ASSOCIATION); UNITED STATES OF AMERICA O/B/O INTERNAL REVENUE SERVICE; NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE; "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.

This constitutes the decision and order of the Court.

ENTER:



Hon. Menachem M. Mirocznik, J.S.C.

**KINGS COUNTY CLERK
FILED
2025 NOV -6 A 10:28**