

**Board of Mgrs. of the Oceana Condominium  
No. Eight v Usmanov**

2025 NY Slip Op 34830(U)

November 13, 2025

Supreme Court, Kings County

Docket Number: Index No. 10720/13

Judge: Derefim B. Neckles

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At an IAS Term, Part FRP-2 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 13<sup>th</sup> day of November, 2025.

P R E S E N T:

HON. DEREKIM B. NECKLES,  
Acting Justice.

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BOARD OF MANAGERS OF THE OCEANA  
CONDOMINIUM NO. EIGHT,

Plaintiff,

- against -

Index No. 10720/13

FARKHADJAN USMANOV, FLAGSTAR BANK FSB,  
HOME VEST CAPITAL LLC, LEAF FUNDING, INC.,  
NYS DEPARTMENT OF TAXATION AND FINANCE,  
UNITED STATES OF AMERICA, INTERNAL REVENUE  
SERVICE, THE BANK OF NEW YORK MELLON,  
MORTGAGE ELECTRONIC REGISTRATION SYSTEM,

Defendants.

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The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/  
Petition/Cross Motion and  
Affidavits (Affirmations) \_\_\_\_\_  
Opposing Affidavits (Affirmations) \_\_\_\_\_  
Reply Affidavits (Affirmations) \_\_\_\_\_

119-124 125-129  
126-129, 151-158, 164-176 160-163,  
177, 179-202  
207-209

Upon the foregoing papers in this action to foreclose a common charge lien encumbering condominium unit #1D at 105 Oceana Drive E. in Brooklyn (Block 8720, Lot 2322), (the Unit), defendant Farkhadjan Usmanov (Usmanov or Moving Defendant) moves (in motion sequence [mot. seq.] seven), by order to show cause (OSC), for an order: (1) pursuant to CPLR 2221 (e), granting him leave to renew his June 13, 2023 motion (in

mot. seq. 4), which sought dismissal of this action based on a lack of personal jurisdiction, pursuant to CPLR 308 (2) and 3211 (a) (8), and vacatur of the default judgment, order of reference and judgment of foreclosure and sale, pursuant to CPLR 5015 (a) (4); (2) vacating the referee deed by which the Unit was transferred to non-party, West Fork Capital Equities LLC (West Fork), and the subsequent deed by which West Fork transferred the Unit to non-party MS Global Group LLC (MSG); and (3) restraining any and all further transfers, encumbrances and conveyances of the Unit (NYSCEF Doc No. 124).

Plaintiff Board of Managers of the Oceana Condominium No. Eight (the Condominium Board or Plaintiff) cross-moves (in mot. seq. eight) for an order: (1) granting it an extension of time to serve Usmanov with the summons and complaint, pursuant to CPLR 306-b; (2) directing an evidentiary hearing and an accounting to determine the rental income collected by the previous deed holder of the Unit, West Fork, and the current deed holder of the Unit, MSG, as well as payments that they made for common charges, the purchase price and real estate taxes; and (3) imposing sanctions against Adam Plotch, the President and owner of non-party West Fork (NYSCEF Doc No. 125).

### **Background**

On June 11, 2013, the Condominium Board commenced this action to foreclose a common charge lien on Usmanov's Unit by filing a summons, an unverified complaint and a notice of pendency. The complaint alleges that Usmanov "failed to comply with the Declaration and By-laws of the Condominium in that [he] failed to pay common charges of the Condominium" and "Plaintiff recorded a Notice of Lien for Unpaid Common

Charges against the Unit at the Office of the City Register in and for Kings County on June 4, 2013 . . .” (complaint at ¶¶ 9-10). The complaint further alleged that “defendant is indebted to Plaintiff for the sums set forth in the Notice of Lien for Unpaid Common Charges, to wit: \$13,752.40 together with all of the common charges, use and occupancy and assessments that may accrue during the pendency of this action, together with interest thereon” (*id.* at ¶ 16).

The Condominium Board’s affidavit of service, sworn to on July 18, 2013, reflects that the process server purportedly served Usmanov with process on June 28, 2013, at 8:05 p.m., at the Condominium Building at “105 OCEANA DRIVE EAST, BROOKLYN NY” by delivering the documents to “MRS. USMANOV (WIFE),” a person of suitable age and discretion, at Usmanov’s “dwelling place” and mailing the documents “within 20 days of such delivery . . .” to “recipient’s last known residence at: S/A/A . . .” (NYSCEF Doc No. 11). Notably, the Condominium Board’s affidavit of service fails to identify the Condominium Unit where the process server purportedly delivered the documents to Mrs. Usmanov and when, where and to whom the subsequent mailing was sent.

Usmanov failed to answer or otherwise respond to the complaint.

The Condominium Board moved for an order of reference and other relief. On August 11, 2014, the court (Partnow, J.) granted the Condominium Board’s motion on default and issued an order of reference appointing a referee (NYSCEF Doc No. 17).

On November 3, 2014, the referee issued a referee’s report in which he determined that \$39,483.79 was due and owing to Plaintiff as of September 25, 2014. Soon thereafter,

the Condominium Board moved to confirm the referee's report and for a judgment of foreclosure and sale. On April 6, 2015, the court (Partnow J.) granted the Condominium Board's motion without opposition, confirmed the referee's report and issued a judgment of foreclosure and sale directing that the Unit be sold at auction (NYSCEF Doc No. 18).

On January 7, 2016, the referee held a foreclosure auction at which West Fork, an entity owned by Adam Plotch,<sup>1</sup> emerged as the winning bidder for the sum of \$69,000,00 (NYSCEF Doc No. 19). By an April 6, 2016 referee's deed, the Unit was transferred to West Fork (NYSCEF Doc No. 20). Subsequently, by a July 18, 2018 deed, West Fork transferred the Unit to MSG (NYSCEF Doc No. 21), another entity that Adam Plotch manages and owns (NYSCEF Doc No. 41 at 25-26).

#### ***Usmanov's 2023 OSC To Vacate and Dismiss***

On June 1, 2023, Usmanov moved (in mot. seq. four), by OSC, for an order: (1) vacating the order of reference, judgment of foreclosure and sale, the 2016 referee's deed to West Fork and the 2018 deed to MSG, pursuant to CPLR 5015 (a) (4); (2) dismissing this action for lack of personal jurisdiction, pursuant to CPLR 308 (2) and 3211 (a) (8); and (3) restraining any further transfers, encumbrances or conveyances of the Unit (NYSCEF

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<sup>1</sup> Adam Plotch is a sophisticated investor in distressed condominium units (*see, e.g., Plotch v Citibank, N.A.*, 27 NY3d 477, 481 [2016] [Plotch was the winning bidder at foreclosure auction]; *U.S. Bank Nat'l Ass'n v Ashon*, 226 AD3d 941 [2d Dept 2024] [by a January 25, 2011, referee's deed, the condominium unit was conveyed to Adam Plotch]; *Bd. of Managers of Regent's Park Gardens Condo v Chavez*, 136 AD3d 953 [2d Dept 2016] [Adam Plotch was the successful bidder at the foreclosure auction]; *Plotch v U.S. Bank Nat'l Ass'n*, 129 AD3d 813 [2d Dept 2015] [Plotch purchased condominium unit at public auction for \$15,000]).

Doc Nos. 3-24). On June 13, 2023, after oral argument, the court (Partnow, J.) signed Usmanov's OSC, adjourned Usmanov's motion to October 17, 2023, and directed service upon Plaintiff, non-party MSG, the referee and "any other party entitled to notice" by *overnight mail*:

"SUFFICIENT cause appearing therefore, let a copy of this Order and the papers upon which it is granted be served on the plaintiff's attorney, the current owner or deed holder, the referee and any other party entitled to notice *via overnight mail*, no later than June 15, 2023, shall be deemed good and sufficient" (NYSCEF Doc No. 27 at 2 [emphasis added]).

Usmanov's June 14, 2023 affidavit of service reflects that the OSC was served by overnight mail to Plaintiff's counsel, MSG and the referee, as the court directed in the OSC (NYSCEF Doc No. 28). On June 16, 2023, Plaintiff's counsel e-filed an "Admission of Service of Order to Show Cause" in which he acknowledged receipt of Usmanov's OSC (NYSCEF Doc No. 29).

On October 17, 2023, the return date of Usmanov's OSC, MSG failed to appear, Usmanov's OSC was granted on default and without opposition and Usmanov was directed to settle an order on notice. Usmanov's October 17, 2023 affidavit of service reflects that a notice of settlement was served upon Plaintiff's counsel, MSG's counsel, MSG and the referee by certified mail (NYSCEF Doc No. 30).

#### ***MSG's and West Fork's Motions to Vacate***

On October 23, 2023, in response to Usmanov's notice of settlement, MSG moved, by OSC, for an order vacating Usmanov's June 13, 2023 OSC, pursuant to CPLR 5015 (a)

(3) and (a) (4), and seeking a stay of the entry of a decision and order on Usmanov's OSC (NYSCEF Doc Nos. 31 and 42). MSG's counsel asserted that a stay is required because Usmanov may enforce a decision, order or judgment canceling MSG's deed to the Unit "without having acquired personal jurisdiction over MSG" (NYSCEF Doc No. 32 at ¶ 5). MSG also submitted a memorandum of law arguing that "service of a *motion* (sans a summons) by *mail*, is not sufficient to transform a non-party into a party, or to vest this court with the power to issue relief against such non-party" (NYSCEF Doc No. 34 at 2).

On March 13, 2024, West Fork similarly moved, by OSC, to vacate Usmanov's June 13, 2023 OSC, pursuant to CPLR 5015 (a) (4), for lack of personal jurisdiction (NYSCEF Doc Nos. 47 and 112).

By an October 2, 2024, decision and order, this court granted MSG and West Fork's motions to vacate Usmanov's June 13, 2023 OSC on the ground that jurisdiction over non-parties cannot be obtained by mail, "the directed service in the order to show cause was improper . . ." and West Fork, the successful bidder at the foreclosure auction, is an indispensable party that should have been personally served (NYSCEF Doc No. 117). Usmanov's June 13, 2023 OSC was vacated because it failed to direct service upon MSG and West Fork, against whom it sought relief, sufficient to obtain jurisdiction over them. Consequently, the court never reached or considered the merits of Usmanov's OSC.

***Usmanov's 2024 Action Against MSG and West Fork***

Meanwhile, on January 3, 2024, Usmanov commenced a separate action under Kings County index No. 500226/24 against MSG, West Fork and the Condominium Board seeking to quiet title to the Unit (2024 Quiet Title Action).

***Usmanov's Instant OSC to Reargue***

On October 16, 2024, Usmanov made his instant motion for an order granting him leave to renew his June 13, 2023 OSC, vacating MSG and West Fork's deeds and restraining any transfers or encumbrances of the Unit (NYSCEF Doc No. 124).

Defense counsel submits an affirmation arguing that because "this Court found that Justice Partnow ordering service by overnight mail was improper (see NYSCEF Doc. 117) . . ." it prompted Usmanov's instant OSC for leave to renew his June 13, 2023 OSC as an attempt "to correct the issue by serving [the] parties personally" (NYSCEF Doc No. 120 at ¶¶ 5 and 30). The remainder of defense counsel's affirmation addresses the merits of the June 13, 2023 motion, arguing that Plaintiff failed to obtain personal jurisdiction over Usmanov because "Plaintiff's failure to properly serve Defendant by e[i]ther delivery and/or mailing *is [evidenced] on the face* of the Affidavit of Service" (*id.* at ¶ 52 [emphasis added]). Defense counsel further argues that "[a] lack of personal jurisdiction [over] the Defendant renders [the] Referee's deed, and the subsequent deeds, including the deed to the current owner not just voidable but void and subject to the mandatory rescission" (*id.* at ¶ 54).

Usmanov and his wife submit moving affirmations and documentary evidence regarding the lack of personal jurisdiction over Usmanov, establishing their residency in Norway from May 2008 through September 2013 and that Usmanov “only became aware of the fact that Subject Premises were sold in 2019 after [he] came back to the US in December of 2018” (NYSCEF Doc Nos. 121 and 122).

### ***MSG and West Fork’s Oppositions***

MSG, in opposition to Usmanov’s instant motion, submits an attorney affirmation arguing that Usmanov and his wife’s affidavits attesting that they resided abroad until 2018 are “demonstrably false, as evidenced by the bankruptcy petition filed by Usmanov on September 16, 2015 . . .” (NYSCEF Doc No. 151 at ¶¶ 27-29). MSG’s counsel asserts that MSG has been defending a pending mortgage foreclosure action concerning the Unit and has been paying common charges to the Condominium since 2018 (*id.* at ¶¶ 31-32 and 38).

MSG submits a memorandum of law in opposition to Usmanov’s motion asserting that: (1) Usmanov cannot seek affirmative relief and void MSG’s 2018 deed by motion rather than in a plenary action;<sup>2</sup> (2) Usmanov improperly served MSG with his 2024 OSC by delivering the documents to the Secretary of State, which is not personal service; (3) MSG is a bona fide purchaser for value whose title cannot be disturbed by vacating the judgment of foreclosure and sale; (4) in light of Plaintiff’s affidavit of service of process

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<sup>2</sup> MSG asserts that “Usmanov tacitly acknowledged the impropriety of his seeking the extraordinary relief of cancelling a non-party’s deed by way of motion by commencing . . .” the 2024 Quiet Title Action (NYSCEF Doc No. 150 at 3).

in 2013, Usmanov failed to rebut the presumption of proper service; (5) Usmanov waived his objection to personal jurisdiction by failing to assert it before the Unit was sold to MSG; (6) the doctrine of laches precludes Usmanov's challenge to personal jurisdiction; and (7) Usmanov fails to present any new facts or law warranting renewal of his 2023 OSC (NYSCEF Doc No. 150).

West Fork, in opposition, submits an attorney affirmation arguing that:

“[u]nder nearly identical circumstances, in *Puretz v Fannie Mae*, 2024 NY Slip Op 06227 (2d Dept. 2024), the Second Department recently held that the title of a good faith purchaser for value would not be vacated even if the foreclosure sale at which it acquired title was reversed due to lack of personal jurisdiction, because the foreclosed owner has his recourse in a plenary action under CPLR § 5523. Indeed, Usmanov has brought a separate action against West Fork and MS[G] and has his recourse there. Thus, to the extent this court does consider Usmonov's jurisdictional challenge and finds {jurisdiction} lacking, it would still be *required* to deny the motion” (NYSCEF Doc No. 164 at ¶ 5; *see also* ¶¶ 39-43).

West Fork's counsel also argues that: (1) vacatur of Usmanov's 2023 OSC is law of the case; (2) “Usmanov's late attempt to dismiss the complaint, vacate the JFS and the Referee's deed is also barred under the doctrine of laches”; and (3) Usmanov “waited until the process server's records were likely unavailable so as to prejudice West Fork's defense of the service in a traverse hearing” (*id.* at ¶¶ 34, 46 and 49-50).

### ***The Condominium Board's Cross-Motion***

On October 30, 2024, the Condominium Board opposed Usmanov's OSC and cross-moved for an extension of time to serve Usmanov with process, pursuant to CPLR 306-b,

an evidentiary hearing and accounting regarding the rental income collected and amounts paid by MSG and West Fork regarding the Unit and for sanctions against Adam Plotch (NYSCEF Doc No. 125).

Plaintiff's counsel submits an affirmation asserting that "Plaintiff made a diligent effort to serve Mr. Usmanov with process in this action within 120 days from the commencement . . ." and references its July 18, 2013 affidavit of service in the record (NYSCEF Doc No. 126 at ¶ 4). Counsel asserts that "an extension of time to serve process should be granted in the interests of justice as the Plaintiff believed that it had properly served Mr. Usmanov with the process . . ." and "justifiably relied on the prima facie valid Affidavit of Service that had not been challenged for 10 years . . ." (*id.* at ¶¶ 19-20). Importantly, Plaintiff's counsel asserts that a traverse hearing is not possible, due to the Condominium Board's "inability to locate the process server for the traverse hearing and the process service company going out of business" (*id.* at ¶ 20). Counsel further notes that granting Plaintiff an extension of time to serve Usmanov with process would effectually vacate and set aside all of the proceedings in this action:

"[m]oreover, pursuant to the applicable caselaw of the Second Department, upon granting Plaintiff's instant application to extend the [time] to serve Mr. Usmanov with process, all the proceedings, including the Order of Reference, Judgment of Foreclosure and Sale, Referee's deed to West Fork and the deed to MSG must be vacated and set aside" (*id.* at ¶ 21).

Counsel further argues that "neither MSG nor West Fork would be prejudiced if the proceedings were reverted back to the status quo" since "Mr. Plotch, upon his initial

purchase of the Subject Premises, was well aware of the potential deficiencies regarding the service of process alleged by Mr. Usmanov as Mr. Plotch notoriously holds himself as a sophisticated purchaser of foreclosed properties and a seasoned litigator” and “[a]ccording to ample caselaw Mr. Plotch has extensive knowledge of the requirements of the proper affidavit of service” (*id.* at ¶¶ 24-25).

***Usmanov’s Partial Support of Plaintiff’s Cross-Motion***

Usmanov, in partial support of Plaintiff’s cross-motion, submits an attorney affirmation asserting that “[t]here is no dispute, as neither West Fork nor MSG attempt to argue otherwise, that the lack of personal jurisdiction upon Mr. Usmanov appears on the face of the Affidavit of Service . . .” (NYSCEF Doc No. 179 at ¶ 4). Importantly, Usmanov’s counsel advises that “Defendant fully *concedes* to Plaintiff’s cross-motion seeking an extension of time to serve Mr. Usmanov in this action pursuant to the CPLR 306-b and to hold an evidentiary hearing on a full accounting . . .” by MSG and West Fork (*id.* at ¶ 11). Defense counsel also disputes that Plotch’s companies, MSG and West Fork, are good faith purchasers for value, because they purchased the Unit with knowledge of the improper service upon Usmanov and subject to a pending mortgage foreclosure action (*id.* at ¶¶ 43-45).

## Discussion

(1)

### *Usmanov's 2024 OSC for Leave to Renew*

CPLR 2221 (e) (2) provides that a motion for leave to renew “shall be based upon new facts not offered on the prior motion that would change *the prior determination* or shall demonstrate that there has been a change in the law that would change *the prior determination*” (emphasis added). Thus, CPLR 2221 (e) only applies to prior motions which have already been determined on the merits. Here, Usmanov improperly styles his 2024 OSC as a motion for leave to renew his June 13, 2023 OSC, despite the fact that there is no “prior determination,” since Usmanov’s June 13, 2023 OSC was never decided on the merits and was vacated based on the improper method of service directed therein. Consequently, Usmanov’s instant OSC seeking to renew his June 13, 2023, OSC is denied.

(2)

### *The Condominium Board's Cross-Motion*

“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” (*State of New York Mortg. Agency v Braun*, 182 AD3d 63, 66 [2d Dept 2020]). “To establish good cause, a plaintiff must demonstrate reasonable diligence in attempting service” (*State of New York Mortg. Agency v Braun*, 182 AD3d 63, 66 [2d Dept 2020], quoting *Bumpus v New York City Tr. Auth.*, 66 AD3d 26, 31-32 [2d Dept 2009]). “The more flexible interest of justice standard accommodates late service that might be due

to mistake, confusion, or oversight, so long as there is no prejudice to the defendant” (*Bhatara v Kolaj*, 222 AD3d 926, 930 [2d Dept 2023]). “In deciding whether to grant a motion to extend the time for service in the interest of justice, the court must carefully analyze the factual setting of the case and a balancing of the competing interests presented by the parties” (*Rhoe v. Reid*, 240 AD3d 633, 637 [2d Dept 2025] [internal quotation marks omitted]). “The determination of whether to grant an extension of time in the interest of justice is within the discretion of the motion court” (*id.*; *CitiMortgage, Inc. v Benyacob*, 237 AD3d 1154, 1155 [2d Dept 2025]).

Here, the Condominium Board’s foreclosure action was timely commenced, and the Condominium Board believed that service of process had been made upon Usmanov within 120 days after the commencement of the action. The Condominium Board’s affidavit of service upon Usmanov, which does not indicate to what unit number delivery was made or to what address the summons and complaint were subsequently mailed, pursuant to CPLR 308 (2), is deficient, on its face (*see, e.g., Aurora Loan Servs., LLC v Revivo*, 175 AD3d 622, 623 [2d Dept 2019]). The interest of justice standard permits consideration of “any other relevant factor” (*State of New York Mortg. Agency v Braun*, 182 AD3d at 67), and the Condominium Board admits that it is unable to establish proper service upon Usmanov at a traverse hearing because it cannot locate the process server and the process service company has gone out of business (NYSCEF Doc No. 26 at ¶ 20). While the lack of proper service is evident from the record, there is no conceivable prejudice to Usmanov attributable to the delay in service, since Usmanov explicitly consents to an order granting

the Condominium Board's cross-motion for an extension of time to serve him with process. Under these circumstances, the Condominium Board is granted an extension of time within which to serve Usmanov with process in the interest of justice.

The Second Department has held that “[a] court is without power to render a judgment against a party over whom the court lacks jurisdiction” and “[a] judgment rendered without jurisdiction is void” (*Bank United, FSB v Verbitsky*, 167 AD3d 833, 834 [2d Dept 2018], quoting *Berlin v Sordillo*, 179 AD2d 717, 719 [2d Dept 1992]). “Furthermore, when a . . . deed is issued in execution upon such a void judgment, that deed is similarly void” (*Berlin v Sordillo*, 179 AD.2d at 719). Because the Condominium Board admittedly cannot establish proper service of process upon Usmanov, the August 11, 2014 order of reference, the April 6, 2015 judgment of foreclosure and sale and the April 6, 2016 referee's deed are void.

The court has considered the remaining arguments asserted by the parties and has determined that the Condominium Board has failed to demonstrate that the imposition of sanctions against Adam Plotch, the principal of non-parties MSG and West Fork, is warranted. Accordingly, it is hereby

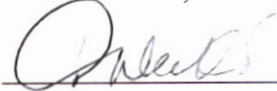
**ORDERED** that Usmanov's motion for leave to renew his June 13, 2023, OSC (mot. seq. seven) is denied; and it is further

**ORDERED** that the Condominium Board's cross-motion (mot. seq. eight) is only granted to the extent that the Condominium Board is granted an extension of time within which to serve Usmanov with process, pursuant to CPLR 306-b, and such service shall be

effectuated within 60 days after service of this decision and order with notice of entry; the cross-motion seeking relief against non-parties MSG and West Fork is denied.<sup>3</sup>

This constitutes the decision and order of the court.

E N T E R,



HON. DEREKIM B. NECKLES  
A. J. S. C.

KINGS COUNTY CLERK  
FILED  
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<sup>3</sup> That branch of the Condominium Board’s cross-motion seeking an evidentiary hearing and an accounting to determine the rental income collected by West Fork and MSG, as well as payments that they made for common charges, the purchase price and real estate taxes, should be determined in the related 2024 Quiet Title Action.