

U.S. Bank Trust, N.A. v Koppel

2025 NY Slip Op 34950(U)

December 18, 2025

Supreme Court, Kings County

Docket Number: Index No. 13874/2009

Judge: Carolyn Walker-Diallo

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At an IAS Term, Part FRP4, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 320 Jay Street, Brooklyn, New York, on the 18th day of December 2025.

PRESENT:

HON. CAROLYN WALKER-DIALLO, J.S.C.

Index No.: 13874/2009

U.S. BANK TRUST, N.A., as Trustee for LSF9
MASTER PARTICIPATION TRUST,

x

Plaintiff,

DECISION/ORDER

-against-

KENNETH I. KOPPEL, as Administrator of
the Estate of Herbert J. Koppel, deceased, et al.,

Defendants.

x

Recitation, as required by CPLR 2219 (a), of the papers considered in the review of these motions:

Papers

Numbered

Notice of Motion
Notice of Cross-Motion
Affirmation in Opposition and in Further Support
Affirmation in Opposition and Reply
Memorandum of Law in Reply

NYSCEF Doc. Nos. 89-91
NYSCEF Doc. Nos. 92-121
NYSCEF Doc. Nos. 125/126¹
NYSCEF Doc. No. 130
NYSCEF Doc. No. 131

Motion Sequences #6 & 7²

Upon the foregoing cited papers, the Decision/Order on these Motions is as follows:

On January 30, 2014, Plaintiff filed a motion for default judgment and an order of reference. Defendants Herbert J. Koppel, the Herbert J. Koppel Family Trust, and Nechama

¹ The Court notes that these filings appear to be duplicative to cover both motion sequences.

² The Court notes that motion sequences 2 and 3 were held in abeyance pending the traverse hearing. These sequences are moot in light of the Court's findings here.

Koppel as trustee³ (“Defendants”), filed a cross-motion to vacate their defaults and dismiss this action, *inter alia*, for lack of personal jurisdiction. This matter was referred for a traverse hearing by order of the Honorable Larry D. Martin on February 14, 2022, and the remainder of the motions were held in abeyance pending the outcome of the hearing. By order dated January 28, 2025, through a separate motion filing, the court denied Plaintiff’s motion for an extension of time to serve Defendants.

At the traverse hearing, the affidavit of service was submitted into evidence due to the process server’s death. Nechama Koppel Kalatsky and Faygie Koppel testified and documentary evidence was submitted into the record. Thereafter, Referee Miriam Sunshine issued a Referee’s Report (“Report”) dated July 16, 2024, finding that Plaintiff failed to establish proper service of process and recommending dismissal of the complaint for lack of personal jurisdiction over the parties. *See* Referee’s Report of Special Referee Miriam Sunshine, dated July 16, 2024, NYSCF Doc. No. 87.

Defendants now move to confirm the Report and to dismiss the action pursuant to CPLR 3211 (a) (8). Defendants contend that the Report is supported by the record and controlling precedent and should be confirmed. They argue that they rebutted the presumption of proper service through specific, credible testimony that the subject property was a multi-unit dwelling; that the process server failed to identify an apartment number; and that no person named “Joanna Koppel,” the alleged recipient of the service of process, existed. Defendants maintain that the

³ Defendant Herbert J. Koppel died on May 26, 2014. By orders of the Honorable Peter P. Sweeney dated January 3, 2019 and September 9, 2019, the caption on this matter was amended to (1) substitute Kenneth J. Koppel for Herbert J. Koppel, as Administrator of his estate and (2) change the name of the trust to “Koppel Family Trust.”

Referee, as the observer of the witnesses firsthand, was entitled to credit Defendants' testimony and discredit the process server's account.

Plaintiff cross-moves to reject the Report pursuant to CPLR 4403, arguing that the Referee's findings were erroneous and contrary to the weight of the credible evidence, and based on implausible testimony. Plaintiff asserts that the process server's affidavit of service constitutes prima facie proof of valid service and Defendants' denials of service are inconsistent and not credible. Plaintiff argues that the conflicting accounts made by the witnesses demonstrate that service evasion, not improper service, and the Referee improperly ignored the sworn proof of service and misapplied the law.

DISCUSSION

"CPLR 4403 provides that, '[u]pon the motion of any party . . . , the judge required to decide the issue may confirm or reject, in whole or in part, . . . the report of a referee to report' The report of a referee should be confirmed whenever the findings are substantially supported by the record, and the referee has clearly defined the issues and resolved matters of credibility." *U.S. Bank Nat'l Ass'n v. Maher*, 219 A.D.3d 1372, 1374 (2d Dep't 2023) (Internal citations and quotation marks omitted).

Further, "[a]t a hearing to determine the validity of service of process, the burden of proving personal jurisdiction is upon the party asserting it, and that party must sustain that burden by a preponderance of the credible evidence. As a general rule, courts will not disturb the findings of a referee as long as they are substantially supported by the record and the referee has clearly defined the issues and resolved matters of credibility." *Deutsche Bank Nat'l Tr. Co. v. Bueno*, 222 A.D.3d 940, 941 (2d Dep't 2023) (Internal citations and quotation marks omitted). "A referee's credibility

determinations are entitled to great weight because, as the trier of fact, he or she has the opportunity to see and hear the witnesses and to observe their demeanor.” *U.S. Bank Nat'l Ass'n v. Kaur*, 177 A.D.3d 1016, 1017 (2d Dep’t 2019); *see also Matter of Taub v. Taub*, 94 A.D.3d 901, 901 (2d Dep’t 2012) (“The Judicial Hearing Officer is in the best position to evaluate the credibility of the witnesses.”).

After reviewing and considering the traverse hearing transcript, exhibits, and Report, this Court finds no basis to disturb the Referee’s findings. The evidence presented established that the process server’s affidavit failed to specify the apartment or unit in which service was made within a multi-unit dwelling⁴ and identified a non-existent individual as the recipient of process. Such defects render the substitute service jurisdictionally invalid. *See Citimortgage, Inc. v. Ramcharran*, 240 A.D.3d 738 (2d Dep’t 2025); *Legal Servicing, LLC v. Carty*, 229 A.D.3d 553 (2d Dep’t 2024). The Referee credited Defendants’ testimony, and this Court finds that credibility determination supported by the record.

Plaintiff’s attempt to discredit the witnesses does not overcome the deference owed to the Referee’s determinations as to credibility, nor does the presumption of proper service based upon the process server’s affidavit reinstate after this presumption has been rebutted by specific, credible testimony. Therefore, this action is DISMISSED.

Finally, given the dismissal of the complaint in this matter, the notices of pendency filed must also be cancelled. *See CPLR 6414*; *see also Nationstar Mtge., LLC v. Davis*, 240 A.D.3d 790 (2d Dep’t 2025).

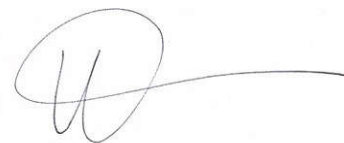
⁴ The Court takes judicial notice of the cover page for the deed to the subject premises dated December 2, 2008 and recorded December 23, 2008, under CRFN 2008000485572, referenced in the Complaint, which indicates that the property is a two-family dwelling.

CONCLUSION

Accordingly, Defendants' motion is GRANTED and Plaintiff's cross-motion is DENIED. The Court has considered the additional contentions of the parties not specifically addressed herein. To the extent that any relief requested was not addressed by the Court, it is hereby DENIED. The summons and complaint and action are DISMISSED. Defendants shall serve notice of entry within fifteen (15) days of upload of the instant order to NYSCEF upon Plaintiff and all parties who have appeared in this action. Further, the Kings County Clerk is hereby directed, upon payment of the appropriate fee, if any, to discharge any notice of pendency filed under this index number, and to enter a notice of cancellation upon the margin of record referring to this Order.

This constitutes the Decision and Order of the Court.

ENTER:



Hon. Carolyn Walker-Diallo, J.S.C