

<b>Wilmington Trust, N.A. v Baptiste</b>
2026 NY Slip Op 30225(U)
January 2, 2026
Supreme Court, Kings County
Docket Number: Index No. 528494/2023
Judge: Menachem M. Mirocznik
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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 2<sup>nd</sup> of January 2026

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

WILMINGTON TRUST, NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS SUCCESSOR TRUSTEE TO CITIBANK, N.A. AS TRUSTEE TO LEHMAN XS TRUST MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005- 3,

Plaintiff,

-against-

INDIRA T. BAPTISTE A/K/A INDIRA T. BAPTISTE BUNBURY A/K/A INDIRA T. BAPTISTE BUN; GMAC MORTGAGE, LLC; NEW YORK CITY PARKING VIOLATION BUREAU; NEW YORK CITY ENVIRONMENTAL CONTROL BOARD; CHEVON CHAMBERS; JAVIER CHAMBERS; KAMER CHANCE; NARCO FLYY; "JOHN DOE"; LAJUNE "DOE"; GARY RAMSAY, ALICIA WILLIS,

Defendants.

**Index No. 528494/2023**

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

Papers	Numbered
Notice of Motion	NYSCEF Doc. 83-99
Notice of Motion/Opposition	NYSCEF Doc. 102, 105, 110
Opposition to Motion/Reply	NYSCEF Doc. 104-107

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

**Relevant Procedural History**

This action was commenced on October 3, 2023, seeking to foreclose a mortgage (the "mortgage") executed by defendant Indira T. Baptiste A/K/A Indira T. Baptiste Bunbury A/K/A Indira T. Baptiste Bun (the "defendant") encumbering the property known as 654 Watkins Street Brooklyn, NY 11212 (the "property").

On October 24, 2023, defendant was served with the summons and complaint by personal

in hand service in accordance with CPLR 308[1]

Settlement conferences were held on September 6, 2016, October 5, 2016, February 14, 2017, and March 8, 2017, after which the matter was released from the settlement part.

On May 2, 2024, the Court granted plaintiff's motion for a default judgment and order of reference.

Plaintiff now moves to confirm the referee's report and for a judgment of foreclosure and sale. Plaintiff contends the referee's report should be confirmed in as much as the report is substantially supported by the record and plaintiff otherwise demonstrated entitlement to the issuance of a judgment of foreclosure and sale.

Defendant separately moves to dismiss contending the Court lacks personal jurisdiction due defective service of process, plaintiff's lack of standing, the action being barred by laches and the statute of limitations.

Plaintiff opposes the motion to dismiss arguing, inter alia, that the affidavit of service creates a presumption of proper service and defendant's mere denial is insufficient to rebut the presumption. Plaintiff further contends that defendant's remaining contentions may not be raised by a party in default and defendant does not offer a reasonable and the defendant's contentions are meritless. Lastly, plaintiff contends that defendant does not substantively challenge plaintiff's motion to confirm the referee's report and for judgment of foreclosure and sale and therefore the same should be granted.

### Discussion

"A process server's affidavit of service establishes a prima facie case as to the method of service and, therefore, gives rise to a presumption of proper service" *Citimortgage, Inc. v Cardali*, 230 AD3d 467 [2d Dept 2024]

Here, plaintiff submitted an affidavit of service demonstrating that defendant was served in hand with the summons and complaint in accordance with CPLR 308[1]. Therefore, the affidavit of service gives rise to a presumption of proper service. See *Caliber Home Loans, Inc. v Silber*, 173 AD3d 963 [2d Dept 2019][“A process server's affidavit of service gives rise to a presumption of proper service...Bare and unsubstantiated denials are insufficient to rebut the presumption of service”]

Although defendant denies proper service, the law is well settled that a “mere conclusory denial of service is insufficient to rebut the presumption of proper service arising from the process server's affidavit.” *PennyMac Corp. v Barbosa*, 189 AD3d 863 [2d Dept 2020]. Moreover, “[b]are and unsubstantiated denials are insufficient to rebut the presumption of proper service.” *Wachovia Mtge. Corp. v Toussaint*, 144 AD3d 1132 [2d Dept 2016]

Here, defendant's conclusory, bare and unsubstantiated denial of proper service is insufficient to rebut the presumption of property service that arises from the affidavit of service.

Therefore, defendant's motion in so far as it seeks dismissal for defective service is denied.

Moreover, the remainder of defendant's contentions may not be raised by a defendant in default. "A defendant in default is not entitled to affirmative relief of a nonjurisdictional nature absent vacatur of his or her default." *Wells Fargo Bank. N.A. v Laporte*, 235 AD3d 936, 938 [2d Dept 2025]; *US Bank N.A. v Scaffidi*, 238 AD3d 1092 [2d Dept 2025][["A defendant in default is not entitled to affirmative relief of a non-jurisdictional nature absent vacatur...of his or her default"]]

Here, other than moving under CPLR 3211[a][8] for dismissal, which has been addressed, defendant did not seek to vacate her default pursuant to CPLR 5015 or CPLR 317 in her motion. Therefore, the Court need not consider defendant's request for dismissal on grounds of a nonjurisdictional nature. See *Wilmington Tr. N.A. v Ashe*, 189 AD3d 1130 [2d Dept 2020][["The defendant is precluded from raising arguments regarding standing and RPAPL 1304 which are nonjurisdictional and cannot be raised without first vacating her default"]]

In the absence of a reasonable excuse, the Court need not to consider whether defendant has a meritorious defense to the action. See *LaSalle Bank. NA v Bernard*, 184 AD3d 816, 818 [2d Dept 2020][["Since the defendant failed to demonstrate a reasonable excuse for her default, it is not necessary to determine whether she demonstrated a potentially meritorious defense"]; See also *US Bank N.A. v Dedomenico*, 162 AD3d 962, 964 [2d Dept 2018][["Moreover, since the appellants failed to demonstrate a reasonable excuse for their default, it is unnecessary to consider whether they sufficiently demonstrated the existence of a potentially meritorious defense"]]

Nevertheless, CPLR 4403 provides in relevant part that "[u]pon the motion of any party or on his own initiative, the judge required to decide the issue may confirm or reject, in whole or in part...the report of a referee to report; may make new findings with or without taking additional testimony; and may order a new trial or hearing."

Pursuant to CPLR 4403, the Court has the express authority to act "on its own initiative" regardless of whether parties so move. See *Breland v Motor Veh. Acc. Indem. Corp.*, 24 AD2d 881 [2d Dept 1965][["Rule 4403 of the CPLR was specifically enacted, in part, to overrule the holding in *Rosenfield v. Rosenfield*, 272 App.Div. 547, 74 N.Y.S.2d 82, that the court must await a formal motion before confirming or rejecting a referee's report, and to reaffirm the court's power to act on its own initiative"]]

"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...The referee's findings and recommendations are advisory only and have no binding effect on the court, which remains the ultimate arbiter of the dispute." *Citimortgage, Inc. v Kidd*, 148 AD3d 767 [2d Dept 2017][citations omitted]

The Court notes that it may confirm the report *only* and *when*, the referee's finding are substantially supported by the record. If the Court has the authority to reject a report "[u]pon the motion" or "on its own initiative", the Court must also independently determine whether the referee's report is substantially supported by the record even in the absence of motion of a party seeking to reject same. Otherwise, there would be no way for a Court to reject a referee's report

“on its own initiative” rendering the language in the statute superfluous. CPLR 4403 does not suggest that this Court has a ministerial duty to rubberstamp unsupported reports.

Here, the referee’s report relied on the affidavit of Minh Nghiem, a purported Document Execution Associate of Nationstar Mortgage LLC (“Nationstar”), the alleged attorney-in-fact for plaintiff. In support of such authority, plaintiff annexes a limited power of attorney dated May 3, 2013 between plaintiff Nationstar. However, the limited power of attorney is expressly limited to that which is expressly authorized under certain Trust and Servicing Agreements that have not been proffered. Therefore, the power of attorney is insufficient to demonstrate that Nationstar possessed the requisite authority to act on behalf of plaintiff. See e.g. *U.S. Bank N.A. v Tesoriero*, 204 AD3d 1066, 1068 [2d Dept 2022][“the limited power of attorney submitted...restricted and conditioned its authority based on the terms of other agreements which were not provided by the plaintiff. Thus, the limited power of attorney was insufficient to demonstrate that Nationstar possessed the authority to act on behalf of the plaintiff”]

Accordingly, it is hereby

**ORDERED**, that plaintiff’s motion to confirm the referee’s report and for a judgment of foreclosure and sale is **DENIED**; and it further

**ORDERED**, that defendant’s motion to dismiss this action is **DENIED** in its entirety.

This constitutes the decision and order of the Court.

ENTER:



Hon. Menachem M. Mirocznik, JSC

FILED

JAN 15 2026

KINGS COUNTY CLERK'S OFFICE