

Citigroup Mtge. Loan Trust Inc. v Principal
2026 NY Slip Op 30600(U)
February 11, 2026
Supreme Court, Kings County
Docket Number: Index No. 522299/2023
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 11th of February 2026

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

Citigroup Mortgage Loan Trust Inc., Asset-Backed Pass-Through Certificates, Series 2007-AMCI, U.S. Bank National Association, as Trustee,

Plaintiff,

-against-

Esner Principal a/k/a/ Ensel Principal a/k/a/Ensel Jean Principal; Six Children Realty LLC; Anson Street, LLC; LVNV Funding LLC; The City of New York; NYCTL 2012-A; New York City Bureau of Highway Operations; John Doe #1 (Name Unknwn): John Doe #2 (Name Unknown); John Doe #3(Name Unknown)

Defendants.

Index No. 522299/2023

**Decision and Order
(Motion Seq. 4)**

Papers	Numbered
Order to Show Cause	NYSCEF Doc. 129-133, 135
Opposition Papers	NYSCEF Doc. 136-141

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 August 2, 2023, seeking to foreclose a modified mortgage (the “mortgage”) executed by defendant Esner Principal a/k/a/ Ensel Principal a/k/a/Ensel Jean Principal (the “defendant”) encumbering the property known as 1043 East 84th Street, Brooklyn, NY 11236 (the “property”).

On August 18, 2023, defendant was allegedly served with the summons and complaint by substituted service in accordance with CPLR 308[2] by delivery to “Vesta Caleziele” by mailing same to defendant at his residence.

Settlement conferences were held on October 31, 2023, and November 29, 2023, after which the matter was released from the settlement part.

On September 19, 2024, the Court granted plaintiff’s motion for a default judgment and

order of reference.

On July 17, 2025, the Court granted plaintiff's motion to confirm the referee's report and issued a judgment of foreclosure and sale.

Defendant now moves by order to show cause seeking to stay the sale of the property and vacate the judgment of foreclosure and sale and the default judgment and order of reference. Defendant contends that service was defective due to alleged discrepancies in the affidavits of mailing and that defendant's wife Vesta Calizaire had a stroke and was therefore unable to have accepted service on his behalf. Defendant further contends the he did not receive notice of the action in time to defend and has meritorious defenses predicated on plaintiff's alleged lack of standing and defects in the executed modification agreements and notice of default.

Plaintiff opposes the motion arguing, inter alia, that the affidavit of service creates a presumption of proper service and defendant's mere denial of service is insufficient to rebut the presumption and notes defendant did not submit an affidavit of his wife denying she received service. Plaintiff contends that defendant failed to establish a reasonable excuse and meritorious defense, that standing was established by annexing the note to the complaint, that the alleged defect in the modification is a mere clerical error and defendant does not dispute his execution of same.

Discussion

"A movant seeking to vacate a default judgment must establish one of the statutory grounds under CPLR 5015 (a), which include, inter alia, excusable default, newly discovered evidence, and fraud, misrepresentation, or other misconduct by an adverse party...It is the movant's burden to show that the prior order should be set aside by submission of sufficient evidence supporting the grant of such relief" *Mtge. Elec. Registration Sys., Inc. v Emile Dort-Relus*, 107 AD3d 861 [2d Dept 2013][internal citations and quotation marks omitted]

"When a defendant seeking to vacate a default judgment raises a jurisdictional objection pursuant to CPLR 5015(a)(4), the court is required to resolve the jurisdictional question before determining whether it is appropriate to grant a discretionary vacatur of the default." *Roberts v Anka*, 45 AD3d 752 [2d Dept 2007])

Indeed, "[a] court may not rule on the excusable nature of a defendants default under CPLR 5015(a)(1) without first determining the jurisdictional question." *Wells Fargo Bank, NA v Spaulding*, 177 AD3d 817 [2d Dept 2019]; See also *Harrison v Schottenstein*, 228 AD3d 848, 850 [2d Dept 2024][“That jurisdictional question must be resolved before determining whether it is appropriate to grant a discretionary vacatur of the default”]

"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 with the summons and complaint in accordance with CPLR 308[2]. 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 does not deny that someone matching the description in the affidavit was served with the summons and complaint on the date and time in question. 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.

“CPLR 317 permits a defendant who has been served with a summons and complaint other than by personal delivery to defend the action upon a finding by the court that the defendant did not personally receive notice of the summons and complaint in time to defend and has a potentially meritorious defense...However, to support a determination granting relief under CPLR 317, a party must still demonstrate, and the Court must find, that the party did not receive actual notice of the summons and complaint in time to defend the action.” *Bethpage Fed. Credit Union v Grant*, 178 AD3d 997 [2d Dept 2019][internal citations and quotation marks omitted]

Here, plaintiff’s “evidence that a copy of the summons and complaint were mailed to the defendant's correct residence address created a presumption of proper mailing and of receipt... The defendant's mere denial of receipt, without more, did not rebut the presumption of proper mailing” *Deutsche Bank Nat. Tr. Co. v Matos*, 77 AD3d 606 [2d Dept 2010][internal citations omitted]

Therefore, “the defendants' mere denial of receipt of the summons and complaint is not sufficient to establish lack of actual notice of the action in time to defend for the purpose of CPLR 317.” *Deutsche Bank Natl. Tr. Co. v Benitez*, 179 AD3d 891 [2d Dept 2020]; See also *Bethpage Fed. Credit Union v Grant*, 178 AD3d 997 [2d Dept 2019][“The mere denial of receipt of the summons and complaint is ... insufficient to establish lack of actual notice for the purpose of CPLR 317”]

Given that defendant failed to establish lack of notice in time to defend, the Court need 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”]

In any case, defendant failed to proffer a potentially meritorious defense.

“A plaintiff has standing to commence a foreclosure action where it is the holder or

assignee of the underlying note, either by physical delivery or execution of a written assignment prior to the commencement of the action with the filing of the complaint... Thus, a plaintiff may demonstrate its standing in a foreclosure action through proof that it was in possession of the subject note endorsed in blank, or the subject note and a firmly affixed allonge endorsed in blank, at the time of commencement of the action” *US Bank Tr., N.A. v Loring*, 193 AD3d 1101 [2d Dept 2021][internal citations omitted]

In general, a plaintiff can establish prima facie that it had standing to commence the action by annexing a copy of the subject note, endorsed in blank, to the complaint. *U.S. Bank N.A. v Auguste*, 173 AD3d 930 [2d Dept 2019]; *Bank of New York Mellon v Swift*, 213 AD3d 624 [2d Dept 2023]; *Selene Fin., L.P. v Coleman*, 187 AD3d 1082 [2d Dept 2020]; *U.S. Bank N.A. v Rozo-Castellanos*, 201 AD3d 995 [2d Dept 2022]

Here, plaintiff established it had standing by annexing a copy of the note endorsed in blank to the complaint.

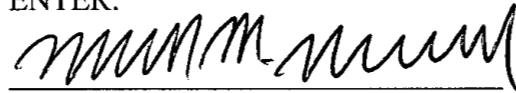
Lastly, defendant’s contentions, that a single number typo in the modification agreement making reference to the mortgage, as well as a similar defect in the notice of default are not potentially meritorious defenses.

Accordingly, it is hereby

ORDERED, that defendant’s motion is DENIED in its entirety.

This constitutes the decision and order of the Court.

ENTER:



Hon. Menachem M. Mirocznik, JSC

KINGS COUNTY CLERK
FILED
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