

Navy Fed. Credit Union v Loiacono

2026 NY Slip Op 31424(U)

April 8, 2026

Supreme Court, New York County

Docket Number: Index No. 150892/2025

Judge: Nicholas W. Moyne

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. NICHOLAS W. MOYNE PART 41M

Justice

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NAVY FEDERAL CREDIT UNION

Plaintiff,

- v -

SHAIMAINE LOIACONO,

Defendant.

-----X

INDEX NO. 150892/2025

MOTION DATE 05/02/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

Plaintiff, Navy Federal Credit Union, commenced the underlying action against the defendant, Shaimain Loiacono, to recover for amounts owed pursuant to a credit agreement and asserting claims for breach of contract and account stated. In Motion Sequence 001, defendant moves for an order, pursuant to CPLR § 3211(a)(8), to dismiss the complaint due to improper service and alleging that, pursuant to Judiciary Law § 470, plaintiff’s attorney should be disqualified. The motion is unopposed and for the reasons set forth below, the motion is granted.

Defendant moves to dismiss the complaint, alleging that service was improper as the service of process did not comply with the statutory requirements for personal service pursuant to CPLR § 308. CPLR § 3211(a)(8) provides that a party may move to dismiss one or more causes of action asserted against them on the grounds that the court lacks “jurisdiction of the person of the defendant.” “Service of process is carefully prescribed by the Legislature, which affords litigants ample methods for serving natural persons. Regularity of process, certainty and reliability for all litigants and for the courts are highly desirable objectives to avoid generating

collateral disputes” (*Dorfman v Leidner*, 76 NY2d 956, 958 [1990]). As “[n]otice received by means other than those authorized by statute cannot serve to bring [a] defendant[] within the jurisdiction of the court” (*Carney v Metro. Transportation Auth.*, 221 AD3d 447, 449 [1st Dept 2023]), where there is a lack of proof of proper service under the CPLR, a complaint may be dismissed for that reason (*Arthur-Brown v Ramirez*, 235 AD3d 526, 527 [1st Dept 2025]).

Pursuant to CPLR § 308(1), personal service upon a natural person may be made “by delivering the summons within the state to the person to be served.” Pursuant to CPLR § 308(2), personal service may also be made by delivering the summons within the state to a person of suitable age and discretion at the usual abode of the person to be served and by mailing the summons to the person at his or her last known residence or actual place of business. “An affidavit of service constitutes prima facie evidence of proper service and the mere denial of receipt of service is insufficient to rebut the presumption of proper service created by a properly-executed affidavit of service” (*Ocwen Loan Servicing, LLC v Ali*, 180 AD3d 591, 591 [1st Dept 2020]). To rebut this prima facie showing, defendant was required to submit a sworn, nonconclusory denial of service or swear to specific facts to rebut the statements in the process server's affidavit (*HSBC Bank USA, N.A. v Proctor*, 232 AD3d 439, 439-40 [1st Dept 2024]; *JP Morgan Chase Bank v Dennis*, 166 AD3d 530, 531 [1st Dept 2018]).

Here, the “Sheriff’s Certificate of Service” includes that on April 15, 2025, “at approximately 9:11 PM at 90 WEST STREET (Lobby/ Front Desk Foyer)” the summons and complaint, together with accompanying exhibits, were served upon “SHAIMAINE LOIACONO” in the following manner of personal delivery, “[b]y delivering to and leaving with SHAIMAINE LOIACONO personally a true copy thereof, said person being known as the mentioned and described herein” (NYSCEF Doc. No. 7). The affidavit of service also included

the description of the person served as: “Skin Complexion: DARK; Gender: Male; Approx. Age: 60-65 years old; Height: 6'4"; Weight: 280 lbs; Hair Color: BALD” (*Id.*).

However, the defendant asserts that he was not personally delivered the summons and complaint nor received anything by mail: as required for proper service pursuant to CPLR §§ 308(1) and 308(2). In his affirmation in support of the motion to dismiss, defendant denied personally receiving the commencement papers from the sheriff, asserting “[t]he sheriff did not hand me, or otherwise give me, the Summons and Complaint... I have not touched or been handed the Summons and Complaint while the sheriff was in the building” (NYSCEF Doc. No. 11). Defendant further asserts that, “[o]n the date of the alleged service, the sheriff s deputy may have handed the Summons and Complaint to our building's doorman outside of my immediate presence” (*Id.*). Defendant’s affirmation includes, “[t]o date, I have not received any mailing by First-Class Mail to complete any alleged substitute service of process... I received no other communication in this matter whatsoever through overnight mail, first class mail or electronic mail” (*Id.*).

The defendant’s express denial of ever receiving the summons and complaint from the sheriff personally is sufficient to rebut the statements averring to such as found in the affidavit (*see NYCTL 1998-1 Tr. v Rabinowitz*, 7 AD3d 459, 460 [1st Dept 2004]). Further, while a doorman may be considered a “person of suitable age and discretion” (*2110-2118 ACBP v Holland-Harden*, 118 AD3d 461 [1st Dept 2014]), “[p]ersonal jurisdiction is not acquired pursuant to CPLR 308(2) unless both the delivery and mailing requirements have been complied with” (*Williams v MTA Bus Co.*, 224 AD3d 467, 468 [1st Dept 2024]). Beyond the defendant’s sworn statement, the substance of the affidavit of service also lacks support for the conclusion that substituted service was properly effected (*Commissiong v Mark Greenberg Real Estate Co.*


LLC, 203 AD3d 657 [1st Dept 2022]) as the affidavit fails to include a statement or any proof of mailing as required (Williams v MTA Bus Co., 224 AD3d 467, 468 [1st Dept 2024]). Defendant’s showing has thus demonstrated the mailing component was not complied with, rendering substituted service ineffective (Deutsche Bank Natl. Tr. Co. v Ferguson, 156 AD3d 460, 461 [1st Dept 2017]; c.f. PennyMac Loan Services, LLC v Valdez, 245 AD3d 443, 444 [1st Dept 2026]).

By failing to oppose the motion herein, plaintiff failed to satisfy its burden of demonstrating the defendant was properly served and the defendant’s motion to dismiss the complaint may be granted (Manfredo v 100-106 LLC, 224 AD3d 626, 627 [1st Dept 2024], citing Stewart v Volkswagen of Am., Inc., 81 NY2d 203, 207 [1993] [“once jurisdiction and service of process are questioned, plaintiffs have the burden of proving satisfaction of statutory and due process prerequisites”]). Accordingly, the court need not consider the defendant’s request for disqualification of plaintiff’s counsel under Judiciary Law § 470- a violation which may have been cured (see Arrowhead Capital Fin., Ltd. v Cheyne Specialty Fin. Fund L.P., 32 NY3d 645, 650 [2019]).

Accordingly, it is hereby

ORDERED that the defendant’s motion to dismiss is GRANTED and the complaint is dismissed in its entirety.

This constitutes the decision and order of the court.


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<u>4/8/2026</u> DATE			<u>NICHOLAS W. MOYNE, J.S.C.</u>
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> OTHER
			<input type="checkbox"/> REFERENCE