

Bank of Am., N.A. v Van Valkenburg
2026 NY Slip Op 32073(U)
May 20, 2026
Supreme Court, Kings County
Docket Number: Index No. 527456/2023
Judge: Menachem M. Mirocznik
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At IAS Part FRP5 of the Supreme Court of the State of New York, County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, NY 11201, on the 26th of May 2026

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

BANK OF AMERICA, N.A.,

Plaintiff,

-against-

PATRICIA VAN VALKENBURG AS EXECUTOR
TO THE ESTATE OF WILLIAM
VANVALKENBURG AKA WILLIAM VAN
VALKENBURG AKA WILLIAM
VANVALKENBERG; ET AL

Defendants.

Index No. 527456/2023

**Decision, Order and Judgment
(Motion Seq. 1, 3, 4 and 5)**

Papers	Numbered
Notice of Motion (Seq. 1)	NYSCEF Doc. 21-25
Opposition Papers (Seq. 1)	NYSCEF Doc. 26-27
Reply Papers (Seq. 1)	NYSCEF Doc. 29-30
Notice of Motion (Seq. 3)	NYSCEF Doc. 55-58
Opposition Papers (Seq. 3)	NYSCEF Doc. 90-98
Reply Papers (Seq. 3)	NYSCEF Doc. 99
Notice of Motion (Seq. 4)	NYSCEF Doc. 59-70
Notice of Cross-Motion (Seq. 5)	NYSCEF Doc. 76-89
Opposition to Cross-Motion/Reply (Seq. 4 and 5)	NYSCEF Doc. 100

Upon the foregoing papers, the motion(s) is/are determined in accordance with this Decision, Order and Judgment as follows:

Relevant Factual and Procedural History

This action was commenced on September 21, 2023, seeking to foreclose a mortgage (the "mortgage") executed by decedent William VanValkenburg (the "decedent") encumbering the real property known as 21 Georgetown Lane, Brooklyn, NY 11234 (the "property"). Title to the property is held by the decedent's estate, of which defendant Patricia Van Valkenburg (the "defendant") is the executor.

On May 14, 2015, a prior foreclosure action was commenced under Index No. 505971/2015 seeking to foreclose the same mortgage (the "prior foreclosure action"). On April

18, 2023, the prior action was dismissed for plaintiff's failure to comply with the pre-foreclosure notice requirements. On April 19, 2023, notice of entry of the dismissal order was served.

Plaintiff commenced the within action allegedly pursuant to CPLR 205-a based on the dismissal of the 2015 action.

Per the affidavit of service filed in this action, defendant was allegedly served on September 27, 2023 pursuant to CPLR 308[2] by delivery to a "Jane Doe (Name Refused)" described as a co-tenant, followed by mailing on September 28, 2023.

On November 13, 2023, defendant joined issue with the filing of an answer asserting affirmative defenses including lack of personal jurisdiction, lack of standing, RPAPL 1304 noncompliance, and the statute of limitations.

Settlement conferences were held on November 21, 2023, December 13, 2023, January 16, 2024, and February 29, 2024, after which the case was released from the settlement conference part.

On January 11, 2024, defendant moved (Seq. 1) to dismiss the complaint for lack of personal jurisdiction.

Plaintiff opposed, arguing that the process server's affidavit of service constitutes prima facie evidence of proper service; that the "Jane Doe" to whom delivery was allegedly made qualifies as a person of suitable age and discretion; that the person served need not reside at the service address; that defendant's denial is conclusory and insufficient to rebut the presumption; and that plaintiff's supplemental evidence — including a process-server work ticket, an undated photograph of the service address corroborates the service.

In reply, defendant argued that her affirmation contained detailed, specific contradictions sufficient to rebut the presumption; that plaintiff's photograph is unauthenticated and does not establish that any person was present at the property at the time of alleged service; and that plaintiff's own work-ticket notes contradict the recitals contained in the affidavit of service.

On July 22, 2024, the Court set the matter down for a traverse hearing and held the remainder of the motion in abeyance pending the outcome of the hearing. The matter was referred to a Special Referee, and a traverse hearing was initially scheduled for March 5, 2025. Plaintiff did not appear at that hearing, and the Special Referee sustained the traverse on default.

On September 8, 2025, the Court granted plaintiff's motion (Seq. 2) to vacate the default order and set the matter down for a renewed traverse hearing.

A traverse hearing was held on November 5, 2025 before Special Referee Joseph D. Etra. The parties did not stipulate to a hear-and-determine basis, and the hearing accordingly proceeded as a hear-and-report. Plaintiff called process server Anthony Schultz. Defendant testified, as did her son, Tevin Drakes.

On November 10, 2025, the Special Referee filed his Report and Recommendation (the "Referee's Report"). The Special Referee credited the portions of defendant's and Drakes'

testimony that no one else had keys to the property and that they did not have guests. While the Special Referee found the process server “substantially credible,” he concluded that the certified medical records, considered together with the witness testimony and a previously proffered doctor’s letter, reflected that defendant would not have been at the premises at the time of the alleged service. The Special Referee recommended that the Court find that service upon defendant was not properly effectuated.

Plaintiff now moves (Seq. 3) for an order extending its time to serve defendant pursuant to CPLR 306-b and CPLR 2004 for 120 days from the date of entry of the order, and for leave to serve defendant by mail to defendant’s counsel. Plaintiff contends that an extension is warranted under both the good cause and interest of justice standards of CPLR 306-b: that plaintiff exercised reasonable diligence and reasonably believed it had timely served defendant within 120 days; that the statute of limitations has expired and plaintiff would suffer severe prejudice if denied an extension; that the action was timely commenced under CPLR 205-a based on the dismissed 2015 action; that plaintiff has expended considerable amounts on taxes, hazard insurance, and property preservation; that plaintiff has a meritorious cause of action; that plaintiff acted promptly upon learning of the Referee’s recommendation; and that defendant suffers no prejudice because defendant filed a timely answer through counsel.

Plaintiff separately moves (Seq. 4) for an order rejecting the report of the Special Referee and finding that plaintiff properly effectuated service upon defendant under CPLR 308; or, in the alternative, deeming defendant served under CPLR 2001. Plaintiff contends that the Referee’s Report rests on inadmissible hearsay — in particular, a doctor’s note attached to defendant’s motion to dismiss — which a referee’s report cannot rely upon. Plaintiff further argues that the Special Referee’s credibility finding contains a logical disconnect because the Special Referee credited the process server while concluding that service was not effected; that the Special Referee ignored inconsistencies between defendant’s motion-to-dismiss affirmation (in which she stated she “liv[ed] alone”) and her hearing testimony (in which she testified that she lived with her adult son); that the Court should take judicial notice of a 2016 order in the 2015 action that characterized as “shaky” defendant’s denial that her daughter accepted service; and that the certified medical records do not specify the time of the September 27, 2023 appointment, leaving the Referee’s conclusion to rest primarily on the inadmissible doctor’s note. As an alternative, plaintiff invokes CPLR 2001, arguing that any defect is technical because defendant received actual notice.

Defendant opposes the motion and cross-moves (Seq. 5) to confirm the Referee’s Report. Defendant contends that the Special Referee clearly defined the issue, made permissible credibility determinations entitled to deference, and reached findings substantially supported by the record; that even disregarding the doctor’s note, the certified medical records, defendant’s testimony about her 3:30 p.m. appointment, and Drakes’ corroborating testimony independently support the conclusion that defendant was not at the property at the time of the alleged service and that no other person of suitable age and discretion was present; that the 2015 action evidence is irrelevant to who resided at the property in 2023; that defendant’s prior “lives alone” statement is explained by her subsequent affirmation that, following the death of her husband in 2015, she feels alone even though her adult son resides in the home; and that CPLR 2001 cannot cure a failure to comply with any of the methods of service prescribed by CPLR 308.

In opposition to plaintiff's motion (Seq. 3) for an extension, defendant argues that the action is governed by CPLR 205-a, which requires that service upon the original defendant be "completed within such six-month period," and that CPLR 306-b and CPLR 2004 cannot be used to extend that deadline; that the prior action terminated on May 19, 2023 (thirty days after the April 19, 2023 service of notice of entry of the dismissal order; that plaintiff had until November 19, 2023 to complete service and never completed service within that window; and that, in any event, no good cause or interest of justice supports an extension because plaintiff was on notice of the service defect when defendant's answer was filed on November 13, 2023 and when defendant's motion to dismiss was filed on January 11, 2024, yet plaintiff did not move for an extension until November 11, 2025 — a delay of nearly two years that constitutes an "extreme lack of diligence."

In reply and in further support of the motions, plaintiff contends that CPLR 205-a is silent on whether a court may extend service under CPLR 306-b or CPLR 2004; that plaintiff's service was "initially completed" on October 12, 2023, within plaintiff's reading of the six-month window; that defendant's personal-jurisdiction affirmative defense was "generic and boilerplate" and gave plaintiff no notice that service was actually defective; that foreclosure actions are equitable and the Court has flexibility; that the medical records do not specify the time of the September 27, 2023 appointment; and that defendant's testimony of unfailingly early arrival and decade-long absence of visitors is implausible.

Discussion

I. Plaintiff's Motion (Seq. 4) to Reject the Special Referee's Report Is Denied; Defendant's Cross-Motion (Seq. 5) to Confirm the Special Referee's Report Is Granted.

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 N.A. v Maher*, 219 AD3d 1372 [2d Dept 2023][internal citations and quotation marks omitted]

"At 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 Natl. Tr. Co. v Bueno*, 222 AD3d 940 [2d Dept 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 N.A. v Kaur*, 177 AD3d 1016 [2d Dept 2019]; See also *Matter of Taub v Taub*, 94 AD3d 901, 901 [2d Dept 2012][“The Judicial Hearing Officer is in the best position to evaluate the credibility of the witnesses”]

"Generally, New York courts will look with favor upon a Referee's report, inasmuch as the Referee, as trier of fact, is considered to be in the best position to determine the issues presented." *Eur. Am. Bank & Trust Co. v H. Frenkel, Ltd.*, 163 AD2d 154 [1st Dept 1990].

Here, the Special Referee plainly defined the issue — whether plaintiff properly effectuated service upon defendant under CPLR 308[2] on September 27, 2023 — conducted an evidentiary hearing at which both parties were represented by counsel and at which three witnesses testified, made credibility determinations regarding each witness, and reached factual conclusions based on the testimony and documentary record before him.

The Special Referee's findings are substantially supported by the record. He credited defendant's and Drakes' testimony that only defendant and her adult son resided at the property in September 2023; that they did not entertain guests; and that no one else possessed keys to the property. He further found, on the basis of the certified medical records (admitted at the hearing), defendant's testimony regarding her 3:30 p.m. physical-therapy appointment, and Drakes' testimony that he was at work at the relevant time, that defendant would not have been at the property at the time of the alleged 3:29 p.m. service. Those findings rest on documentary evidence admitted at the hearing and on credible witness testimony, and they are entitled to deference.

Plaintiff's contention that the Special Referee impermissibly relied on inadmissible hearsay — specifically, the doctor's note submitted with defendant's motion-to-dismiss affirmation — does not warrant rejection of the Report. As the Special Referee made clear, the findings rest on three reinforcing pillars: the certified medical records; the credited testimony of defendant and her son regarding the household, her physical-therapy schedule, and her appointment on the day of alleged service; and, as a confirmatory matter, the previously proffered doctor's letter. Even if the doctor's letter were disregarded entirely, the certified medical records and the credited witness testimony independently support the same conclusion. The Referee's Report here does not rest on the doctor's note alone; it rests on admissible record evidence, therefore, "their admission into evidence was harmless since the referee's determination is supported by other substantial evidence in the record." *U.S. Bank N.A. v Kaur*, 177 AD3d 1016, 1018 [2d Dept 2019]

Plaintiff's related argument — that the certified medical records do not specify the time of the September 27, 2023 appointment and therefore cannot independently support the finding — is unpersuasive. The Special Referee was entitled to credit defendant's sworn testimony that her appointment on that day was at 3:30 p.m. and that she left the property at approximately 2:00 p.m. to arrive early; that testimony is corroborated by her standing pattern of physical-therapy appointments reflected in the certified records and by the fact that, on plaintiff's own theory, the alleged service occurred at 3:29 p.m. The Special Referee made a permissible credibility determination on the timing question, and his determination is entitled to deference.

Plaintiff's argument that the findings are internally inconsistent — because the Special Referee found the process server "substantially credible" while concluding that service was not effectuated — misreads the Report. The Special Referee credited the process server's testimony as to the actions he took (going to the property, taking a photograph, entering information into his electronic logbook, mailing a copy of the papers the next day) but did not credit, on the record as a whole, the proposition that service occurred or the person allegedly served was at the property at the time alleged. That distinction is a permissible one for a trier of fact to draw, particularly

where the process server testified that the alleged recipient was “very nasty” and refused to engage with him — testimony which the Referee’s footnote four expressly noted is in tension with the affidavit of service’s recital that the recipient confirmed defendant’s residence and military status.

In any event, “it is well established that the burden of proving that personal jurisdiction was acquired rests at all times upon the plaintiff in the action.” *Fed. Natl. Mtge. Assn. v Castoldi*, 187 AD3d 988, 989 [2d Dept 2020].

Plaintiff bore the burden at the hearing to establish proper service by a preponderance of the evidence, — a burden that did not shift to the defendant, even though defendant submitted testimony and evidence — and the Special Referee found plaintiff did not meet that burden.

Plaintiff’s reliance on the 2015 action — in particular, a 2016 order characterizing as “shaky” defendant’s denial that her daughter “Chioma” accepted service — does not warrant rejection of the Report. The question before the Special Referee was who was at the property on September 27, 2023, not who may have been at the property eight years earlier. The Special Referee considered defendant’s prior “lives alone” formulation, the apparent tension with her hearing testimony that she lived with her adult son, and her testimony explaining that, following the 2015 death of her husband of twenty-one years, she feels alone even though her adult son lives in the home. The Special Referee further considered the process server’s admission that his attestation in the affidavit of service that the person served advised him that the defendant resided at the property and was not in the military service was false.

A fact finder may credit portions of a witness’ testimony and discredit other portions. See 58A N.Y. Jur. 2d Evidence and Witnesses § 970 [“Issues of credibility and the weight to accord testimony are matters to be resolved by the trier of fact, who is free to accept or reject any part of the testimony presented.”]; See also *Scalogna v Osipov*, 117 AD3d 934, 935 [2d Dept 2014][a fact finder “may believe or disbelieve the testimony of a witness, or believe portions of the testimony and disbelieve others... Indeed, the [fact finder] is free to accept or reject some or all of the parties’ testimony and weigh any conflicting inferences”][citation omitted].

Here, when weighing the credibility of the defendant and that of the process server who admittedly made false assertions in his affidavit of service, the Special Referee resolved the issues of credibility against the inference plaintiff urges, and his determination is entitled to deference.

Plaintiff’s alternative request to deem defendant served under CPLR 2001 is also denied.

“CPLR 2001 may be used to cure only a “technical infirmity”... Defendant’s actual receipt of the summons and complaint is not dispositive of the efficacy of service.” *Ruffin v Lion Corp.*, 15 NY3d 578 [2010][citations and quotation marks omitted]

Indeed, “notice received by means other than those authorized by statute cannot serve to bring a defendant within the jurisdiction of the court.” *Feinstein v Bergner*, 48 NY2d 234 [1979]; *Emigrant Mtge. Co., Inc. v Westervelt*, 105 AD3d 896 [2d Dept 2013][“Service of process must be made in strict compliance with statutory ‘methods for effecting personal service upon a natural person’ pursuant to CPLR 308... A defect in service is not cured by the defendant’s subsequent receipt of actual notice of the commencement of the action.”]; *Deutsche Bank Natl. Tr. Co. v*

Kenol, 205 AD3d 1004 [2d Dept 2022]]["defect in service is not cured by the defendant's subsequent receipt of actual notice of the commencement of the action"]

"CPLR 2001 may not be used to disregard the plaintiff's failure to properly serve the defendants with process...The court's ability to apply CPLR 2001 [] presupposes that the court has acquired jurisdiction...Defendant's actual receipt of the summons and complaint is not dispositive of the efficacy of service...Here...the plaintiff's failure to comply with the personal delivery requirements of CPLR 308(2)...are jurisdictional defects that the Supreme Court may not overlook pursuant to CPLR 2001." *Baptiste v County of Suffolk*, 241 AD3d 619, 621 [2d Dept 2025]; See also *Segway of NY, Inc. v Udit Group, Inc.*, 120 AD3d 789 [2d Dept 2014]]["Accordingly, these defects constitute jurisdictional defect[s] that courts may not overlook pursuant to CPLR 2001...Since the Supreme Court failed to acquire personal jurisdiction, all subsequent proceedings are thereby rendered null and void"] [citations and quotation marks omitted]

Accordingly, plaintiff's motion (Seq. 4) to reject the Referee's Report and, alternatively, to deem defendant served pursuant to CPLR 2001 is denied. Defendant's cross-motion (Seq. 5) to confirm the Referee's Report is granted, the Referee's Report is confirmed, and the Court finds that defendant was not properly served with the summons and complaint.

II. Plaintiff's Motion (Seq. 3) for an Extension of Time to Serve Pursuant to CPLR 306-b and CPLR 2004 Is Denied.

CPLR 306-b provides in relevant part "Service of the summons and complaint...shall be made within one hundred twenty days after the commencement of the action...If service is not made upon a defendant within the time provided in this section, the court, upon motion, shall dismiss the action without prejudice as to that defendant, or upon good cause shown or in the interest of justice, extend the time for service."

"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...Good cause' and 'interest of justice' are two separate and independent statutory standards...To establish good cause, a plaintiff must demonstrate reasonable diligence in attempting service. Good cause will not exist where a plaintiff fails to make any effort at service ... or fails to make at least a reasonably diligent effort at service. By contrast, good cause may be found to exist where the plaintiff's failure to timely serve process is a result of circumstances beyond the plaintiff's control." *State of New York Mtge. Agency v Braun*, 182 AD3d 63 [2d Dept 2020]

"[A]n attempt at service that later proves defective cannot be the basis for a "good cause" extension of time to serve process pursuant to CPLR 306-b" *Estate of Fernandez v Wyckoff Hgts. Med. Ctr.*, 162 AD3d 742, 743 [2d Dept 2018]; *Citibank, N.A. v Martinez*, 197 AD3d 1086 [2d Dept 2021]]["The record demonstrates that there was no good cause shown for an extension of time to serve the summons and complaint upon the defendant pursuant to CPLR 306-b, since the plaintiff's attempt at service was defective."]

However, where the statute of limitations has expired the "Court lack[s] the authority to extend the plaintiffs' time to serve the [defendant] pursuant to CPLR 306-b." *Henriquez v Inserra*

Supermarkets, Inc., 68 AD3d 927, 928 [2d Dept 2009]; *Deutsche Bank Natl. Tr. Co. v Booker*, 221 AD3d 579, 582 [2d Dept 2023][“Since the action was time-barred, the court was without authority to extend the plaintiff’s time to serve the summons and complaint upon the defendant.”]; *Quinones v Neighborhood Youth and Family Services, Inc.*, 71 AD3d 1106 [2d Dept 2010][Same]; *CitiMortgage, Inc. v Goldstein*, 230 AD3d 1219, 1223 [2d Dept 2024][“Furthermore, the Supreme Court should have denied the plaintiff’s cross-motion, inter alia, pursuant to CPLR 306-b to extend the time to serve the summons and complaint upon the defendant, since the action was time-barred, and thus, the court was without authority to extend the plaintiff’s time to serve the summons and complaint upon the defendant.”]

Plaintiff contends that this action is not barred by the statute of limitations because it was timely commenced within six months of termination of the prior action pursuant to CPLR 205-a.

“Pursuant to CPLR 205-a, where, as here, an action upon an instrument described under CPLR 213(4) is timely commenced and is not terminated on certain enumerated grounds, “the original plaintiff ... may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months following the termination, provided that the new action would have been timely commenced” and that “service upon the original defendant is *completed* within such six-month period”... Notably, under CPLR 205(a), in order to qualify for the six-month extension, service need only be “effected” within the six-month period... In contrast, in enacting CPLR 205-a, the Legislature chose to require that service upon the defendant be “completed” within the six-month period.” *Deutsche Bank Natl. Tr. Co. v Heitner*, 226 AD3d 967 [2d Dept 2024]

Here, it is undisputed that the complaint filed in the previous foreclosure action accelerated all sums due under the note and mortgage and was dismissed on April 18, 2023, with notice of entry being served on April 19, 2023. Therefore, plaintiff had until November 19, 2023 to file and complete service to be entitled to the extension afforded under CPLR 205-a. See *HSBC Bank USA, N.A. v St. Hillaire*, 251 NYS3d 198 [2d Dept 2026]

However, the Court has already determined, in confirming the Referee’s Report, that service of the summons and complaint upon defendant was not properly effectuated. It follows that service upon defendant was not “completed” within the meaning of CPLR 205-a, regardless of the six-month window plaintiff posits.

Contrary to plaintiff’s contentions, neither CPLR 306-b or CPLR 2004 provide authority to extend the period to file and complete service pursuant to CPLR 205-a.

“Discretionary extensions of time to effect service under CPLR 306-b do not “negate or nullify” the filing and service requirements of CPLR 205(a)”. *Mira v Media*, 222 AD3d 528, 529 [1st Dept 2023]; *U.S. Bank N.A. v Chait*, 2026 NY Slip Op 03129 [1st Dept May 19, 2026][“Plaintiff argues that the motion court properly exercised its discretion under CPLR 306-b to extend plaintiff’s time to serve the summons and complaint by 120 days. However, the court did

not have discretion to extend the time for plaintiff to serve defendant beyond CPLR 205-a's six-month service period.¹

The simple fact is that service on defendant was not "completed" as required by CPLR 205-a. Therefore, the savings provision is inapplicable, and this action is time barred. See *Deutsche Bank Natl. Tr. Co. v Zak*, 235 AD3d 839 [2d Dept 2025]; *Deutsche Bank Natl. Tr. Co. v Heitner*, 226 AD3d 967 [2d Dept 2024]; *Wells Fargo Bank, N.A. v Brandt*, 230 AD3d 623 [2d Dept 2024]

The same principle disposes of plaintiff's alternative invocation of CPLR 2004, which by its terms does not apply "where otherwise expressly prescribed by law." The savings provision in CPLR 205-a expressly prescribes the service deadline applicable here, and CPLR 201 separately provides that "[n]o court shall extend the time limited by law for the commencement of an action." Plaintiff's effort to extend the CPLR 205-a deadline by motion under either provision is unavailing. See *Sengstacken v Zoning Bd. of Appeals of Town of Ramapo*, 87 AD2d 651, 652 [2d Dept 1982] ["Although a court can extend the time for doing certain acts (CPLR 2004), it cannot extend the time limited by law for the commencement of an action (CPLR 201)."]; See also *Facteau v Clinton County Bd. of Elections*, 197 AD3d 840 [3d Dept 2021] ["A court cannot extend the time within which to commence an action or proceeding"]

Contrary to plaintiff's further contentions, compliance with RPAPL 1304 does not toll the limitations period.

"The notice period of RPAPL 1304 does not operate to toll the statute of limitations. CPLR 204 (a) authorizes the tolling of a statute of limitations where the commencement of an action is stayed by a court order or by a statutory prohibition... There is a difference between a "statutory prohibition," on the one hand, which tolls the statute of limitations, and a "condition precedent" to suit, on the other, which does not generate a toll... RPAPL 1304 is not a statutory prohibition within the scope of CPLR 204(a), but is instead a condition precedent to the commencement of mortgage foreclosure actions... As such, RPAPL 1304 does not trigger a toll of the applicable statute of limitations under CPLR 204(a)" *Christiana Tr. v Barua*, 184 AD3d 140 [2d Dept 2020], *abrogated on other grounds by Freedom Mtge. Corp. v Engel*, 37 NY3d 1 [2021]; See also *U.S. Bank N.A. v Derissaint*, 193 AD3d 790 [2d Dept 2021] ["contrary to the plaintiff's contention, [t]he notice period of RPAPL 1304 does not operate to toll the statute of limitations"] [quotation mark omitted]; *Everhome Mtge. Co. v Aber*, 195 AD3d 682, 685 [2d Dept 2021] ["the plaintiff's service of 90-day notices in compliance with RPAPL 1304 did not toll the statute of limitations."] *affd.* 39 NY3d 949 [2022]

¹ See also *Welsh v United Parcels Serv., Inc.*, 24-CV-3876 (AMD) (PK), 2025 WL 754039, at *4 [EDNY Mar. 10, 2025] ["In short, the Court may extend the time to serve under CPLR § 306-b in the interest of justice, but that discretionary authority does not allow the Court to extend the six-month service deadline set by the legislature in CPLR § 205(a)"]; *Moyle v United Parcels Serv., Inc.*, 24-CV-3874 (CBA), 2025 WL 1952457, at *3 [EDNY July 16, 2025] [CPLR 306-b "is an unrelated statute. It establishes a 120-day period for a plaintiff to serve a defendant after filing his complaint; it has nothing to do with what a plaintiff must do to render timely an otherwise untimely complaint. In fact, the Appellate Division has since rejected the viability of such an extension."] citing *Mira v Media*, 222 AD3d 528, 529 [1st Dept 2023] and *U.S. Bank N.A. v Derissaint*, 193 AD3d 790 [2d Dept 2021] ["contrary to the plaintiff's contention, the Supreme Court could not have extended the time to serve the defendant" where the CPLR 205(a) period had elapsed]

Therefore, given that the statute of limitations has expired, the Court is without authority to grant an extension of time to serve. Thus, plaintiff's motion (Seq. 3) must be denied.

III. Defendant's Motion (Seq. 1) to Dismiss for Lack of Personal Jurisdiction Is Granted.

CPLR 3211[a][8] requires dismissal of a complaint where the Court does not have jurisdiction of the person of the defendant. The Court's confirmation of the Special Referee's Report, together with the denial of plaintiff's alternative request for a CPLR 306-b extension, establishes that defendant was not properly served with the summons and complaint and that no avenue remains by which the Court might acquire personal jurisdiction over her in this action.

Given that defendant is an indispensable party to the action which cannot proceed in her absence, the complaint must be dismissed in its entirety. See *LaSalle Bank N.A. v Benjamin*, 164 AD3d 1223 [2d Dept 2018][“Chittra, as a fee owner of the property which was subject to the mortgage, was a necessary and indispensable party to the action...Once the complaint was dismissed against Chittra, the plaintiff could not continue the action against the other defendants”]; *Newton v Evers*, 215 NY 198 [1915][“Julia E. Ferguson was the owner of the equity of redemption under her deed...She was a necessary party to any action brought to foreclose that mortgage, and without her presence the action could not proceed.”]; see also *MTGLQ Inv'rs, L.P. v Shay*, 190 AD3d 527 [1st Dept 2021][“Dismissal of the action as against Eaton requires discontinuation of the action as against Meldal as well”]; *Green Tree Servicing, LLC v Jean*, 244 AD3d 955 [2d Dept 2025][“ As a fee owner of the property and mortgagor, Jean was an indispensable party to this foreclosure action...The absence of an indispensable party mandates dismissal of the action, and the plaintiff cannot maintain the action as against the other defendants... Therefore, contrary to the plaintiff's contention, once the complaint was dismissed insofar as asserted against Jean, the plaintiff could not continue the action against the remaining defendants.”][internal citations omitted]

Lastly, given the dismissal of the complaint, the notice of pendency filed herein must also be cancelled. See CPLR 6514; see also generally *Nationstar Mtge., LLC v Davis*, 240 AD3d 790 [2d Dept 2025]; *Bayview Loan Servicing, LLC v Starr-Klein*, 193 AD3d 807 [2d Dept 2021].

The parties remaining contentions either need not be reached in light of the Court's determinations or have been considered and found to be without merit.

Accordingly, it is hereby

ORDERED that defendant's motion (Seq. 1) to dismiss pursuant to CPLR 3211(a)(8) is GRANTED; and it is further

ORDERED that plaintiff's motion (Seq. 3) for an extension of time to serve defendant pursuant to CPLR 306-b and CPLR 2004 is DENIED; and it is further

ORDERED that plaintiff's motion (Seq. 4) to reject the Special Referee's Report and, alternatively, to deem defendant served pursuant to CPLR 2001 is DENIED; and it is further

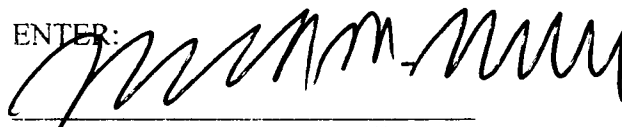
ORDERED that defendant's cross-motion (Seq. 5) to confirm the Special Referee's Report is GRANTED, and the Special Referee's Report dated November 5, 2025 is CONFIRMED; and it is further

ORDERED AND ADJUDGED that this action is DISMISSED IN ITS ENTIRETY; and it is further

ORDERED that the Clerk is directed to cancel the Notice of Pendency filed on September 21, 2023.

This constitutes the decision, order and judgment of the Court.

ENTER:

A handwritten signature in black ink, appearing to read 'Menachem M. Mirocznik', written over a horizontal line.

Hon. Menachem M. Mirocznik, JSC