

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND DEPARTMENT

Wilmington Trust, N.A. v. Delfeus

2026 NY Slip Op 02148 · No. 2024-11509 · Decided April 8, 2026

SUMMARY

The Appellate Division, Second Department, affirmed the denial of Fabius Delfeus's motion to vacate a foreclosure judgment and dismiss the action for lack of personal jurisdiction. The court held that the process server's affidavits established a presumption of proper service under CPLR 308(2), which Delfeus failed to rebut with sufficiently specific evidence.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Department
WRITING FOR THE COURT	Betsy Barros, J.P.; Angela G. Iannacci, J.; Helen Voutsinas, J.; Susan Quirk, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	April 8, 2026
DOCKET	2024-11509
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from an order denying his motion to vacate an order and judgment of foreclosure and sale under CPLR 5015(a)(4) and to dismiss the complaint for lack of personal jurisdiction under CPLR 3211(a)(8).
STANDARD OF REVIEW	Whether the defendant rebutted the presumption of proper service and established lack of personal jurisdiction sufficient to vacate the default judgment under CPLR 5015(a)(4).
PRECEDENTIAL VALUE	published
PARTIES	Fabius Delfeus v. Wilmington Trust, National Association

TOPICS

- personal jurisdiction
- service of process
- foreclosure
- appellate procedure
- civil procedure

PRACTICE AREAS

civil procedure

foreclosure

personal jurisdiction

service of process

appellate procedure

QUESTIONS PRESENTED

1. Whether Delfeus demonstrated lack of personal jurisdiction by overcoming the presumption of proper service created by the process server's affidavits.
2. Whether the Supreme Court properly denied Delfeus's motion under CPLR 5015(a)(4) to vacate the order and judgment of foreclosure and sale and under CPLR 3211(a)(8) to dismiss the complaint for lack of personal jurisdiction.
3. Whether the defendant's remaining contention could be considered on appeal after being raised for the first time.

HOLDINGS

1. The process-server affidavits established a prima facie case of proper service because they stated that the summons and papers were delivered to a person of suitable age and discretion at the defendant's premises and mailed to the same address.
2. Delfeus did not rebut the presumption of proper service because neither he nor his son specifically denied that the son matched the description in the service affidavit, and Delfeus's assertions were conclusory and unsubstantiated.
3. The Supreme Court properly denied the motion to vacate and dismiss because Delfeus failed to establish that service was defective or that the court lacked personal jurisdiction.
4. A service hearing was not required because Delfeus failed to rebut the presumption of proper service with a detailed and specific sworn denial.

KEY QUOTATIONS

*“A default must be vacated once the movant demonstrates a lack of personal jurisdiction, and the movant is relieved of any obligation to demonstrate a reasonable excuse for the default and a potentially meritorious defense” (*1)*

*“A court lacks personal jurisdiction over a defendant who is not properly served with process” (*1)*

*“When it is determined that process was ineffective, all subsequent proceedings are rendered null and void as to that party” (*1)*

*“A sworn denial containing a detailed and specific contradiction of the allegations in the process server's affidavit will defeat the presumption of proper service” (*2)*

FACTUAL BACKGROUND

Wilmington Trust brought a mortgage-foreclosure action against Fabius Delfeus and others. Process-server affidavits stated that substituted service was made under CPLR 308(2) by delivery to one of Delfeus's sons, a person of suitable age and discretion, at the subject premises, followed by mailing to the same address. Delfeus

did not appear or answer, and the court entered a default judgment and later a judgment of foreclosure and sale; the property was sold to Wilmington Trust in August 2022. Delfeus's later submissions did not specifically deny or contradict the service affidavit and were deemed conclusory and unsubstantiated.

PROCEDURAL HISTORY

Wilmington Trust commenced a mortgage-foreclosure action in April 2018. Delfeus was purportedly served under CPLR 308(2), did not appear or answer, and was subjected to a default judgment, followed by an order and judgment of foreclosure and sale dated February 18, 2020. After the property was sold in August 2022, Delfeus moved in September 2023 to vacate the foreclosure judgment and dismiss the complaint for lack of personal jurisdiction; the Supreme Court, Kings County, denied the motion, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Wells Fargo Bank, N.A. v. Guerrero, 189 AD3d 1669, 1670
- Wells Fargo Bank, NA v. Spaulding, 177 AD3d 817, 818
- Flatow v. Goddess Sanctuary & Spa Corp., 233 AD3d 656, 657
- Federal Natl. Mtge. Assn. v. Smith, 219 AD3d 938, 940
- Mendez v. Rattigan, 209 AD3d 637, 639
- Everbank v. Kelly, 203 AD3d 138, 143
- Nurhan v. Harley, 237 AD3d 728, 729-730
- U.S. Bank Trust, N.A. v. Catalano, 215 AD3d 992, 993
- TD Bank, N.A. v. Turbo Group, Inc., 226 AD2d 1058
- HSBC Bank USA, N.A. v. Rahmanan, 194 AD3d 792, 793
- Creswell Invs., Ltd. v. Brazil+Q1 Ltd., 234 AD3d 667, 669
- Machovec v. Svoboda, 120 AD3d 772, 773
- Tuttnauer USA Co., Ltd. v. Russo, 216 AD3d 846, 847
- Deutsche Bank Natl. Trust Co. v. Kenol, 205 AD3d 1004, 1005

OPINION

Wilmington Trust, N.A. v. Delfeus 2026 NY Slip Op 02148

PER CURIAM.

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defense" (*id.* [internal quotation marks omitted]; *see* Wells Fargo Bank, NA v Spaulding, 177 AD3d 817, 818). "A court lacks personal jurisdiction over a defendant who is not properly served with process" (*Flatow v Goddess Sanctuary & Spa Corp.*, 233 AD3d 656, 657 [internal quotation marks omitted]; *see* *Federal Natl. Mtge. Assn. v Smith*, 219 AD3d 938, 940). "When it is determined that process was ineffective, all subsequent proceedings are rendered null and void as to that party" (*Flatow v Goddess Sanctuary & Spa Corp.*, 233 AD3d at 657 [internal quotation marks omitted]; *see* *Federal Natl. Mtge. Assn. v Smith*, 219 AD3d at 940).

"[S]ervice of process upon a natural person must be made in strict compliance with the methods of service set forth in CPLR 308" (*Flatow v Goddess Sanctuary & Spa Corp.*, 233 AD3d at 657 [internal quotation marks omitted]; *see* *Federal Natl. Mtge. Assn. v Smith*, 219 AD3d at 940). "Service of process under CPLR 308(2) . . . requires that the summons be delivered . . . to a person of suitable age and discretion at the defendant's actual place of business, dwelling place or usual place of abode, along with a mailing of the summons to the defendant's last known residence or actual place of business" (*Flatow v Goddess Sanctuary & Spa Corp.*, 233 AD3d at 657 [internal quotation marks omitted]; *see* *Federal Natl. Mtge. Assn. v Smith*, 219 AD3d at 940). "Personal jurisdiction is not acquired absent compliance with both the delivery and mailing requirements of the statute" (*Mendez v Rattigan*, 209 AD3d 637, 639 [internal quotation marks omitted]; *Everbank v Kelly*, 203 AD3d 138, 143).

"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" (*Nurhan v Harley*, 237 AD3d 728, 729-730 [internal quotation marks omitted]; *see* *U.S. Bank Trust, N.A. v Catalano*, 215 AD3d 992, 993). "To be entitled to vacatur of a default judgment under CPLR 5015(a)(4), a defendant must overcome the presumption raised by the process server's affidavit of service" (*Nurhan v Harley*, 237 AD3d at 730 [internal quotation marks omitted]; *see* *TD Bank, N.A. v Turbo Group, Inc.*, 226 AD2d 1058). "A sworn denial containing a detailed and specific contradiction of the allegations in the process server's affidavit will defeat the presumption of proper service" (*Nurhan v Harley*, 237 AD3d at 730 [internal quotation marks omitted]; *see* *HSBC Bank USA, N.A. v Rahmanan*, 194 AD3d 792, 793). If the presumption is rebutted, a hearing to determine the propriety of service is necessary, at which the plaintiff must prove jurisdiction by a preponderance of the evidence (*see* *Creswell Invs., Ltd. v Brazil+Q1 Ltd.*, 234 AD3d 667, 669; *Machovec v Svoboda*, 120 AD3d 772, 773).

Here, the process server's affidavits of personal service upon the defendant attest that the process server effected substituted service upon the defendant by delivering the papers to one of the defendant's sons, who was a person of suitable age and discretion, at the subject premises and by mailing the papers to the same address. Thus, the affidavits constituted prima facie evidence of proper service upon the defendant. In support of the defendant's motion, neither the defendant nor his son state that the description of the son contained

in the affidavit of service concerning delivery of the papers is inaccurate. Moreover, the defendant's assertions were conclusory and unsubstantiated (*see* *Tuttnauer USA Co., Ltd. v Russo*, 216 AD3d 846, 847; *Deutsche Bank Natl. Trust Co. v Kenol*, 205 AD3d 1004, 1005). Accordingly, the Supreme Court properly denied the defendant's motion, inter alia, pursuant to CPLR 5015(a)(4) to vacate the order and judgment of foreclosure and sale and pursuant to CPLR 3211(a)(8) to dismiss the complaint insofar as asserted against him on the ground of lack of personal jurisdiction.

The defendant's remaining contention is improperly raised for the first time on appeal and, in any event, need not be reached in light of this determination.

BARROS, J.P., IANNACCI, VOUTSINAS and QUIRK, JJ., concur.

ENTER:

Darrell M. Joseph

Clerk of the Court