

2020 WL 7212955  
Supreme Court, Appellate Division, First  
Department, New York.

U.S. BANK NATIONAL ASSOCIATION,  
etc., Plaintiff–Respondent,

v.

Abuovbo **OLATUNJI**,  
Defendant–Appellant,  
Khaykin Dora et al. Defendants.

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M-03679

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Index No. 35425/15E

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Case No. 2020-00972

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ENTERED: December 8, 2020

#### Attorneys and Law Firms

Joseph A. Altman, P.C., Bronx ([Joseph A. Altman](#) of  
counsel), for appellant.

David A. Gallo & Associates, Manhasset ([Robert M. Link](#)  
of counsel), for respondent.

[Gische](#), J.P., [Webber](#), [Oing](#), Mendez, JJ.

#### Opinion

\*1 Order, Supreme Court, Bronx County (Doris M. Gonzalez, J.), entered on or about September 24, 2019, which granted plaintiff’s motion to confirm the report of a Special Referee, after a traverse hearing, concluding that service was properly made on defendant **Olatunji**, and denied defendant’s cross motion to reject the report and dismiss the complaint for lack of personal jurisdiction, unanimously affirmed, with costs.

The Special Referee’s conclusion that plaintiff met its burden of proving proper service pursuant to [CPLR 308\(2\)](#) was supported by the record (see [CitiMortgage Inc. v. Scott](#), 157 A.D.3d 507, 67 N.Y.S.3d 201 [1st Dept. 2018]). The Referee found the process server’s testimony, supported by her logbook and GPS photographs of the house, to be credible, and in contrast, defendant’s testimony contained unexplained discrepancies with her prior sworn statement concerning her place of residence.

Due to the physical features of the house, which was a legal one-family premises with no indicia from the front that a separate basement apartment existed, the process server could not reasonably have ascertained that such a separate unit existed and was accessible from a side street or that defendant resided there. Accordingly, substitute service made upon the person who answered the front door of the home satisfied the requirements of [CPLR 308\(2\)](#) and personal jurisdiction was obtained over defendant (see [State of N.Y. Higher Educ. Servs. Corp. v. Sparozic](#), 35 A.D.3d 1069, 1071, 826 N.Y.S.2d 493 [3d Dept. 2006], *lv dismissed* 8 N.Y.3d 958, 836 N.Y.S.2d 537, 868 N.E.2d 218 [2007]; see also [Johnson v. Motyl](#), 202 A.D.2d 477, 609 N.Y.S.2d 34 [2d Dept. 1994]; [Roldan v. Thorpe](#), 117 A.D.2d 790, 499 N.Y.S.2d 114 [2d Dept. 1986], *lv dismissed* 68 N.Y.2d 663, 505 N.Y.S.2d 78, 496 N.E.2d 237 [1986]).

We have considered defendant’s remaining arguments and find them unavailing.

**M-03679 – U.S. Bank National Association v. Olatunji**

Motion to enlarge record to include reply brief granted, and the brief deemed filed.

#### All Citations

--- N.Y.S.3d ----, 2020 WL 7212955, 2020 N.Y. Slip Op. 07327