

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Argued - December 14, 2010

WILLIAM F. MASTRO, J.P.
REINALDO E. RIVERA
LEONARD B. AUSTIN
SHERI S. ROMAN, JJ.

2010-01489
2010-03800

DECISION & ORDER

HSBC Bank USA, N.A., etc., respondent, v Marina
Roldan, et al., appellants, et al., defendants.

(Index No. 3202/08)

Barbara Finkelstein, White Plains, N.Y. (Jasbrinder Sahni of counsel), for appellants.

Hogan Lovells US LLP, New York, N.Y. (Allison J. Schoenthal, Victoria McKenney,
and Jessica L. Ellsworth, pro hac vice, of counsel), for respondent.

In an action to foreclose a mortgage on real property, the defendants Marina Roldan and Richard Roldan appeal, as limited by their brief, from (1) so much of an order of the Supreme Court, Putnam County (O'Rourke, J.), dated July 27, 2009, as granted the plaintiff's motion, in effect, for leave to enter a default judgment against them upon their failure to answer the complaint and for an order of reference, and (2) so much of an order of the same court dated September 1, 2009, as denied their motion, in effect, to vacate their default in answering the complaint, and to dismiss the complaint for lack of personal jurisdiction and lack of standing, or for leave to serve a late answer and third-party complaint.

ORDERED that the orders are affirmed insofar as appealed from, with one bill of costs.

To successfully oppose a motion for leave to enter a default judgment based on the failure to timely serve an answer, a defendant must demonstrate a reasonable excuse for the delay and the existence of a potentially meritorious defense (*see May v Hartsdale Manor Owners Corp.*, 73

AD3d 713; *Kouziou v Dery*, 57 AD3d 949; *Giovanelli v Rivera*, 23 AD3d 616; *Mjahdi v Maguire*, 21 AD3d 1067, 1068; *Thompson v Steuben Realty Corp.*, 18 AD3d 864, 865; *Dinstber v Fludd*, 2 AD3d 670, 671). Here, the appellants failed to demonstrate a reasonable excuse. Since the appellants failed to demonstrate a reasonable excuse for their default, it is unnecessary to determine whether they demonstrated the existence of a potentially meritorious defense (*see Levi v Levi*, 46 AD3d 519, 520; *Mjahdi v Maguire*, 21 AD3d at 1068). Accordingly, the Supreme Court properly granted the plaintiff's motion, in effect, for leave to enter a default judgment against the appellants and for an order of reference, and properly denied the appellants' motion, in effect, to vacate the default, and to dismiss the complaint, or for leave to serve a late answer and third-party complaint.

The appellants' remaining contentions are without merit.

MASTRO, J.P., RIVERA, AUSTIN and ROMAN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court