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

D30820
C/kmb

_____AD3d_____ Argued - March 25, 2011

JOSEPH COVELLO, J.P.
RANDALL T. ENG
L. PRISCILLA HALL
SHERI S. ROMAN, JJ.

2010-05419 DECISION & ORDER

Richard George, appellant, v Yoma Development Group, Inc., et al., respondents.

(Index No. 10730/06)

Richard George, Far Rockaway, N.Y., appellant pro se.

Borchert, Genovesi, LaSpina & Landicino, P.C., Whitestone, N.Y. (Helmut Borchert and Robert W. Frommer of counsel), for respondents U.S. Bank National Association, Jennifer E. Lozana Luna, Wells Fargo Bank, N.A., HSBC Bank USA, N.A., and Bank of New York Mellon Trust Company, N.A., as successor in interest of Ashmeeda Swezey.

Fidelity National Law Group, New York, N.Y. (Paul McGeough of counsel), for respondent Wells Fargo Bank, N.A. with respect to the property known as 151 Beach 26th Street, Far Rockaway.

In an action, inter alia, for a permanent injunction compelling the defendants to remove structures encroaching upon certain real property upon which the plaintiff allegedly has an easement, the plaintiff appeals from an order of the Supreme Court, Queens County (Pineda-Kirwan, J.), entered April 27, 2010, which denied that branch of his motion which was, in effect, for leave to reargue a prior motion for summary judgment on his claim for injunctive relief, and denied that branch of his motion which was for leave to enter a judgment against the defendants Yoma Development Group, Inc., Impressive Homes, Deutsche Bank National Trust Company, Thelma T. Rosenblatt, Bity Holding, LLC, Alfio Marcellino, and Zaira Marcellino upon their default in appearing or answering the complaint.

ORDERED that the appeal from so much of the order as denied that branch of the plaintiff's motion which was, in effect, for leave to reargue is dismissed, as no appeal lies from an order denying reargument; and it is further,

ORDERED that the order is affirmed insofar as reviewed; and it is further,

ORDERED that one bill of costs is awarded to the respondents appearing separately and filing separate briefs.

The branch of the plaintiff's motion which seeks injunctive relief was denominated as a motion for summary judgment. However, that branch of the plaintiff's motion was, in effect, for reargument of a prior motion for summary judgment, the denial of which is not appealable (*see Lapadula v Sang Shing Kwok*, 304 AD2d 798).

To establish entitlement to a default judgment, a plaintiff must submit proof of service of the summons and the complaint, of the facts constituting the claim, and of the default (*see* CPLR 3215[f]; *Miterko v Peaslee*, 80 AD3d 736; *Levine v Forgotson's Cent. Auto & Elec., Inc.*, 41 AD3d 552, 553). Here, in support of that branch of his motion which was for leave to enter a default judgment, the plaintiff failed to submit proof of service of the supplemental summons and second amended complaint. Accordingly, the Supreme Court properly denied that branch of the plaintiff's motion which was for leave to enter a judgment against the defendants Yoma Development Group, Inc., Impressive Homes, Deutsche Bank National Trust Company, Thelma T. Rosenblatt, Bity Holding, LLC, Alfio Marcellino, and Zaira Marcellino upon their default in appearing or answering the complaint (*see* CPLR 3215[f]; *cf. 599 Ralph Ave. Dev., LLC v 799 Sterling Inc.*, 34 AD3d 726).

The plaintiff's remaining contentions are not properly before this Court.

COVELLO, J.P., ENG, HALL and ROMAN, JJ., concur.

ENTER:

Matthew G. Kiernan
Clerk of the Court