

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

D36149
O/ct

_____AD3d_____

Submitted - September 11, 2012

RANDALL T. ENG, P.J.
REINALDO E. RIVERA
L. PRISCILLA HALL
SANDRA L. SGROI, JJ.

2011-09057

DECISION & ORDER

Deutsche Bank National Trust Company, etc., respondent,
v Purcell Conway, appellant, et al., defendants.

(Index No. 14228/07)

Purcell Conway, Averte, N.Y., appellant pro se.

Frenkel Lambert Weiss Weisman & Gordon, LLP, New York, N.Y. (Barry Weiss of counsel), for respondent.

In an action to foreclose a mortgage, the defendant Purcell Conway appeals, as limited by his brief, from so much of an order of the Supreme Court, Queens County (Nahman, J.), dated May 6, 2011, as denied those branches of his motion which were, in effect, to vacate a judgment of foreclosure and sale of the same court (Kelly, J.), entered January 18, 2008, upon his default in answering or appearing, and pursuant to CPLR 3211(a)(3) to dismiss the complaint insofar as asserted against him.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The Supreme Court properly denied that branch of the motion of the defendant Purcell Conway (hereinafter the appellant) which was, in effect, to vacate a judgment of foreclosure and sale entered January 18, 2008, upon his default in answering or appearing. A defendant seeking to vacate a default in appearing or answering must demonstrate a reasonable excuse for the default and a potentially meritorious defense to the action (*see* CPLR 5015[a][1]; *U.S. Bank N.A. v Stewart*, 97 AD3d 740; *Fremont Inv. & Loan v Bertram*, 90 AD3d 988, 988; *Citimortgage, Inc. v Brown*, 83 AD3d 644, 645). Here, the appellant failed to set forth a reasonable excuse for his default in appearing or answering the complaint (*see Fremont Inv. & Loan v Bertram*, 90 AD3d at 988). Since

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the appellant failed to demonstrate a reasonable excuse for his default, we need not consider whether he proffered a potentially meritorious defense to the action (*see U.S. Bank N.A. v Stewart*, 97 AD3d 740; *Fremont Inv. & Loan v Bertram*, 90 AD3d at 988).

The appellant's remaining contentions need not be reached in light of the foregoing determination.

ENG, P.J., RIVERA, HALL and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court