

Shorehaven Homeowners Assn., Inc. v Perez
2026 NY Slip Op 30630(U)
February 9, 2026
Supreme Court, Bronx County
Docket Number: Index No. 808761/2023
Judge: Joaquin E. Orellana
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**SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY**

PRESENT:	<u>HON. JOAQUIN E. ORELLANA</u>	PART	<u>37</u>
	<i>Justice</i>		
-----X		INDEX NO.	<u>808761/2023E</u>
SHOREHAVEN HOMEOWNERS ASSOCIATION, INC.,		MOTION DATE	<u>12/16/2025</u>
Plaintiff,		MOTION SEQ. NO.	<u>4</u>

- v -

SUSAN PEREZ, MARTIN BROWN, SAGE RICKS, BOARD OF MANAGERS OF THE SHOREHAVEN CONDOMINIUM, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, NEW YORK CITY PARKING VIOLATIONS BUREAU, NEW YORK CITY TRANSIT ADJUDICATION BUREAU

DECISION + ORDER ON MOTION

Defendant.

-----X
The following e-filed documents, listed by NYSCEF document number (Motion 4) 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 71, 72, 73, 74, 75, 76, 77, 78, 79

were read on this motion to/for DISMISS.

Upon the foregoing documents, Defendant's Order to Show Cause to vacate default judgment and to dismiss the complaint is hereby GRANTED. Plaintiff's cross-motion to appoint Defendant Susan Perez as a personal representative of the Estate of Martin Brown and to substitute said representative as a named party defendant *nunc pro tunc*, is DENIED.

In this matter, Plaintiff seeks to foreclose on a common charge lien against the premises located at 218 Neptune Court, Bronx, NY 10473 ("the premises"). On September 16, 2019, Plaintiff filed a common charge lien against the premises in the amount of \$10,615.46, which is the amount allegedly owed through January 31, 2019. On June 6, 2023, Plaintiff commenced this action to foreclose on the premises to recover common charge arrears owed, which at the time amounted to \$32,832.55. On April 10, 2024, the Court granted Plaintiff's motion for default judgment and an Order of Reference, and appointed Mitchel May as Referee. On September 24, 2024, Plaintiff moved to confirm the Referee report that the amount owed to Plaintiff was

\$42,845.76, with interest from May 7, 2024. On December 21, 2024, the Court granted Plaintiff's motion, and on January 8, 2024, the Clerk entered Judgment of Foreclosure and Sale. On September 10, 2025, Plaintiff moved to amend the Judgment of Foreclosure and Sale to extend the time to conduct the foreclosure and sale. On December 10, 2025, the Court granted Plaintiff's motion.

On December 16, 2025, Defendant moved, via Order to Show Cause, to vacate default judgment and dismiss the complaint. In opposition, Plaintiff cross-moved for an order appointing Susan Perez as the personal representative as the Estate of Martin Brown, and upon such appointment, to substitute said representative of the Estate of Martin Brown as a named party defendant *nunc pro tunc*.

It is well settled law that a motion to vacate an order or judgment based on an excusable default should be made within one year after the service of the order with notice of entry. (*See* CPLR § 5015; *JPMorgan Chase Bank, N.A. v Alamazon*, 215 A.D.3d 933, 935 [2d Dept. 2023]). The Court may, however, "...vacate its own judgment for sufficient reason and in the interests of substantial justice" even after the expiration of the one-year limitations period set forth in CPLR 5015. (*OneWest Bank, FSB v Singer*, 237 A.D.3d 731, 733 [2d Dept 2025]). Additionally, a party attempting to vacate a default must establish both a reasonable excuse for the default and a meritorious defense. (*Roussodimou v Zafiriadis*, 238 A.D.2d 568, 568-69 [2d Dept. 1997]). To demonstrate a meritorious defense, a party must submit an affidavit from an individual with knowledge of the facts. (*Peacock v Kalikow*, 239 A.D.2d 188, 190 [1st Dept 1997]). Such affidavit must make sufficient factual allegations and must do more than merely make conclusory allegations or vague assertions. (*Id.*). For example, on a claim that a Defendant's negligent work caused property damage, an affidavit setting forth facts that the employees were not working at

the site at the time in question is sufficient to demonstrate a meritorious defense. (*Id*; *Tiger v Town of Bolton*, A.D.2d 889, 891 [3rd Dept 1989]).

Here, Defendant Susan Perez testified that her reasonable excuse for default is that, due to her advanced age, illnesses, and mobility issues, she is a frequent guest at Kings Harbor Nursing home and rehabilitation center, where she was receiving care from April 21, 2021, through December 21, 2024. As such, Defendant Perez first became aware of the proceedings when she returned from the hospital and has established a reasonable excuse for the default.

As to the meritorious defense, Defendant Perez alleges that she is exempt from association fees to Plaintiff because the fees were included in the selling price when the unit was initially purchased and that she is “grand-fathered in” to not having to pay common charges. Plaintiff argues that this argument fails because all Shorehaven members are obligated to pay their share of the common charges that are assessed by the Board, pursuant to the recorded Declaration and By-Laws of the Homeowners Association. Plaintiff explains that the Shorehaven community is comprised of five condominiums and two homeowner associations. Each of the 7 sections has its own separate board of managers or directors, which govern their respective sections and charge their respective homeowners common charges attributable only to the maintenance of that section’s building exterior and common elements. The Shorehaven Homeowners Association (“SHOA”) is the “umbrella” association that is responsible for the common properties and amenities used by all members in the community, such as the clubhouse, swimming pool, security, landscaping, and snow removal. Plaintiff argues that no such fee exemption exists. Notably, neither party is clear as to whether the fees in dispute are common charges or assessments.

The Court notes, however, that the Declaration governing the Association explicitly provides a mechanism for such an exemption through the “irrevocable surrender” of membership

certificates by the Sponsor.¹ Here Defendants purchased their home from the Sponsor on or around October 1989. Thus, it is feasible that the Defendants are exempt from these common charges and/or association fees. Notably, Plaintiff previously brought a lawsuit against Defendant but voluntarily discontinued once Defendant alleged that she was “grandfathered in” to the fee exemption. Such discontinuance supports the argument that Defendant could be exempt from some kind of common charge fee. Plaintiff allegedly discontinued the action to review the matter with ability to “restore within one year for good cause” but chose not to do so. As such, the Court finds that Defendant has established a meritorious defense to this action and, as such, the default judgment is hereby vacated. Moreover, vacating the default judgment would be consistent with the public policy of this State to dispose of cases on their merits (*Harwood v Chaliha*, 291 AD2d 234, 234, 737 N.Y.S.2d 359 [1st Dept 2002]).

Plaintiff’s cross-motion to appoint Susan Perez as the personal representative of Martin Brown is denied. It is well settled that an action commenced against a deceased person is a legal nullity and the Court acquires no jurisdiction of the decedent. (*Marte v Graber*, 58 A.D.3d 1, 3 [1st Dept 2008]). At the time this matter was filed, Defendant Martin Brown had been deceased for many years, and as such, the Complaint against him is a legal nullity. Plaintiff attempts to clear this procedural hurdle by asking the Court to appoint Susan Perez as a temporary administrator to the estate of Martin Brown and then substitute her in as the administrator, pursuant to CPLR 1015 and 1021. Substitution, however, would be procedurally improper because Martin Brown was deceased prior to the commencement of the action. As such, he has never been a party to this

¹ Section 7.3 of the Declaration of Shorehaven Homeowners Association, Inc. provides, in pertinent part: “In the event the Sponsor decides not to build additional condominiums or Homes or not to reserve the right to make membership in or use of the Association Properties available to purchasers or lessees of residential units in other condominium phases the Sponsor shall have the right, at any time or from time to time, to record an amendment to this Declaration without the consent of any other party, irrevocably surrendering any or all of its remaining membership certificates. Should the Sponsor so surrender any of its membership certificates, it shall no longer be liable for any assessments with respect to said surrendered certificates.” (NYSCEF Doc No. 16 at 7.)

proceeding, and thus there is no party for whom substitution could be effected upon pursuant to CPLR 1015 or 1021. (*Id.*)

Further, since Defendants Susan Perez and Martin Brown were unmarried at the time of purchase, and the deed contains no survivorship language, they held the property as tenants in common. (EPTL 6-2.2). As such, the estate of Martin Brown has a 50% interest that cannot be foreclosed upon without proper joinder. As Martin Brown has never been a party to this action, he cannot be substituted, and a judgment of foreclosure cannot be granted as to only a partial interest in a single-family dwelling, the Complaint must be dismissed in its entirety for failure to name a necessary party. (CPLR 1001; RPAPL 1311(1); *Bd. Of Managers of Parkchester N. Condominium v Alaska Seaboard Partners Ltd. Partnership*, 37 AD3d 332, 333 [1st Dept 2007]).

ACCORDINGLY, after consideration of the foregoing, the applicable law, a review of the Court file, and due deliberation, it is hereby:

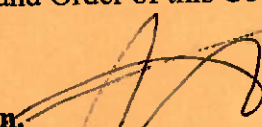
ORDERED, that the Defendant's Order to Show Cause to vacate the default judgment and to dismiss is hereby GRANTED; and it is further

ORDERED, that Plaintiff's cross-motion to appoint Susan Perez as temporary representative of Martin Brown's estate and to substitute said representative *nunc pro tunc* is DENIED; and it is further

ORDERED, that the Complaint is hereby dismissed without prejudice.

This Constitutes the Decision and Order of this Court

Dated: 2/9/2026

Hon. 
JOAQUINE E. ORELLANA, A.J.S.C.

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|------------------------------|---|---|
| 1. CHECK ONE..... | <input checked="" type="checkbox"/> CASE DISPOSED IN ITS ENTIRETY | <input type="checkbox"/> CASE STILL ACTIVE |
| 2. MOTION IS..... | <input checked="" type="checkbox"/> GRANTED | <input type="checkbox"/> DENIED <input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER |
| 3. CHECK IF APPROPRIATE..... | <input type="checkbox"/> SETTLE ORDER | <input type="checkbox"/> SUBMIT ORDER <input type="checkbox"/> SCHEDULE APPEARANCE |
| | <input type="checkbox"/> FIDUCIARY APPOINTMENT | <input type="checkbox"/> REFEREE APPOINTMENT |