

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

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Submitted - November 17, 2017

WILLIAM F. MASTRO, J.P.  
CHERYL E. CHAMBERS  
COLLEEN D. DUFFY  
FRANCESCA E. CONNOLLY, JJ.

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2016-10762

DECISION & ORDER

Wells Fargo Bank, N.A., etc., respondent, v Hyun J. Choo, appellant, et al., defendants.

(Index No. 17073/09)

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Harvey Sorid, Uniondale, NY, for appellant.

Shapiro, DiCaro & Barak, LLC (McGlinchey Stafford, New York, NY [Brian S. McGrath and Fincey John], of counsel), for respondent.

Appeal from an order of the Supreme Court, Queens County (Carmen R. Velasquez, J.), dated June 10, 2016. The order, insofar as appealed from, denied that branch of the motion of the defendant Hyun J. Choo which was to vacate an order of reference and a judgment of foreclosure and sale, entered upon his default in appearing or answering the complaint.

ORDERED that the order dated June 10, 2016, is affirmed insofar as appealed from, with costs.

In June 2009, the plaintiff commenced this action against the defendant Hyun J. Choo, among others, to foreclose a mortgage. Choo failed to appear or answer the complaint, and the Supreme Court granted the plaintiff's motions for an order of reference and for a judgment of foreclosure and sale. Subsequently, Choo moved, inter alia, to vacate the order of reference and the judgment of foreclosure and sale. The Supreme Court denied the motion, and Choo appeals.

“Under CPLR 5015(a), a court is empowered to vacate a default judgment for several reasons, including excusable neglect; newly-discovered evidence; fraud, misrepresentation or other misconduct by an adverse party; lack of jurisdiction; or upon the reversal, modification or vacatur of a prior order” (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 68; *see* CPLR 5015[a]; *HSBC*

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*Bank USA v Josephs-Byrd*, 148 AD3d 788; *40 BP, LLC v Katatikarn*, 147 AD3d 710). “However, CPLR 5015(a) does not provide an exhaustive list as to when a default judgment may be vacated, and a court may vacate its own judgment for sufficient reason and in the interests of substantial justice” (*40 BP, LLC v Katatikarn*, 147 AD3d at 711, citing *Woodson v Mendon Leasing Corp.*, 100 NY2d at 68; see *Hudson City Sav. Bank v Cohen*, 120 AD3d 1304, 1305). Here, Choo did not move pursuant to CPLR 5015(a); rather, he expressly moved to vacate the order of foreclosure and judgment of foreclosure and sale “in the interests of justice.”

Although the Supreme Court retains “inherent discretionary power to relieve a party from a judgment or order for sufficient reason and in the interest of substantial justice” (*Galasso, Langione & Botter, LLP v Liotti*, 81 AD3d 884, 885; see *Ladd v Stevenson*, 112 NY 325, 332; *Katz v Marra*, 74 AD3d 888, 890), “[a] court’s inherent power to exercise control over its judgments is not plenary, and should be resorted to only to relieve a party from judgments taken through [fraud,] mistake, inadvertence, surprise or excusable neglect” (*Matter of McKenna v County of Nassau, Off. of County Attorney*, 61 NY2d 739, 742 [internal quotation marks omitted]; see *Wells Fargo Bank Minn., N.A. v Coletta*, 153 AD3d 757; *HSBC Bank USA v Josephs-Byrd*, 148 AD3d at 790; *Long Is. Light. Co. v Century Indem. Co.*, 52 AD3d 383, 384; *Quinn v Guerra*, 26 AD3d 872, 873). Here, Choo failed to provide any evidence of fraud, mistake, inadvertence, surprise, or excusable neglect that would warrant vacating the order of reference or the judgment of foreclosure and sale in the interests of substantial justice (see *Wells Fargo Bank Minn., N.A. v Coletta*, 150 AD3d at 758; *HSBC Bank USA v Josephs-Byrd*, 148 AD3d at 790; *HSBC Mtge. Servs. v Talip*, 111 AD3d 889, 890; cf. *Nationscredit Fin. Servs. Corp. v Atherley*, 91 AD3d 922, 922).

In light of our determination, we need not reach the parties’ remaining contentions.

Accordingly, the Supreme Court properly denied that branch of Choo’s motion which was to vacate the order of reference and the judgment of foreclosure and sale.

MASTRO, J.P., CHAMBERS, DUFFY and CONNOLLY, JJ., concur.

ENTER:



Aprilanne Agostino  
Clerk of the Court