

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

D56412
M/htr

_____AD3d_____

Argued - May 3, 2018

REINALDO E. RIVERA, J.P.
CHERYL E. CHAMBERS
LEONARD B. AUSTIN
BETSY BARROS, JJ.

2016-01467
2016-01469
2016-01470

DECISION & ORDER

HSBC Bank USA, N.A., appellant,
v Sandra Jimenez-Zayas, etc., respondent, et al.,
defendants.

(Index No. 31267/12)

McCabe, Weisberg & Conway, P.C., New Rochelle, NY (Mark Golab, Matthew S. Blum, and Brett Milchman of counsel), for appellant.

Zayas Law Offices, P.C., Stony Point, NY (Richard R. Zayas of counsel), for respondent.

In an action to foreclose a mortgage, the plaintiff appeals from (1) an order of the Supreme Court, Rockland County (Alan D. Scheinkman, J.), dated September 30, 2013, (2) an order of the same court (Robert M. Berliner, J.) dated January 6, 2016, and (3) a money judgment of the same court dated January 11, 2016. The order dated September 30, 2013, inter alia, found that the plaintiff had failed to engage in settlement discussions and negotiations in good faith pursuant to CPLR 3408 and tolled the running of interest on the underlying mortgage loan, subject to certain conditions. The order dated January 6, 2016, granted the unopposed motion of the defendant Sandra Jimenez-Zayas, inter alia, in effect, to enforce the order dated September 30, 2013. The money judgment, upon the order dated January 6, 2016, is in favor of the defendant Sandra Jimenez-Zayas and against the plaintiff in the total sum of \$27,029.30.

ORDERED that the appeals are dismissed, with one bill of costs.

The order dated January 6, 2016, as well as the money judgment dated January 11,


August 22, 2018

Page 1.

2016, were both entered upon the plaintiff's default. No appeal lies from an order entered upon the default of the appealing party (*see* CPLR 5511; *Morgan Stanley Mtge. Loan Trust [2007-8XS] v Harding*, 141 AD3d 511).

As for the order dated September 30, 2013, no appeal lies as of right from an order which does not determine a motion made on notice (*see* CPLR 5701[a][2]; *U.S. Bank N.A. v Smith*, 123 AD3d 914), and we decline to grant leave to appeal.

RIVERA, J.P., CHAMBERS, AUSTIN and BARROS, JJ., concur.

ENTER: 
Aprilanne Agostino
Clerk of the Court