

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

D57616
G/htr

_____AD3d_____

Argued - September 4, 2018

CHERYL E. CHAMBERS, J.P.
LEONARD B. AUSTIN
SHERI S. ROMAN
ANGELA G. IANNACCI, JJ.

2015-09895
2015-09899

DECISION & ORDER

HSBC Bank USA, N.A., etc., respondent,
v Gurmeet K. Sodhi, appellant, et al., defendants.

(Index No. 24277/07)

Gurmeet K. Sodhi, Fort Salonga, NY, appellant pro se.

Kozeny, McCubbin & Katz, LLP (Reed Smith, LLP, New York, NY [Andrew B. Messite and Joseph B. Teig], of counsel), for respondent.

In an action to foreclose a mortgage, the defendant Gurmeet K. Sodhi appeals from (1) a judgment of foreclosure and sale of the Supreme Court, Suffolk County (Denise F. Molia, J.), entered July 1, 2008, and (2) an order of the same court dated September 16, 2015. The order denied the defendant's motion, in effect, for leave to reargue and/or renew her motion, inter alia, to vacate the judgment of foreclosure and sale, which was denied in an order of the same court dated December 16, 2014.

ORDERED that the appeal from the judgment of foreclosure and sale is dismissed, as no appeal lies from a judgment entered upon the default of the appealing party (*see* CPLR 5511; *Wilmington Sav. Fund Socy., FSB v Zimmerman*, 157 AD3d 846, 846); and it is further,

ORDERED that the appeal from so much of the order dated September 16, 2015, as denied that branch of the motion of the defendant Gurmeet K. Sodhi which was for leave to reargue is dismissed, as no appeal lies from an order denying reargument; and it is further,

ORDERED that the order dated September 16, 2015, is affirmed insofar as reviewed; and it is further,

ORDERED that one bill of costs is awarded to the plaintiff.

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In August 2007, the plaintiff commenced this action to foreclose a mortgage against the defendant Gurmeet K. Sodhi (hereinafter the defendant), among others. Thereafter, the Supreme Court issued a judgment of foreclosure and sale entered July 1, 2008, upon the defendant's default in answering the complaint. The subject property was sold at a public auction on July 19, 2013.

By order to show cause dated July 29, 2013, the defendant moved, inter alia, to vacate the judgment of foreclosure and sale, arguing that the plaintiff failed to deal with her in good faith. The Supreme Court held the defendant's motion in abeyance and directed the parties to participate in CPLR 3408 settlement conferences. Following the conclusion of the settlement conferences, the court denied the defendant's motion, inter alia, to vacate the judgment of foreclosure and sale in an order dated December 16, 2014. In the order dated December 16, 2014, the Supreme Court noted, among other things, that the alleged failure of the plaintiff to negotiate in good faith pursuant to CPLR 3408 did not constitute a defense or a reasonable excuse for the defendant's default in answering. Additionally, the court noted that the parties engaged in settlement conferences with the court; however, the defendant was unable to demonstrate that she had sufficient financial resources to resolve the matter.

In March 2015, the defendant moved, in effect, for leave to reargue and renew her motion, inter alia, to vacate the judgment of foreclosure and sale. In an order dated September 16, 2015, the Supreme Court denied the defendant's motion. The court stated that it did not overlook or misapprehend any relevant facts or misapply any controlling principle of law, and further, that the defendant failed to set forth new facts not offered on the prior motion that would change the prior determination. The defendant appeals from the judgment of foreclosure and sale and the order dated September 16, 2015.

The record supports the Supreme Court's denial of that branch of the defendant's motion which was, in effect, for leave to renew. The defendant did not provide new facts or new law that would change the court's prior determination to deny the defendant's motion to, inter alia, to vacate the judgment of foreclosure and sale (*see Aurora Loan Servs., LLC v Ahmed*, 122 AD3d 557, 558).

The defendant's remaining contentions are without merit.

CHAMBERS, J.P., AUSTIN, ROMAN and IANNACCI, JJ., concur.

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DECISION & ORDER ON MOTION

HSBC Bank USA, N.A., etc., respondent,
v Gurmeet K. Sodhi, appellant, et al., defendants.

(Index No. 24277/07)

Motion by the respondent to dismiss appeals from a judgment of foreclosure and sale

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of the Supreme Court, Suffolk County, entered July 1, 2008, and an order of the same court dated September 16, 2015, on the ground that the appellant's replacement appendix is inadequate and the appellant's replacement brief does not comply with the rules of the Court. By decision and order on motion of this Court dated July 21, 2017, the motion was held in abeyance and referred to the panel of Justices hearing the appeal for determination upon the argument or submission thereof.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, and upon the argument of the appeals, it is

ORDERED that the motion is denied.

CHAMBERS, J.P., AUSTIN, ROMAN and IANNACCI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court