

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

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_____AD3d_____

Argued - December 4, 2025

COLLEEN D. DUFFY, J.P.
PAUL WOOTEN
LAURENCE L. LOVE
PHILLIP HOM, JJ.

2023-09876

DECISION & ORDER

JPMorgan Mortgage Acquisition Corp., appellant,
v Shopland Corp., respondent, et al., defendants.

(Index No. 713131/19)

Friedman Vartolo LLP, Garden City, NY (Stephen J. Vargas of counsel), for appellant.

Chidi Eze (McKinley Law, P.C., Lloyd Harbor, NY [Shannon McKinley], of counsel), for respondent.

In an action to foreclose a mortgage, the plaintiff appeals from an order of the Supreme Court, Queens County (Pam Jackman Brown, J.), dated September 27, 2023. The order granted the motion of the defendant Shopland Corp. to vacate so much of an order of the same court dated January 13, 2023, as granted those branches of the plaintiff's motion which were for leave to enter a default judgment against that defendant and for an order of reference, and for leave to serve a late answer.

ORDERED that the order dated September 27, 2023, is reversed, on the law, with costs, and the motion of the defendant Shopland Corp. to vacate so much of the order dated January 13, 2023, as granted those branches of the plaintiff's motion which were for leave to enter a default judgment against that defendant and for an order of reference, and for leave to serve a late answer is denied.

In July 2019, the plaintiff commenced this mortgage foreclosure action against, among others, the defendant Shopland Corp. (hereinafter the defendant). In September 2020, the plaintiff moved, inter alia, for leave to enter a default judgment against the defendant based upon the defendant's failure to timely answer the complaint and for an order of reference. In an order dated

January 13, 2023, the Supreme Court, among other things, granted those branches of the plaintiff's motion. In March 2023, the defendant moved to vacate so much of the order dated January 13, 2023, as granted those branches of the plaintiff's motion and for leave to serve a late answer. The plaintiff opposed. In an order dated September 27, 2023, the Supreme Court granted the defendant's motion. The plaintiff appeals.

Contrary to the defendant's contention, the plaintiff established that it effected service upon the defendant by delivering a copy of the summons and complaint to the Secretary of State (*see* CPLR 311[a][1]; Business Corporation Law § 306; *NYCTL 2013-A Trust v Heights Houses Corp.*, 172 AD3d 1078, 1079; *Commissioners of State Ins. Fund v Nobre, Inc.*, 29 AD3d 511, 511). The defendant's contention that it did not receive the summons and complaint due to its failure to update its address with the Secretary of State is insufficient to rebut the presumption of proper service (*see NYCTL 2013-A Trust v Heights Houses Corp.*, 172 AD3d at 1079; *Associated Imports v Amiel Publ.*, 168 AD2d 354, 354). Accordingly, the plaintiff was not entitled to relief pursuant to CPLR 5015(a)(4).

The defendant also failed to establish that it was entitled to relief pursuant to CPLR 5015(a)(1). A defendant seeking to vacate a default in answering a complaint and to compel the plaintiff to accept an untimely answer as timely "must show both a reasonable excuse for the default and the existence of a potentially meritorious defense" (*U.S. Bank N.A. v Adolphe*, 170 AD3d 1236, 1237 [internal quotation marks omitted]; *see U.S. Bank N.A. v Crawford*, 174 AD3d 762, 763). Here, the defendant's continuing unexplained failure to update its address with the Secretary of State did not constitute a reasonable excuse (*see NYCTL 2013-A Trust v Heights Houses Corp.*, 172 AD3d at 1079; *Gershman v Midtown Moving & Stor., Inc.*, 123 AD3d 974, 975).

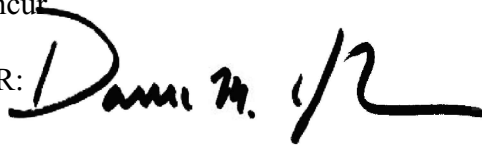
"Although the Supreme Court retains the inherent discretionary power to relieve a party from a judgment for sufficient reason and in the interest of substantial justice, this power is not plenary and should only be exercised to grant relief where a judgment was taken through fraud, mistake, inadvertence, surprise, or excusable neglect" (*Wells Fargo Bank, N.A. v Hyun Jung Kim*, 189 AD3d 1673, 1674-1675). Here, the defendant failed to provide any evidence that would warrant vacatur, in the interest of substantial justice, of so much of the order dated January 13, 2023, as granted those branches of the plaintiff's motion which were for leave to enter a default judgment against the defendant and for an order of reference (*see Bank of N.Y. Mellon Trust Co. N.A. v Hsu*, 204 AD3d 874, 875-876).

"To vacate a default in answering or appearing pursuant to CPLR 317, a defendant must demonstrate that it was served with a summons other than by personal delivery, that it did not receive actual notice of the summons in time to defend, and that it has a meritorious defense" (*NYCTL 2015-A Trust v 731 Bergen, LLC*, 172 AD3d 1391, 1392). Here, the defendant failed to establish that it did not personally receive notice of the summons in time to defend the action. An affidavit of the defendant's managing member was not sufficiently detailed or substantiated to establish lack of actual notice of the action (*see Dwyer Agency of Mahopac, LLC v Dring Holding Corp.*, 164 AD3d 1214, 1216; *Moran v Grand Slam Ventures, LLC*, 160 AD3d 944, 945). Accordingly, the Supreme Court should have denied the defendant's motion.

The defendant's remaining contentions either are without merit or do not warrant a contrary result.

DUFFY, J.P., WOOTEN, LOVE and HOM, JJ., concur

ENTER:

A handwritten signature in black ink, appearing to read "Darrell M. Joseph", followed by a long horizontal flourish.

Darrell M. Joseph
Clerk of the Court