

Pope v Saget

2004 NY Slip Op 30080(U)

June 2, 2004

Supreme Court, New York County

Docket Number: 0119884/9884

Judge: Sherry Klein Heitler

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Sherry Klein Heitler
Justice

PART 30

0119884/2002

INDEX NO. 119884/02

POPE, KENDALLE

MOTION DATE _____

vs
SAGET, ALIX

MOTION SEQ. NO. (002)

SEQ ⁰⁰ 2

MOTION CAL. NO. _____

DEFAULT JUDGMENT

is motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

is decided in accordance with the memorandum decision dated 6.2.04.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

FILED
JUN 08 2004
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 6-2-04

Sherry Klein Heitler
SHERRY KLEIN HEITLER J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 30**

-----X
KENDALLE POPE as Executrix of the
Estate of MAUD ATKINS and KEVIN SMITH,

Plaintiffs,

Index No 119884/02

DECISION AND ORDER

- against -

ALIX SAGET, ALIX SAGET, **JR.** DAVID CARTER,
ALEW MANAGEMENT & DEVELOPMENT, LLC,
EQUITY SETTLEMENT SERVICES, **INC.** ,
MERCURY HOMES REHAB, LLC, ELEZER ELIAS,
SUNTRUST MORTGAGE, INC, and JANE DOE and
JOHN DOE being any persons unknown who claim or
may make claim to title,

Defendants.

-----X
SHERRY KLEIN HEITLER, J.:

Kendalle Pope, as Executrix of the Estate of Maud Atkins and Kevin Smith (the Executrix),
moves, pursuant to CPLR 3215, for a default judgment against defendants Alix Saget, Alix Saget,
Jr., David Carter and Mercury Homes Rehab, LLC.

The plaintiff brought this action, pursuant to Article 15 of the Real Property Actions and
Proceedings Law, to compel the determination of any adverse claims to property known as 145 West
132nd Street, New York, New York (the Property). The moving papers state that defendants Alix
Saget and Alix Saget, Jr. were served a Summons with Notice and Notice of Pendency, pursuant to
CPLR 308(4), on October 10, 2002. The moving papers also state that defendant David Carter was
served, pursuant to CPLR 308(2), a Supplemental Summons and Verified Complaint on March 17,
2003, and that defendant Mercury Homes Rehab, LLC, was served, pursuant to Section 303 of the
Limited Liability Company Law, a Supplemental Summons and Verified Complaint, on March 17, 2003.

FILED
JUN 08 2004
NEW YORK
COUNTY CLERK'S
OFFICE

2003. Plaintiff states that the time for these defendants to appear has past, and that none of them **has** appeared, answered or moved with respect to the Complaint. Plaintiff has provided the court with affidavits of service with respect to each of the defendants who failed to serve **an** answer. Based upon the foregoing, plaintiff now **seeks** entry of a default judgment against defendants Alix Saget, Alix Saget, Jr., David Carter and Mercury Homes Rehab, LLC.

The only papers received in opposition were submitted by counsel for defendants Sun Trust Mortgage, Inc. and Alew Management & Development, LLC, with respect to Alix Saget and Alix Saget, Jr. The counsel filing the opposition papers does not represent the Saget defendants against whom the default judgments are sought. Nevertheless, the answering defendants argue that the motion is deficient on procedural grounds. Specifically, defendants argue, citing CPLR 3215(c) that the motion is not timely, and that the additional notice requirements with respect to a default under CPLR 3215(f) were not complied with. These objections are without merit. **As** plaintiff correctly argues, when a defendant is served pursuant to CPLR 308, service is deemed complete 10 days after the filing of proof of service with the clerk of the court. Pursuant to CPLR 320, the defendant **has** 30 days to *make an* appearance before a default has occurred. **In** the instant case, service on the Saget defendants was complete on December 2, 2002 and they were not in default until **January 2,** 2003. Plaintiffs moving papers, dated December 31, 2003, were timely. In addition, while CPLR 3215(g)(3)(I) does require that an additional notice be mailed before entry of a default judgment on a natural person, CPLR 3215(g)(3)(iii) dispenses with such notice in “actions affecting the title to real property.”

Accordingly, it is

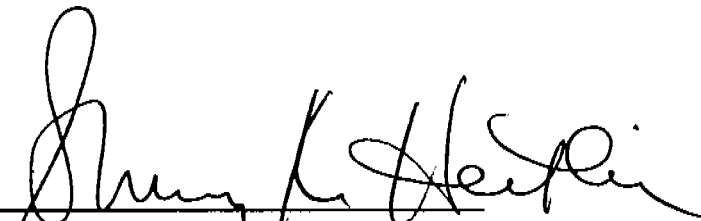
ORDERED that plaintiffs motion for entry of a default judgment against defendants Alix Saget, Alix Saget, Jr. David Carter, and Mercury Homes Rehab, LLC is granted and an assessment of damages is directed; and it is further

ORDERED that a copy of this order with notice of entry shall be served upon the Clerk of the Trial Support Office (Room 158), who is directed, upon the filing of a note of issue and statement of readiness and payment of the proper fees, if any, to place this action on the appropriate calendar for the assessment hereinabove directed; and it is further

ORDERED that the action with respect to the remaining defendants Alew Management & Development, LLC, Eliezer Elias, Suntrust Mortgage, Inc., be severed, and shall continue.

This shall constitute the decision and order of the court.

DATED: June 2, 2004


SHERRY KLEIN HEITLER
J.S.C.

FILED
JUN 08 2004
NEW YORK
COUNTY CLERKS OFFICE