

**The Chase Manhattan Bank v Kippins**

2011 NY Slip Op 32528(U)

September 21, 2011

Sup Ct, Nassau County

Docket Number: 1197/99

Judge: Anthony L. Parga

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**SHORT FORM ORDER**

**SUPREME COURT-NEW YORK STATE-NASSAU COUNTY  
PRESENT:**

**HON. ANTHONY L. PARGA**  
**JUSTICE**

-----X PART 8  
THE CHASE MANHATTAN BANK, AS TRUSTEE,  
FOR THE REGISTERED HOLDERS OF GOLDEN  
NATIONAL MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES,

INDEX NO. 1197/99  
**XXX**  
MOTION DATE: 08/08/11  
SEQUENCE NO. 03, 04

Plaintiff,  
-against-

FRED KIPPINS and EUNICE KIPPINS,  
  
Defendants.

-----X

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Plaintiff's motion, brought by Order to Show Cause (Seq. 03), for an order extending the January 24, 2011 deadline of the ten (10) year lien period as set forth in the Judgment of Foreclosure and Sale and permitting the plaintiff to re-schedule a foreclosure auction of the subject premises, is granted to the extent directed below. Defendant's motion, brought by Order to Show Caus (Seq. 04), for an order vacating the previous Judgment of Foreclosure and Sale, denying plaintiff's requests to extend the lien and re-schedule a foreclosure auction, and for declarations that plaintiff has violated certain principles of law, is denied in its entirety.

The following facts are taken from pleadings and submitted papers and do not constitute findings of fact by this Court.

This is an action to foreclose upon a mortgage dated April 21, 1997, secured upon the

subject property located at 106 Lowell Avenue, New Hyde Park, New York (hereinafter referred to as the “premises”). An order of reference was signed by the Court on October 3, 2000. A Judgment of Foreclosure and Sale was thereafter signed by Justice Peter B. Skelos on January 11, 2001.

Plaintiff contends that on July 22, 2002, the defendant, Eunice Kippins, filed her first Chapter 13 bankruptcy case in the Eastern District of New York (case no. 02-85243). From July 22, 2002 through the dismissal of the case on August 16, 2004, the plaintiff was prohibited from selling the premises at auction due to the automatic stay. On September 23, 2004, defendant, Eunice Kippins, filed her second Chapter 13 bankruptcy case in the Eastern District of New York (case no. 04-86081). From September 23, 2004 through the dismissal of the case on April 26, 2005, the plaintiff was prohibited from selling the premises at auction due to the automatic stay. On June 16, 2005, the defendant, Eunice Kippins, filed her third Chapter 13 bankruptcy case in the Eastern District of New York (case no. 05-84208). From June 16, 2005 through the entry of an order vacating the automatic stay on April 30, 2008, the plaintiff was prohibited from selling the premises at auction due to the automatic stay and motion practice.

The lien of plaintiff’s judgment will expire ten years after entry of the judgment on January 22, 2001. As such, it will expire on January 24, 2011 (as January 22, 2011 is a Saturday). The plaintiff contends that the ten year period of the lien was tolled for over five and one-half years by defendant Eunice Kippins multiple bankruptcy cases, as noted *supra*. As such, the plaintiff is seeking an order extending the expiration period for three (3) years to allow the plaintiff to either sell the premises or modify the defendants’ loan.

CPLR §5203(b) provides that upon the motion of a judgment creditor to extend the lien on real property past the ten year lien period, the Court may order that the lien of a judgment on real property is extended for a period of no longer than the time during which the judgment creditor was stayed from enforcing the judgment [which in the instant action is 5.5 years] or the time necessary to complete advertisement and sale of real property in accordance with section 5236. CPLR §5203(b) also provides that the order shall be effective from the time it is filed with the clerk of the county in which the property is located and an appropriate entry is made upon the docket of the judgment.

In opposition, defendant Eunice Kippins attests, *inter alia*, that the amount claimed by the plaintiff as due and owing is incorrect and that the plaintiff breached an “oral contract” to modify her loan in 2008. She further attests that she was told by a loan officer at Ever Home Mortgage not to make any payments on the mortgage until she received a loan modification by mail. Ms. Kippins further alleges that the plaintiff misrepresented its intention to modify her loan in 2008. Ms. Kippins fails to submit any documentation evidencing an agreement or approval by plaintiff to modify her loan and also fails to submit any evidence to support her contention that the amount owed to plaintiff was incorrectly calculated.

Regardless of same, defendant Eunice Kippins’ opposition is insufficient to defeat plaintiff’s showing of entitlement to an extension of the ten (10) year lien period of the Judgment of Foreclosure, pursuant to CPLR §5203(b).

In addition, defendant Eunice Kippins moves by Order to Show Cause for an order vacating the previous Judgment of Foreclosure and Sale, denying plaintiff’s requests to extend the lien and re-schedule a foreclosure auction, and for declarations that plaintiff has violated certain principles of law. In support of her application, she submits an affidavit in which she attests that she “fell behind” on the mortgage on the premises, which was purchased in 1997. She attests that thereafter, in 1999, foreclosure proceedings were begun by plaintiff. She attests further that she applied for a loan modification in 2008, “which was never...granted or denied.” She states that the application was submitted over 25 times with no response by the plaintiff or its attorneys. She also attests that she sent over \$3,000.00 in payments to Chase in 2005, but same were returned to her. Lastly, she attests that “in order to prevent the foreclosure I filed bankruptcy 3 times.”

In order to vacate a default judgment, the movant must establish both a reasonable excuse for the default and a meritorious defense to the action. (*See*, CPLR §5015; *Putney v. Pearlman*, 203 D.D.2d 333, 612 N.Y.S.2d 919 (2d Dept. 1994); *Sciavetta v. McKeon*, 190 A.D.2d 724, 593 N.Y.S.2d 468 (2d Dept. 1993); *Shaw v. Shaw*, 97 A.D.2d 403, 467 N.Y.S.2d 231 (2d Dept. 1983)). In addition, CPLR §5015 requires that such a motion be made within one year of the entry of the judgment or order. The defendant, Eunice Kippins, herein has failed to demonstrate either a reasonable excuse for her default or a meritorious defense to the action. The

determination of the sufficiency of the excuse and the statement of merits rests within the sound discretion of the court. (*Goldman v. Cotter*, 10 A.D.2d 289, 781 N.Y.S.2d 28 (1<sup>st</sup> Dept. 2004)). The defendant admits in her affidavit that she and Fred Kippins “fell behind” and failed to make payments in accordance with the terms of the mortgage agreement, and she has not submitted any evidence in support of her assertions that the amount of the judgment is incorrect or that there was an agreement by both parties to modify the loan in question. (*See, Weiss v. Croce*, 167 A.D.2d 465, 561 N.Y.S.2d 927 (2d Dept. 1990)(conclusory allegations are insufficient to establish that a meritorious defense exists); *Peacock v. Kalikow*, 239 A.D.2d 188, 658 N.Y.S.2d 7 (1<sup>st</sup> Dept. 1997)(the movant must make sufficient factual allegations, more than merely conclusory or vague assertions); *see also, National Recovery Systems v. Weiss*, 226 A.D.2d 29, 641 N.Y.S.2d 296)(1st Dept. 1996)). She also fails to offer any excuse for her default. In addition, the defendant’s within application to vacate the Judgment of Foreclosure and Sale is made over eleven (11) years after its entry on January 22, 2001. Accordingly, defendant Eunice Kippins motion to vacate the Judgment of Foreclosure and Sale is denied.

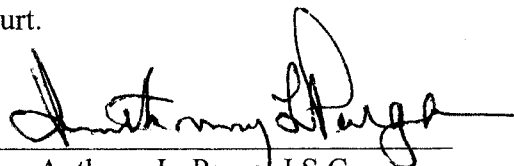
In addition, the remainder of defendant Eunice Kippins’s application for relief is without merit and without any factual or evidentiary support in the record. Defendant Eunice Kippins requests that this Court issue a declaration that, among other items, plaintiff failed to verify the arrears in accordance with the Fair Debt Collection Act (FDCPA), failed to comply with Notice Provisions, failed to notify of a change in states, and failed to show proof of ownership of the mortgage, but plaintiff fails to support her contentions with any facts, arguments or admissible evidence. Further, her remaining contentions with respect to the statute of limitations, laches, estoppel, unclean hands, breach of duty to act in good faith, failure to prosecute, unconscionable conduct, breach of fiduciary duty, and the remainder of her contentions, are unsupported by any argument regarding the applicability of same and are devoid of merit and of any factual or evidentiary support in the record before this Court. The defendant also fails to cite any case law or any statutory authority in support of her application. Further, the Court notes that the defendant’s request for the said relief is procedurally defective as the defendant defaulted in the action by failing to answer the complaint and raise any affirmative defenses.

Accordingly, defendant Eunice Kippins’s Order to Show Cause is denied in its entirety,

and plaintiff's Order to Show Cause is granted to the extent that the Judgment of Foreclosure and Sale, entered on January 22, 2001, is extended for three (3) years from the date of this Order. It is further ordered that the plaintiff is hereby permitted to re-schedule a foreclosure auction of the subject premises forthwith.

This constitutes the decision and Order of this Court.

Dated: September 21, 2011



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Anthony L. Parga J.S.C.

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**ENTERED**  
SEP 22 2011  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE