

JP Morgan Chase Bank v Leschins

2011 NY Slip Op 32861(U)

October 18, 2011

Supreme Court, New York County

Docket Number: 117007/09

Judge: Joan A. Madden

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

PRESENT: HON. JOAN A. MADDEN
J.S.C. Justice

PART 11

Index Number : 117007/2009
JPMORGAN CHASE BANK, N.A.
VS.
LESCHINS, EILEEN WEISS
SEQUENCE NUMBER : 002
APPT REF COMPUTE/EXAMINE ACCT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

this motion to/for _____

Answering Affidavits – Exhibits _____
Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is determined in accordance with the annexed decision and order and the Court is signing the Annexed Order of Reference In Mortgage Foreclosure, annexed to plaintiff's motion papers.

FILED

OCT 25 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: October 18, 2011

HON. JOAN A. MADDEN
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

-----X
JP MORGAN CHASE BANK, NATIONAL ASSOCIATION
AS SUCCESSOR IN INTEREST TO WASHINGTON
MUTUAL BANK, FA, THROUGH FDIC RECEIVERSHIP,

INDEX NO. 117007/09

Plaintiff,

-against-

EILEEN WEISS LESCHINS; MOLLIE LESCHINSKY;
BOARD OF MANAGERS TWO COLUMBUS AVENUE
CONDOMINIUM C/O GUMLEY-HAFT REAL ESTATE;
CITY OF NEW YORK ENVIRONMENTAL CONTROL
BOARD; UNITED STATES OF AMERICA O/B/O
INTERNAL REVENUE SERVICE; "JOHN DOE #1-5"
AND "JANE DOE #1-5" said names being fictitious, it
being the intention of Plaintiff to designate any and all
occupants, tenants, persons or corporations, if any, having or
claiming an interest in or lien upon the premises being
foreclosed herein;

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Defendants.

-----X

JOAN A. MADDEN, J.:

In this action to foreclose a mortgage, plaintiff moves for an order pursuant to RPAPL 1321 granting an Amended Order of Reference Appointing a Referee to Compute.¹ Defendant Eileen Weiss Leschins ("defendant") opposes the motion and cross-moves to vacate her default

¹Plaintiff previously moved for the identical relief (motion sequence no. 001). Although that motion was served on defendant's counsel by mail, defendant defaulted and submitted no opposition. In an order dated August 17, 2010, this court granted the motion on default, but at plaintiff's request that order was vacated. Plaintiff explains that the previous order of reference contained a clerical error, in that Mollie Leschinsky was not a necessary party and should not have been included in the caption, "having been deceased on December 11, 2001, and whose interest transferred to defendant Eileen Weiss Leschins, who held title to the premises being foreclosed herein as surviving tenant with right of survivorship."

in failing to answer, for leave to serve a late answer, and for an order directing plaintiff to provide her with a “reinstatement letter.”

RPAPL 1321 permits a court in a mortgage foreclosure action, upon defendant’s default or defendant’s admission, to appoint a referee “to compute the amount due to the plaintiff.” Here, plaintiff’s application for an order of reference is a preliminary step towards obtaining a default judgment of foreclosure and sale. See Home Savings of America, F.A. v. Gkanios, 230 AD2d 770 (2nd Dept 1996); Signature Bank v. 1775 East 17th Street, LLC, 32 Misc3d 124(A) (Sup Ct, Kings Co 2011).

To successfully oppose a motion for a default judgment based on the failure to serve a timely answer, defendant must demonstrate both a reasonable excuse for not answering the complaint, and a meritorious defense to the action. See HSBC Bank USA, NA v. Roldan, 80 AD3d 566 (2nd Dept 2011); Johnson v. Deas, 32 AD2d 253 (1st Dept 2006); ICBC Broadcasting Holdings-NY, Inc. v. Prime Time Advertising, Inc., 26 AD3d 239, 240 (1st Dept 2006); 114 West 26th Street Assocs LP v. Fortunak, 22 AD3d 346 (1st Dept 2005). Defendant satisfies neither requirement.

The action seeks to foreclose on a mortgage dated May 25, 1999, on condominium unit #7A, in the building located at 2 Columbus Avenue, New York, New York. The mortgage was given by defendant Leschins and co-defendant Mollie Leschinsky, to secure a loan in the amount of \$550,000. Plaintiff commenced this action on December 3, 2009. Defendant Leschins does not dispute that she was served with the summons and complaint on December 16, 2009. On January 12, 2010, defendant’s counsel filed a notice of appearance without an answer, and wrote a letter to plaintiff’s counsel, requesting a “reinstatement letter . . . including a complete

breakdown of all of the costs of reinstatement and indicating what the monthly payments will be upon reinstatement.” Defendant asserts that plaintiff’s counsel did not respond to the letter and instead commenced this action, and that plaintiff and its counsel have been “unresponsive and uncooperative.”

Although defendant’s counsel filed a notice of appearance, defendant nevertheless defaulted in this action by not serving an answer. See US Bank National Association v. Slavinski, 78 AD3d 1167 (2nd Dept 2010). Defendant now seeks to interpose a late answer, but the cross-motion papers do not include a copy of the proposed answer. As the excuse for her default in answering the complaint, defendant merely states that she did not answer because she intended to reinstate the mortgage and settle the action.

While defendant and her attorney state that they “had (and still have) every intention of settling this action” and reinstating the mortgage, the record shows otherwise. In May 2010, the parties first appeared before this court for oral argument on the motion and cross-motion. At that time, defendant’s counsel expressed his client’s desire to settle this matter and requested a reinstatement letter. As a result, over the course of more than a year, the parties made numerous appearances before this court and the court granted numerous adjournments, all in an effort to provide defendant with an opportunity to work out a settlement with plaintiff. That effort, however, has proved unsuccessful. In June 2010 and again in August 2010, plaintiff provided defendant with reinstatement letters with reinstatement quotes listing arrears and other charges due. More than six months later, on February 14, 2011, plaintiff wrote to defendant Leschins that “[w]e do not yet have all of the documents needed to process your request” to participate in a loan modification program; the letter detailed the necessary documents and forms. Three

months later, on May 9, 2011, plaintiff wrote to defendant Leschins that she was not eligible for a permanent loan modification through the federal Home Affordable Modification Program, "because you did not provide us with the documents we requested." Shortly thereafter, on May 25, 2011, defendant's counsel advised this court and plaintiff's counsel, that his client had informed him that TD Bank had given her a "verbal commitment" and that she would have a commitment letter after her banker returned on May 30, 2011. Defendant subsequently failed to comply with the court's directive to send a copy of the commitment letter "immediately" to plaintiff.

In view of the foregoing, defendant's proffered excuse that she had "every intention" of reinstating the mortgage and settling the action, is not reasonable under the circumstances.

Defendant likewise fails to demonstrate a meritorious defense to this foreclosure action. Her bare and conclusory allegations as to "predatory lending practices" and an interest rate that "far exceeded" the adjustable rate in the mortgage, are insufficient to establish a meritorious defense.

Accordingly, it is

ORDERED that defendant's cross-motion is denied in its entirety; and it is further

ORDERED that plaintiff's motion is granted and the court is signing the proposed amended order of reference annexed to plaintiff's motion papers.

DATED: October 18, 2011

ENTER:

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J.S.C.
HON. JOAN A. MADDEN
J.S.C.