

United Nations Fed. Credit Union v Charles
2013 NY Slip Op 33021(U)
November 12, 2013
Supreme Court, Suffolk County
Docket Number: 12-2975
Judge: Jr., John J.J. Jones
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SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 10 - SUFFOLK COUNTY

PRESENT:

Hon. JOHN J.J. JONES, JR.
Justice of the Supreme Court

MOTION DATE 9-11-13
ADJ. DATE _____
Mot. Seq. # 002 - MG

-----X
UNITED NATIONS FEDERAL CREDIT UNION, :
:
Plaintiff, :
:
-against- :
:
ROSELAURE CHARLES individually and :
ROSELAURE CHARLES, as guardian for :
VALERIE JEANTY, CASTLE LANDSCAPES, :
INC., SLOMINS, INC., CACH LLC, CHASE :
BANK FIRST USA ASSET ACCEPTANCE :
LLC, PORTFOLIO RECOVERY ASSOCIATES :
LLC, CITIBANK SOUTH DAKOTA N.A., :
COMMISSIONER OF TAXATION AND :
FINANCE, CHRYSLER FINANCIAL SERVICES :
AMERICAS LLC, INTERNAL REVENUE :
SERVICE, JOHN DOE and JANE DOE, the last :
two names being fictitious and unknown to the :
plaintiff, the persons or parties intended being the :
person, occupants, persons or corporations, if any, :
having or claiming an interest or lien upon the :
premises described in the complaint, :
:
Defendants. :
-----X

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PORTFOLIO RECOVERY ASSOCIATES, LLC
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Norfolk, Virginia 23502

Upon the following papers numbered 1 to 16 read on this motion to renew and reargue; Notice of Motion/ Order to Show Cause and supporting papers 1 - 16; Notice of Cross Motion and supporting papers ___; Answering Affidavits and supporting papers ___; Replying Affidavits and supporting papers ___; Other ___; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that the unopposed motion by the plaintiff for an order pursuant to CPLR 2221 granting leave to renew and reargue its prior motion for summary judgment and other related relief,

Charles as guardian for Valerie Jeanty. The Court noted in its order that the plaintiff was seeking summary judgment and an order of reference with respect to an original note and mortgage, and a separate note and mortgage in connection with a home equity line of credit ("HELOC"), and that while both the original note and the note for the HELOC were signed by defendant Roselaure Charles, on both of the mortgages securing the original note and the HELOC, Roselaure Charles signed her name individually and as guardian for Valerie Jeanty. However, the plaintiff's motion contained no information as to Valerie Jeanty's identity, her relationship to Ms. Charles, or the nature of her disability. The Court noted that without this information it could not issue an order as any order it issued would directly affect a person who may or may not have a disability. As a result, the plaintiff's motion was denied without prejudice to renew upon the plaintiff obtaining and annexing the aforementioned information to its motion.

The plaintiff now moves for renewal and reargument and annexes to its moving papers the documents requested by the Court including the petition for appointment of Roselaure Charles as guardian for Valerie Jeanty, affirmations of examining physicians, a copy of Ms. Jeanty's birth certificate establishing that she is no longer a minor, a copy of the consent to appointment of guardian and affidavit of proposed guardian (Roselaure Charles), decree of guardianship, letters of guardianship, and a copy of the infant's compromise order. The Court notes that Ms. Charles is the mother of Ms. Jeanty, a developmentally disabled person, and that by order dated May 30, 2002, Ms. Charles was appointed Ms. Jeanty's guardian. Also annexed to the moving papers is a copy of an order from the Surrogate's Court approving the petition by Ms. Charles to withdraw funds from the guardianship account in order to pay for a 10 percent interest in the new family residence for Ms. Jeanty and the family.

In this action, the plaintiff seeks to foreclose a mortgage on premises known as 477 Wolf Hill Road, Dix Hills, New York. On August 16, 2005, Ms. Charles executed a promissory note agreeing to pay the principal sum of \$600,000.00 at the rate of 6.5% per year in return for a loan received from the plaintiff. To secure said note, Ms. Charles executed a mortgage of the same date on the subject property. Ms. Charles defaulted on her monthly payment of principal and interest in the sum of \$3,792.41 on August 1, 2010 and each month thereafter. In addition, on March 27, 2006 Ms. Charles executed a note agreeing to pay the principal sum of \$120,000.00 at the rate of 5.45% in return for a HELOC received from the plaintiff. Ms. Charles defaulted on her monthly payment of principal and interest on November 1, 2010 and each month thereafter. The plaintiff sent Ms. Charles a letter of default dated July 27, 2011. Charles failed to cure her default.

The plaintiff commenced the instant action on January 25, 2012 by serving a copy of the summons, complaint, and notice of pendency on the named defendants. Ms. Charles was the only defendant who served an answer.

In support of the plaintiff's motion, the plaintiff submits, among other things, the note and mortgage, the notice of default letter, the summons and complaint, notices pursuant to RPAPL §§ 1320 and 1304, affidavits of service for the summons and complaint, an affidavit of service for the instant summary judgment motion upon defendant's counsel, and a proposed order appointing a referee to compute.

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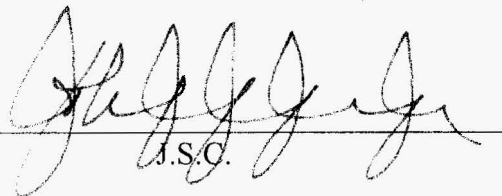
“[I]n an action to foreclose a mortgage, a plaintiff establishes its case as a matter of law through the production of the mortgage, the unpaid note, and evidence of default” (*Republic Natl. Bank of N.Y. v O’Kane*, 308 AD2d 482, 482, 764 NYS2d 635 [2d Dept 2003]; see *Argent Mtge. Co., LLC v Mentesana*, 79 AD3d 1079, 915 NYS2d 591 [2d Dept 2010]). Here, the plaintiff produced the note and mortgage executed by the mortgagor, as well as evidence of nonpayment thereby establishing its prima facie entitlement to judgment as a matter of law (see *Argent Mtge. Co., LLC v Mentesana*, *supra*; *Republic Natl. Bank of N.Y. v O’Kane*, *supra*).

Since the plaintiff made a prima facie showing of entitlement to judgment as a matter of law, it was incumbent on the defendant “to demonstrate the existence of a triable issue of fact as to a bona fide defense to the action, such as waiver, estoppel, bad faith, fraud, or oppressive or unconscionable conduct on the part of the plaintiff” (see *Cochran Inv. Co., Inc. v Jackson*, 38 AD3d 704, 834 NYS2d 198, 199 [2d Dept 2007] quoting *Mahopac Natl. Bank v Baisley*, 244 AD2d 466, 467, 664 NYS2d 345 [2d Dept 1997]). However, Ms. Charles has not submitted opposition to the motion and it is well settled that a defendant’s answer is insufficient, as a matter of law, to defeat plaintiff’s unopposed motion (see *Argent Mtge. Co., LLC v Mentesana*, *supra*; *Citibank, N.A. v Souto Geffen Co.*, 231 AD2d 466, 647 NYS2d 467 [1st Dept 1996]; *Greater N.Y. Sav. Bank v 2120 Realty Inc.*, 202 AD2d 248, 608 NYS2d 463 [1st Dept 1994]). Since no opposition to the instant motion was filed by Ms. Charles, no triable issue of fact was raised in response to plaintiff’s prima facie showing (see *Flagstar Bank v Bellafiore*, 94 AD3d 1044, 943 NYS2d 551 [2d Dept 2012]; *Wells Fargo Bank Minnesota v Perez*, 41 AD3d 590, 837 NYS2d 877 [2d Dept 2007]; see also *Zanfini v Chandler*, 79 AD3d 1031, 912 NYS2d 911 [2d Dept 2010]).

Based upon the foregoing, the plaintiff’s motion is granted.

The proposed order appointing a referee to compute pursuant to RPAPL §1321 is signed simultaneously herewith as modified by the court.

Dated: 12 Nov. 2013


 J.S.C.

_____ FINAL DISPOSITION X NON-FINAL DISPOSITION

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