

<b>Aurora Loan Servs., LLC v Hiyo</b>
2014 NY Slip Op 34079(U)
June 24, 2014
Supreme Court, Suffolk County
Docket Number: Index No. 21330/11
Judge: James F. Quinn
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SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 11 - SUFFOLK COUNTY

PRESENT: HON. JAMES F. QUINN  
Acting Justice

**DECISION AND ORDER**  
**Mot.Seq.No.: 001, Mot-D**

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Aurora Loan Services, LLC,

Plaintiff,

- against -

Milagros Hiyo, et al.,

Defendants.

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Plaintiff's Attorney  
Davidson Fink, LLP  
28 East Main Street, Ste. 1700  
Rochester, NY 14614

Defendant's Attorney  
Young Law Group, PLLC  
80 Orville Drive, Ste. 100  
Bohemia, NY 11716

The Court in its deliberations has considered the following papers on this motion to dismiss:

- Notice of Motion
- Affirmation in Opposition
- Reply Affirmation in Further Support of Motion to Dismiss

The defendant, Milagros Hiyo, has filed a motion to dismiss the plaintiff's complaint pursuant to CPLR § 3215(c) for failure to take proceedings for the entry of judgment within one year of the alleged pleading default. The defendant claims that between August 11, 2011, the first date of alleged pleading default by the defendant, and August 13, 2013, when this motion was dated, the plaintiff had not taken any proceedings or moved this Court for any default judgment. The defendant is asking for dismissal of the plaintiff's complaint. The defendant is also asking to be awarded attorney's fees in the amount of \$5,000 pursuant to Real Property Law §282.

The plaintiff, Aurora Loan Services, commenced an action by filing a summons and complaint for this residential foreclosure action on July 7, 2011. The complaint was served on the defendant on July 11, 2011. The defendant was then required to serve an answer to the Plaintiff by no later than August 1, 2011. No answer was served and the defendant allegedly defaulted. The record shows that no further proceedings were taken by the plaintiff. Plaintiffs claim that the participation in the mandatory settlement conferences constitutes the "proceedings" are being taken and no intent to abandon the case was present.

The defendant argues that according to CPLR §3215(c) the proceedings should be dismissed because default was not entered within one year. Defendant notes that the plaintiff waited over two years before filing any further proceedings. Plaintiff's argument that the mandatory settlement conferences acted as a stay of the one year deadline is misplaced. While 22 NYCRR 202.12-a(c)(7), provides that motions shall be held in abeyance while settlement conferences are being held. It does not prohibit a party from filing a motion for default judgment or an order of reference. It prohibits a decision on the motion.

Accordingly, the motion to dismiss is *granted*, without prejudice.

The defendant is awarded and plaintiff is directed to pay \$2500.00 as and for attorney's fees to the Young Law Group, PLLC., 80 Orville Drive, Suite 100, Bohemia, NY 11716 within thirty (30) days of the date of this order.

The foregoing constitutes the decision and order of the Court.

Dated: Central Islip, New York  
June 24, 2014

E N T E R:

JAMES F. QUINN  
Hon. James F. Quinn, A.J.S.C.