

HSBC Bank USA, N.A. v Simms
2016 NY Slip Op 32367(U)
April 7, 2016
Supreme Court, Kings County
Docket Number: 33094/2009
Judge: Mark I. Partnow
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At an IAS Term, Part 43 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 7th day of April, 2016.

P R E S E N T:

HON. MARK I. PARTNOW,
Justice.

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HSBC BANK USA, NATIONAL ASSOCIATION,
AS THE TRUSTEE UNDER THE POOLING AND
SERVICING AGREEMENT DATED AS OF
SEPTEMBER 1, 2006, FREEMONT HOME
LOAN TRUST 2006-C

Plaintiff,

- against -

Index No.: 33094/2009

KEITH SIMMS;
GLORIA LEWIS a/k/a GLORIA SIMMS;
MICHELLE SIMMS PARRIS;
EMIGRANT MORTGAGE COMPANY, INC.;
ZENA SPENCE, DEPUTY KINGS
COUNTY REGISTER,

Defendants.

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FILED
KINGS COUNTY CLERK
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The following papers numbered 1 to 8 read herein:

Papers Numbered

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed _____
Opposing Affidavits (Affirmations) _____
Reply Affidavits (Affirmations) _____

1-2; 4-5; 6-7
3 8

Upon the foregoing papers, defendant Michelle SimmsParris (hereinafter “SimmsParris”) moves pursuant to CPLR § 5015 (a)(1) to vacate the court’s April 1, 2015 decision. HSBC (plaintiff) moves pursuant to CPLR § 6513 for an order extending the notice of pendency for an additional three-year period from December 28, 2015, through and including December 28, 2018. SimmsParris cross-moves pursuant to CPLR § 5015 (a)(3) to vacate the court’s April 1, 2015 decision.

SimmsParris’ motion to vacate to the court’s April 1, 2015 decision pursuant to CPLR § 5015 is denied.¹ SimmsParris’ argument that she has a reasonable excuse and a meritorious defense for her default as it relates to the April 1, 2015 decision does not lie. SimmsParris appeared, filed opposition papers to plaintiff’s default judgment motion, and filed a cross-motion and thus did not “default” on the return date of the motions which were the subject of the April 1, 2015 decision. Furthermore, assuming that SimmsParris’ instant motion seeks leave to reargue the court’s April 1, 2015 decision, the motion is likewise denied. SimmsParris has failed to allege that the court overlooked or misapprehended any matter of fact or law in its April 1, 2015 decision. Additionally, SimmsParris’ motion states that she had a reasonable excuse in failing to provide the court ordered discovery that lead to the striking of her answer. SimmsParris’ proper remedy is to appeal the December 17, 2013 decision rather than moving pursuant to CPLR 5015 (a)(1) to vacate the April 1, 2015 order (*see*

¹The April 1, 2015 decision granted plaintiff’s motion for a default judgment and denied SimmsParris’ cross-motion to vacate the court’s prior orders and for leave to renew a prior motion.

generally *Reilly v. Syosset Hosp.*, 225 AD2d 602, 602 [2d Dept 1996]).² Lastly, SimmsParris has previously moved for leave to reargue and to vacate the court's December 17, 2013 decision, which was denied. Thus, SimmsParris' motion to vacate is denied in its entirety.

Plaintiff's motion to extend the term of a notice of pendency on the subject property is granted. The plaintiff filed the instant motion on November 20, 2015, prior to the expiration of the existing notice of pendency. Furthermore, the court finds that plaintiff has shown good cause for the extension (*see HSBC Bank USA, Nat. Ass'n v. Simms*, 131 AD3d 508, 509 [2d Dept 2015]).³

SimmsParris' motion to vacate the court's April 1, 2015 decision pursuant to CPLR § 5015 (a)(3) is denied. The argument raised in the instant motion has been previously raised and rejected by the court. SimmsParris' contention that plaintiff lacks standing was rejected by this court on November 21, 2011. SimmsParris' argument that the April 1, 2015 order should be vacated because of plaintiff's alleged fraud, misrepresentation, or other misconduct is without merit. SimmsParris' remedy was to appeal the November 21, 2011 decision, as noted by the Appellate Division in *HSBC v. Simms*. Accordingly, it is

²On December 17, 2013, the court struck SimmsParris' answer for failing to comply with prior court orders, specifically the October 22, 2013 order.

³ SimmsParris argues that the plaintiff was never entitled to file a notice of pendency against the subject property and thus the instant motion should be denied. However, the Appellate Division, Second Department, affirmed this court's May 14, 2013 order granting plaintiff's motion to extend the notice of pendency (*see HSBC v. Simms*, at 509).

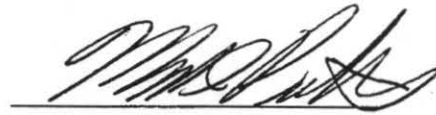
ORDERED that SimmsParris' motion to vacate pursuant to CPLR 5015 (a)(1) is denied; and it is further

ORDERED that plaintiff's motion for the extension of the notice of pendency is granted. The Clerk of the court shall extend the existing notice of pendency from December 28, 2015, through and including December 28, 2018, against Block 4848, Lot 33; and it is further

ORDERED that SimmsParris' motion to vacate the court's April 1, 2015 order pursuant to CPLR 5015(a)(3) is denied.

This constitutes the decision and order of the court.

E N T E R,



J. S. C.

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**HON. MARK I PARTNOW
SUPREME COURT JUSTICE**