

Richards v LaSalle Bank N.A.
2017 NY Slip Op 30720(U)
April 11, 2017
Supreme Court, New York County
Docket Number: 159560/15
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 2

-----X
CAROLE RICHARDS,

Plaintiff,

-against-

**DECISION, ORDER,
& JUDGMENT**

Index No.: 159560/15

Mot. Seq. No.: 001

LASALLE BANK N.A., BANK OF AMERICA N.A.,
HSBC MORTGAGE CORPORATION (USA), NEW YORK
CITY ENVIRONMENTAL CONTROL BOARD,
NEW YORK CITY PARKING VIOLATIONS BUREAU
AND NEW YORK CITY TRANSIT ADJUDICATION
BUREAU,

Defendants.
-----X

KATHRYN E. FREED, J.S.C.

RECITATION, AS REQUIRED BY CPLR 2219 (a), OF THE PAPERS CONSIDERED IN THE REVIEW OF
THIS MOTION:

MOT. SEQ. 001

PAPERS	NUMBERED
PLTFS.' NOTICE OF MOTION AND AFFIRMATION ANNEXED	1-2 (Exs. A-I)
AFFIRMATION OF REGULARITY AND EXHIBITS ANNEXED	3
PLAINTIFF'S AFFIDAVIT	4

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THE MOTION IS AS FOLLOWS:

In this action by plaintiff Carole Richards against defendants LaSalle Bank N.A. (LaSalle), Bank of America N.A. (BOA), HSBC Mortgage Corporation (USA) (HSBC), New York City Environmental Control Board (ECB), New York City Parking Violations Bureau (PVB), and New York City Transit Adjudication Bureau (TAB), plaintiff moves, pursuant to CPLR 3215, for a default judgment against defendants. The motion is unopposed. After a review of plaintiff's papers and a review of the relevant statutes and case law, **the motion is granted in part.**

FACTUAL AND PROCEDURAL BACKGROUND:

Plaintiff alleged that she acquired title to 60 East 126th Street, New York, New York, Block 1750, Lot 43, Liber/Reel 3215, Page 1467, by deed from On The Way Back Inc. dated November 30, 2000 and recorded January 2, 2001. Ex. A, at pars. 2, 9; Pltf. Aff., at pars. 2-3. On or about June 8, 2006, plaintiff executed a mortgage against the premises with Virtualbank, a subsidiary of Lydian Bank, in the amount of \$1,330,000. Ex. A, at par. 10; Ex. C; Pltf. Aff., at par. 4. The mortgage was then allegedly assigned to LaSalle in or about July, 2008. Ex. A, at par. 11; Ex. D; Pltf. Aff., at par. 6.

On or about December 22, 2006, plaintiff took a “home equity line of credit mortgage” with HSBC in the amount of \$250,000. NYSCEF Doc. No. 7; Pltf. Aff., at par. 7.

On or about July 14, 2008, LaSalle commenced a foreclosure action against plaintiff due to her alleged default on the mortgage. Ex. A, at par. 12. Pltf. Aff., at par. 11. LaSalle’s action was dismissed with prejudice by order of this Court (Billings, J.) dated August 17, 2012. Ex. A, at par. 13; Ex. F; Pltf. Aff., at par. 12.

Similarly, an action commenced against plaintiff by LaSalle’s alleged successor to the mortgage, BOA, was dismissed by this Court (Huff, J.) on February 19, 2014. Ex. A, at pars. 14-15; Ex. G; Pltf. Aff., at par. 14.

On September 17, 2015, plaintiff commenced the captioned action seeking, inter alia, to declare that she has absolute title to the subject premises, to discharge any lien against her property, and to bar any claims against her property. Ex. A. Plaintiff properly served process on BOA, HSBC, LaSalle, and the TAB. Ex. H. Plaintiff did not serve the PVB and her affidavit of service reflects that the “New York City Control Board” and not the New York City Environmental Control Board”

was served. Ex. H.¹ Plaintiff also served additional copies of the summons and complaint on BOA, HSBC, LaSalle, and the TAB pursuant to CPLR 3215(g). Ex. I. On March 3, 2016, the \$1.33 million mortgage was satisfied as to “Mortgage Electronic Registration Systems, Inc., as nominee for Virtualbank, a Division of Lydian Private Bank, its successors and assigns.” NYSCEF Doc. No. 7; Pltf. Aff., at par. 12. The satisfaction, which was thus applicable to LaSalle and BOA, as assignees of the mortgage, noted that it was “solely for the purpose of discharging the lien created by the mortgage on [60 East 126th Street, New York, New York 10035]” but was “not a discharge of the obligation under the Note as said obligation has not been fully paid.” NYSCEF Doc. No. 7.

POSITION OF THE PLAINTIFF:

Plaintiff argues that, although she owes HSBC \$235,952.50, her account was delinquent as of May 2008 and, since the statute of limitations on any claim against her by HSBC has run, she is entitled to a discharge of the mortgage held by HSBC. She further maintains that the prior Court orders dismissing the claims by BOA and LaSalle preclude those entities from having a lien on her property. She further claims that she is entitled to a default against the TAB, the PVB, and the ECB, since those entities failed to answer the complaint.

LEGAL CONCLUSIONS:

CPLR 3215(a) provides, in pertinent part, that “[w]hen a defendant has failed to appear, plead or proceed to trial..., the plaintiff may seek a default judgment against him.” It is well settled that

¹Plaintiff claims that the ECB, PVB, and TAB are agencies of the City of New York which may hold judgments against her. Ex. A, at pars. 6-8.

“[o]n a motion for leave to enter a default judgment pursuant to CPLR 3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting party’s default in answering or appearing.” *Atlantic Cas. Ins. Co. v RJNJ Servs. Inc.*, 89 AD3d 649, 651 (2d Dept 2011). Proof of the facts constituting the claim may be provided by plaintiff’s affidavit. *See* CPLR 3215(f). The affidavit of default may be made by plaintiff or her attorney. *Id.*

Here, plaintiff has established her entitlement to a default against defendants LaSalle, BOA, and the TAB. She has established proper service of process on those entities and her attorney’s affirmation establishes that those entities have failed to answer or otherwise appear in this action. Further, plaintiff’s affidavit establishes the facts constituting the claim. However, since plaintiff did not properly serve the ECB or the PVB, her motion is denied as to those entities with leave to renew upon proper papers.

Plaintiff’s affidavit of facts fails to establish that she is entitled to a default as against HSBC, having conceded in her affidavit that she still owes that entity \$235,000 in connection with the \$250,000 home equity line of credit mortgage she obtained from that bank. *Pltf.’s Aff.*, at pars. 7, 9. Indeed, plaintiff concedes that she hired an attorney to assist her in negotiating a settlement of that debt with HSBC but that the bank “refuse[d] to cooperate” with her by settling for less than half of the amount she owed. *Id.*, at par. 10. Thus, plaintiff is clearly not entitled to a default judgment against HSBC.

Therefore, in light of the foregoing, it is hereby:

ORDERED AND ADJUDGED that the branch of plaintiff's motion seeking a default judgment against defendants LaSalle Bank N.A., Bank of America N.A., and New York City Transit Adjudication Bureau is granted; and it is further,

ORDERED AND ADJUDGED that defendants LaSalle Bank N.A., Bank of America N.A., and New York City Transit Adjudication Bureau are barred from claiming an estate or interest in plaintiff's property located at 60 East 126th Street, New York, New York 10035, Block 1750, Lot 43; and it is further,

ORDERED AND ADJUDGED that the Clerk of the County be directed to cancel and discharge of record any mortgage or lien held on plaintiff's property located at 60 East 126th Street, New York, New York 10035, Block 1750, Lot 43 by defendants LaSalle Bank N.A. and Bank of America N.A., recorded in the office of the Clerk of New York County by Virtualbank, a Division of Lydian Private Bank, on July 3, 2006 as CRFN # 2006000377074; and it is further,

ORDERED AND ADJUDGED that the Clerk of the County be directed to cancel and discharge of record any mortgage or lien held on plaintiff's property located at 60 East 126th Street, New York, New York 10035, Block 1750, Lot 43 by defendant the New York City Transit Adjudication Bureau; and it is further,

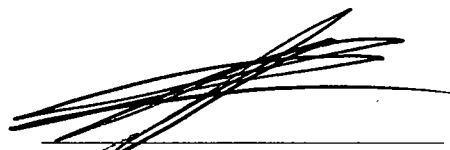
ORDERED that the branch of plaintiff's motion seeking a default judgment against defendants the New York City Environmental Control Board and the New York City Parking Violations Bureau is denied with leave to renew upon proper papers; and it is further,

ORDERED that the branch of plaintiff's motion seeking a default judgment against HSBC Mortgage Corporation (USA) is denied; and it is further,

ORDERED that this constitutes the decision and order of this Court.

Dated: April 11, 2017

ENTER:


KATHRYN E. FREED, J.S.C.