

Golden Eagle Capital Corp. v Paramount Mgt. Corp.
2017 NY Slip Op 31803(U)
August 21, 2017
Supreme Court, Queens County
Docket Number: 17821/2009
Judge: Robert J. McDonald
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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

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GOLDEN EAGLE CAPITAL CORP., Index No.: 17821/2009

Plaintiff, Motion Date: 4/24/17

- against - Motion Seq.: 16

PARAMOUNT MANAGEMENT CORP., DANIEL
LEE, EVA LEE, YIN FONG, XIAO HUAN
ZHANG, CHI KEUNG LAI, YOUNG HOON KANG,
EUN JA CHOI KANG, STEPHANIE S. SUNG,
LOUIS & SONS, INC., JPMORGAN CHASE
BANK, N.A., EMIGRANT MORTGAGE COMPANY,
INC., DAVID CHO, EMPIRE PORTFOLIOS
INC., NEW YORK STATE DEPARTMENT OF
TAXATION AND FINANCE, NYC PARKING
VIOLATIONS BUREAU, CITY STORE GATES
MFG. CORP., INTERNAL REVENUE SERVICE,
METRO PORTFOLIOS INC., CRIMINAL COURT
OF THE CITY OF NEW YORK, FIRST SELECT
CORPORATION, MANUFACTURERS & TRADERS
TRUST COMPANY, PORTFOLIO RECOVERY
ASSOCIATES, LLC, 41 AVENUE REALTY &
MANAGEMENT CORP., and NEW YORK CITY,

Defendants.

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The following papers numbered 1 to 26 read on this motion brought by order to show cause by Young Hoon Kang and Eun Ja Choi Kang (the Kang Defendants) pursuant to CPLR 602(a) and 3211(a)(4) to consolidate an action pending in Supreme Court, Queens County, under Index No. 704720/2014, entitled *Golden Eagle Capital Corp. v Paramount Management Corp., et al.*, with this action, directing that the answer served by the Kang Defendants in the Second Action be deemed the Kang Defendants' answer in the consolidated action and pursuant to CPLR 3215(g) and 5015(a)(4) vacating the order of reference in this action dated August 21, 2013, or in the alternative, granting leave to renew the first, second and fourth branches of the Kang Defendants' order to show cause dated

November 20, 2013 and upon renewal, pursuant to CPLR 3211(a)(8) dismissing the complaint in this action for lack of personal jurisdiction, or in the alternative ordering a hearing as to alleged service upon the Kang Defendants in this action, or in the alternative pursuant to CPLR 3215(c) and 5015(a)(1) permitting the Kang Defendants to appear and serve their proposed answer on the grounds that any default was excusable and the Kang Defendants have a meritorious defense to this action; and on the cross motion by JP Morgan Chase Bank, N.A. (Chase) pursuant to CPLR 602(a) and 3211(a)(4) to consolidate an action pending in Supreme Court, Queens County, under Index No. 704720/2014, entitled *Golden Eagle Capital Corp. v Paramount Management Corp., et al.*, with this action, directing that the answer served by Chase in the Second Action be deemed Chase's answer in the consolidated action and pursuant to CPLR 3215(g) and 5015(a)(4) vacating the order of reference in this action dated August 21, 2013, or in the alternative, granting leave to renew Chase's prior order to show cause and upon renewal, pursuant to CPLR 2004, 3012(d), 5015 and 317 vacating the order of reference, or in the alternative finding any default in answering by Chase to be excusable and permitting Chase to file a late answer.

Papers
Numbered

Order to Show Cause - Affidavits - Exhibits.....	1-8
Notice of Cross Motion - Affidavits - Exhibits...	9-15
Answering Affidavits - Exhibits.....	16-21
Reply Affidavits.....	22-26

Upon the foregoing papers it is ordered that this motion and cross motion are determined as follows:

This is a foreclosure action. The action was commenced on July 9, 2009. Plaintiff moved for a default judgment and an order of reference against Chase and other non-appearing defendants, including the defendants Young Hoon Kang and Eun Ja Choi Kang (Kang defendants). This motion was granted in a memorandum decision dated May 28, 2013. An Order of Reference was granted in an order dated August 21, 2013. The Kang defendants then moved to vacate their default, vacate the order of reference and dismiss the case on the ground that plaintiff had not moved for a default judgment within a year, the Kang defendants also sought dismissal for lack of personal jurisdiction. In an order dated May 16, 2014 and filed on May 27, 2014, this Court dismissed this action against defaulting defendants Young Hoon Kang and Eun Ja Choi Kang. The Court found that the under CPLR 3215(c) the plaintiff had abandoned the action by failing to take proceedings for the entry of the

default judgment within one year from the time of the default. The Court in effect overturned its prior order granting a default judgment against all non-appearing defendants and then dismissed the complaint against the Kang defendants. In an order dated September 11, 2014 and filed on September 16, 2014, this Court denied the plaintiff's motion to reargue the order dismissing the complaint against the Kang defendants. Following the dismissal Chase then moved to dismiss the complaint against it under 3215(c). The court in an order dated June 24, 2015, then dismissed the complaint against Chase. The Appellate Division in two orders dated October 5, 2016, then reversed the dismissal order and denied the motions to dismiss the complaint as abandoned and reinstated the complaint but did not determine any other branches of the prior motion or direct this court to determine the other branches of the motions.

Following the dismissal order of this action, and prior to the Appellate Division decision overturning the dismissal, the plaintiff commenced the Second Action, a new action to foreclose that is almost identical to this action. Both the Kang defendants and Chase timely submitted answers in the Second Action. The Kang defendants and Chase have now moved to consolidate the two actions, vacate the order of reference in the first action and have their answer served in the second action deemed the answer in the consolidated action or in the alternative to renew the unaddressed branches of their prior motions.

First, the order of reference must be vacated. The plaintiff did not comply with the notice requirements of 3215(g). This is a jurisdictional defect that deprives the court of the authority to entertain a motion for leave to enter a default judgment (*Deutsche Bank, Nat. Trust Co. v Gavrieola*, 130 AD3d 674 [2d Dept 2015]). While plaintiff argues that the motion was properly made ex parte under CPLR 3215(d), this argument is without merit. In order to make an ex parte motion for a default judgment the plaintiff was required to move within one year of the default. Since the motion was made more than a year it was improper to make the motion without the serving notice under 3215(g). Therefore, the order of reference must be vacated.

Turning next to the branches of the motion and cross motion to consolidate, these actions are virtually identical. Consolidation of the actions would promote efficiency and avoid duplication of time, effort and expense. Furthermore, in light of the determination that the order of reference needs to be vacated, the plaintiff is at similar stages of the litigation in both actions. Therefore, inasmuch as these actions involve common questions of law or fact, they are consolidated under Index No. 17821/2009 (CPLR 602). Finally, since the actions are consolidated and both the Kang defendants and Chase timely answered and appeared in the second action, the answer submitted

by the Kang defendants and Chase in second action are deemed to be the answer in the consolidated action and the allow the parties to litigate the merits of the claim.

Accordingly, the motion and cross motion to vacate the order of reference are granted and the order of reference dated August 21, 2017 is vacated. The motion and cross motion to consolidate an action pending in Supreme Court, Queens County, under Index No. 704720/2014 with this action is granted. The actions are consolidated under Index No. 17821/2009. The caption of the consolidated action shall be as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

_____x

GOLDEN EAGLE CAPITAL CORP.,

Plaintiff,

Index No. 17821/2009

- against -

PARAMOUNT MANAGEMENT CORP., DANIEL LEE, EVA LEE, YIN FONG, XIAO HUAN ZHANG, CHI KEUNG LAI, YOUNG HOON KANG, EUN JA CHOI KANG, STEPHANIE S. SUNG, LOUIS & SONS, INC., . J.P. MORGAN CHASE BANK, N.A., EMIGRANT MORTGAGE COMPANY, INC., DAVID CHO, EMPIRE PORTFOLIOS INC., NEW YORK STATE DEPARTMENT OF TAXATION & FINANCE, NYC PARKING VIOLATIONS BUREAU, CITY STORE GATES MFG. CORP., INTERNAL REVENUE SERVICE, METRO PORTFOLIOS INC., CRIMINAL COURT OF THE CITY OF NEW YORK, FIRST SELECT CORPORATION, MANUFACTURERS & TRADERS TRUST COMPANY, PORTFOLIO RECOVERY ASSOCIATES, LLC, 41 AVENUE REALTY & MANAGEMENT CORP., NEW YORK CITY, NYC DEPARTMENT OF FINANCE, and NYC ENVIRONMENTAL CONTROL BOARD,

Defendants.

_____x

The Kang Defendants are directed to serve a copy of this order with notice of entry on all parties to the actions consolidated and on the Clerk of the Supreme Court, Queens County, who shall transfer all papers filed under Index No. 704720/2014 to the file under Index No. 17821/2009. The answer

served by the Kang Defendants and Chase in the Second Action are deemed the answer in the consolidated action.

In light of the decision granting consolidation, vacating the order of reference and deeming the answers served in the Second Action as the answers in the consolidated action, the branches of the motion and cross motion for alternative relief are denied as moot.

Dated: August 21, 2017
Long Island City, N.Y.

ROBERT J. MCDONALD
J.S.C.