

<b>Ostrovskaya v Rodkopf</b>
2019 NY Slip Op 33562(U)
January 18, 2019
Supreme Court, Kings County
Docket Number: 1610/2018
Judge: Carl J. Landicino
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At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 18<sup>th</sup> day of January, 2019.

PRESENT:  
HON. CARL J. LANDICINO,  
Justice.

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**OKSANA OSTROVSKAYA,**  
*Plaintiff, Pro-Se,*

**Index No.: 1610/2018**

**DECISION AND ORDER**

- against -

**SERGEY RODKOPF, a/k/a SERGE RODKOPF,**  
**SANTANDER BANK, (Indispensible party)**  
*Defendants.*

**Motion Sequence #1, #2**

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**Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:**

	<u>Papers Numbered</u>
Notice of Motion/Cross Motion and	
Affidavits (Affirmations) Annexed.....	<u>1/2, 3/4,</u>
Opposing Affidavits (Affirmations).....	<u>5,</u>
Reply Affidavits (Affirmations).....	<u>6</u>

Upon the foregoing cited papers, unopposed and on default, the Court finds as follows:

Plaintiff, *pro-se*, Oksana Ostrovskaya (hereinafter “the Plaintiff”) commenced this action by the filing of a Summons with Notice on July 9, 2018. As part of that Notice the Plaintiff stated that the nature of the action was “for FORECLOSURE, BREACH OF CONTRACT, FRAUD, seeking property, compensatory damages, actual damages, punitive damages, together with Interest, Court Costs and reasonable attorney fees.” On July 24, 2018 the Defendant Sergey Rodkopf (hereinafter “the Defendant”) filed a Notice of Appearance and Demand for Complaint. As part of his Demand for Complaint, the Defendant demanded that the Plaintiff “serve a copy of the Complaint and all papers in this action upon the undersigned attorneys, at the office address stated below, within twenty (20) days after service of this demand upon you.”

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The Defendant now moves (motion sequence #1) for an order dismissing the action for Plaintiff's failure to serve a complaint pursuant to CPLR 3012(b). Specifically, the Defendant contends that the instant action should be dismissed given that no Complaint has been served on the Defendant, well after the twenty day period provided for by CPLR 3012(b). The Plaintiff, *pro-se*, cross moves (motion sequence #2) and opposes the Defendant's motion. As part of the Plaintiff's motion, the Plaintiff seeks a six month stay pursuant to CPLR Section 2201. As part of her application, the Plaintiff states in her Affidavit that her father has been admitted to the hospital and that she has been responsible for assisting him with doctors' appointments and medical tests.

CPLR 3012(b) provides in pertinent part that

**Service of complaint where summons served without complaint. If the complaint is not served with the summons, the defendant may serve a written demand for the complaint within the time provided in subdivision (a) of rule 320 for an appearance. Service of the complaint shall be made within twenty days after service of the demand. Service of the demand shall extend the time to appear until twenty days after service of the complaint. If no demand is made, the complaint shall be served within twenty days after service of the notice of appearance. The court upon motion may dismiss the action if service of the complaint is not made as provided in this subdivision. A demand or motion under this subdivision does not of itself constitute an appearance in the action.**

"To avoid dismissal of the action for failure to serve a complaint after a demand for the complaint has been made pursuant to CPLR 3012(b), a plaintiff must demonstrate both a reasonable excuse for the delay in serving the complaint and a potentially meritorious cause of action." *Carducci v. Russell*, 120 A.D.3d 1375, 1375–76, 993 N.Y.S.2d 119, 121 [2<sup>nd</sup> Dept, 2014]; *see also Dayan v. Darche*, 96 A.D.3d 708, 708, 945 N.Y.S.2d 735, 736 [2<sup>nd</sup> Dept, 2012]. "The determination of what constitutes a reasonable excuse for a default lies within the sound discretion of the court." *Mitrani Plasterers Co. v. SCG Contracting Corp.*, 97 A.D.3d 552, 552, 947 N.Y.S.2d 339 [2<sup>nd</sup> Dept, 2012].

Turning to the merits of the instant applications by the respective parties, the Court finds that the Defendant's motion should be granted and the matter should be dismissed. First, it should be noted that the Plaintiff has still not served a Complaint on the Defendant, more than six months after the Notice of Appearance and Demand for Complaint was served. What is more, the Plaintiff's excuse related to her father and her otherwise busy schedule is not sufficient. Finally, the Plaintiff has not otherwise provided sufficient proof that she has a potentially meritorious cause of action. *See Lobel v. Hilltop Vill. Coop., No. 4*, 138 A.D.3d 938, 939, 28 N.Y.S.3d 633, 634 [2<sup>nd</sup> Dept, 2016]; *Leibowitz v. Glickman*, 50 A.D.3d 643, 644, 855 N.Y.S.2d 193, 194 [2<sup>nd</sup> Dept, 2008].

As for the Plaintiff's cross-motion seeking a stay pursuant to CPLR 2201, the Court finds that this is unfounded given the procedural facts herein. CPLR 2201 provides in pertinent part that "[e]xcept where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just." In her application, the Plaintiff provides general information regarding her disputes with the Defendant and requests a six month stay. Plaintiff states that she is preparing for a custody trial in the Kings County Family Court. While the existence of another pending action is a basis for a stay pursuant to CPLR 2201, a stay should not be granted unless the other action presents complete identity of parties, causes of action and relief sought. "To impose a stay in one action pending the resolution of a related action, there must be a complete identity of parties, claims, and reliefs sought in the two actions." *Green Tree Fin. Servicing Corp. v. Lewis*, 280 A.D.2d 642, 643, 720 N.Y.S.2d 843, 844 [2<sup>nd</sup> Dept, 2001]; *see Winters Bros. Recycling Corp. v. H.B. Millwork, Inc.*, 72 A.D.3d 942, 943, 900 N.Y.S.2d 99, 100 [2<sup>nd</sup> Dept, 2010]. In relation to the relief sought, while the parties are apparently the same in both actions, the cause of action reflected in the Plaintiff's Notice was "for FORECLOSURE, BREACH OF CONTRACT, FRAUD, seeking property, compensatory

damages, actual damages, punitive damages, together with Interest, Court Costs and reasonable attorney fees.” Neither the respective causes of action nor the relief sought in relation to each action is not the same. Accordingly, a stay is not appropriate under CPLR 2201.

Based on the foregoing, it is hereby ORDERED as follows:

The Defendant’s motion (motion sequence #1) is granted and the Clerk is directed to dismiss the action.

The Plaintiff’s motion (motion sequence #2) is denied.

This constitutes the Decision and Order of the Court.

ENTER:

  
**Carl J. Landicino**  
**J.S.C.**

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