

**Sugamele v JPMC Specialty Mtge. LLC**

2019 NY Slip Op 34459(U)

February 27, 2019

Supreme Court, Nassau County

Docket Number: Index No. 613238/17

Judge: James P. McCormack

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT - STATE OF NEW YORK**

**PRESENT:**

**Honorable James P. McCormack**  
**Justice of the Supreme Court**

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**THERESA SUGAMELE and DOROTHY  
HOLLMAN,**

**Plaintiff(s),**

**-against-**

**JPMC SPECIALTY MORTGAGE LLC and  
FAY SERVICING LLC,**

**Defendant(s).**

\_\_\_\_\_x

**TRIAL/IAS, PART 21  
NASSAU COUNTY**

**Index No. 613238/17**

**Motion Seq. No.: 006 & 007  
Motion Submitted: 1/8/19**

The following papers read on this motion:

- Notice of Motion/Supporting Exhibits.....X
- Notice of Cross Motion/Supporting Exhibits/Opposition.....X
- Reply/Opposition to Cross Motion.....X
- Reply Affirmation.....X

Plaintiffs, Theresa Sugamele (Sugamele) and Dorothy Hollman (Hollman), move this court (Motion Seq. 006) for an order, pursuant to CPLR §3215, granting leave to file a default judgment against Defendant, Fay Servicing LLC (Fay). Fay opposes the motion and cross moves (Motion Seq 007) for an order compelling Plaintiffs to accept Fay’s answer. Plaintiffs oppose the cross motion.

The history of this matter has been recounted in prior orders and need not be restated herein. For the purposes of these motions, it is relevant to note that, by short form order dated April 11, 2018, this court granted in part, and denied in part, Fay's pre-answer motion to dismiss. Plaintiffs served the April 11, 2018 order with notice of entry on May 8, 2018. Therefore, Fay had until May 18, 2018 to serve an answer. (CPLR §3211(f)). Admittedly, they did not serve an answer until after Plaintiffs filed their motion for a default judgment. Plaintiffs rejected the answer.

According to CPLR § 3215 a motion for default judgment can be made once a defendant has failed to appear.

CPLR 3215(f) holds:

On any application for judgment by default, the applicant shall file proof of service of the summons and the complaint, or a summons and notice served pursuant to subdivision (b) of rule 305 or subdivision (a) of rule 316, and proof by affidavit made by the party of the facts constituting the claim, the default and the amount due. Where a verified complaint has been served it may be used as the affidavit of the facts constituting the claim and the amount due; in such case, an affidavit as to the default shall be made by the party or his attorney.

Once a plaintiff submits proof of service and an affidavit constituting the merits of his claim, the application for a default judgment must be granted (*see Pampalone v. Giant Building Maintenance, Inc.*, 17 AD3d 556 [2d Dept. 2005]; *Andrade v. Ranginwala*, 297 AD2d 691 [2d Dept. 2002]). Moreover, once the requisite showing has been made and

the requisite proof proffered, said motion shall be granted unless the defendant can establish that it has a meritorious defense to the claims made, a reasonable excuse for the delay in interposing its answer, and that the delay in interposing an answer has in no way prejudiced the plaintiffs in the prosecution of their case (*see Buywise Holding, LLC v. Harris*, 31 AD3d 681 [2d Dept. 2006]; *Giovanelli v. Rivera*, 23 AD3d 616 [2d Dept. 2005]; *Mjandi v. Maguire*, 21 AD3d 1067 [2d Dept. 2005]; *Thompson v. Steuben Realty Corp.*, 18 AD3d 864 [2d Dept. 2005]).

A defendant who has failed to appear or answer the complaint must provide a reasonable excuse for the default and demonstrate a meritorious defense to the action to avoid the entering of a default judgment or to extend the time to answer (*see CPLR §5015 [a] [1]*; *O'Shea v. Bittrolff*, 302 AD2d 439 [2d Dept. 2003]; *Matter of Gambardella v. Orlov Light*, 278 AD2d 494 [2d Dept. 2000]). The determination of what constitutes a reasonable excuse lies within the sound discretion of the Supreme Court (*see Gambardella v. Orlov Light*, 278 AD2d 494 [2000], *supra*).

Herein, Plaintiffs have submitted an affidavit of service indicating that Fay was served. As for the affidavit of merit, Plaintiffs submit the verified complaint. While the verification is not attached complaint annexed to the motion, the verification is annexed to the complaint on the e-file site, and the court finds that sufficient. As such, it is incumbent upon Fay to provide a reasonable excuse, a meritorious defense and that the delay in answering has not prejudiced Plaintiffs.

In opposition, and in support of their cross motion, Fay asserts law office failure for their excuse. Counsel claims he inadvertently failed to provide his “Docketing Department” with the notice of entry. As a result, an answer was never served,. Counsel goes into detail as to how the procedure works in the office and how it is the lawyer’s obligation to inform the docketing department of relevant dates and the outcome of motions and court appearances. His failure to do so in this instance meant that the deadline to serve the answer was never docketed. Counsel, who is a partner at the firm, asserts this is the first time in his career he has missed such a deadline. Under the circumstances of this case, the court finds the excuse reasonable. It is relevant to note that, prior to the missed answer, there were five motions between the parties, and Fay either brought, or opposed, each one. It cannot be argued that Fay in anyway abandoned their defense of this matter. (*See De Bartolo v. De Bartolo*, 46 AD3d 739 [2d Dept 2007]). Further, Fay points out that after the April 11, 2018 order was issued, the parties entered into settlement discussions, something Plaintiffs do not deny. Though the discussions were not fruitful, that settlement discussions occurred but Plaintiffs failed to mention they would filing a motion for default is something the court may consider. (*Performance Const. Corp. v. Huntington Bldg., LLC*, 68 AD3d 737 [2d Dept 2009]).

The court further agrees with Fay that they have a meritorious defense. The court sees no prejudice to Plaintiffs, nor is any alleged, and the court is mindful of the public policy in favor of deciding actions on their merits. *Id.*

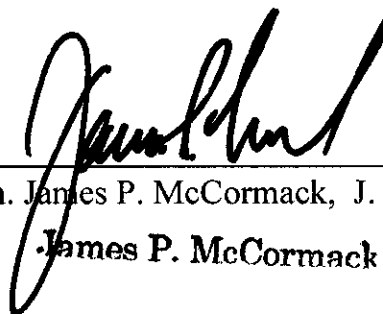
Accordingly, it is hereby

**ORDERED**, that Plaintiffs' motion (Motion Seq. 006) for leave to enter a default judgment is DENIED; and it is further

**ORDERED**, that Fay's cross motion (Motion Seq. 007) to compel Plaintiffs to accept their answer is GRANTED. Fay has 10 days from being served with notice of entry of this order to re-serve their answer.

This constitutes the Decision and Order of the Court.

Dated: February 27, 2019  
Mineola, N.Y.



Hon. James P. McCormack, J. S. C.

James P. McCormack

**ENTERED**

FEB 28 2019

NASSAU COUNTY  
COUNTY CLERK'S OFFICE