

Suriel v JPMorgan Chase Bank, N.A.

2019 NY Slip Op 35081(U)

August 19, 2019

Supreme Court, New York County

Docket Number: Index No. 153608/2019

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2EFM

Justice

-----X INDEX NO. 153608/2019

JULIO SURIEL,

Plaintiff,

MOTION SEQ. NO. 001, 002

- v -

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, PENNYMAC CORP., and DEBRORAH TULLY,

DECISION AND ORDER

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14

were read on this motion to/for DISMISSAL

The following e-filed documents, listed by NYSCEF document number (Motion 002) 15, 16, 17, 18, 19, 20, 21, 22, 23

were read on this motion to/for DISMISS

Motion sequences 001 and 002 are hereby consolidated for disposition.

In this action by plaintiff Julio Soriel sounding, inter alia, in fraud, defendant JP Morgan Chase Bank, National Association ("Chase") moves (motion sequence 001) to dismiss the complaint for lack of personal jurisdiction pursuant to CPLR 3211(a)(8). Defendant PennyMac Corp. ("PMC") moves (motion sequence 002) for the identical relief. After a review of the motion papers and the relevant statutes and case law, the applications, which are unopposed, are decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND:

Plaintiff Julio Soriel commenced the instant action against defendants Chase, PMC, and Deborah L. Tully seeking to recover damages for, inter alia, fraud, by filing a summons with notice on April 5, 2019. Doc. 1. The same day, plaintiff served the summons with notice on defendants by "USPS First Class-Certified Mail". Doc. 2, 9. On April 24, 2019, Chase demanded that plaintiff serve a complaint pursuant to CPLR 3012(b). Docs. 3, 4, 10.

Although plaintiff filed a verified complaint on July 17, 2017 (Doc. 24), Chase rejected the same as untimely on July 19, 2019. Doc. 26. On July 22, 2019, PMC rejected the complaint due to plaintiff's failure to comply with CPLR 312-a and CPLR 3012(b). Doc. 28.

On June 13, 2019, Chase moved (motion sequence 001), pursuant to CPLR 3211(a)(8), to dismiss this action for lack of personal jurisdiction. Docs. 6, 11, 13. In support of the motion, Chase argued that the action had to be dismissed because it was not properly served with process. Doc. 7. In any event, argues Chase, plaintiff failed to serve a complaint within 30 days after Chase demanded the same. Doc. 7. Chase further asserts that the claims against it must be dismissed since plaintiff failed to properly serve it pursuant to CPLR 312-a. Doc. 7.

On June 24, 2019, PMC also moved (motion sequence 002), pursuant to CPLR 3211(a)(8), to dismiss the action on the ground that it was not properly served with process. Doc. 15. In support of its motion, PMC asserts that the claims against it must be dismissed because plaintiff failed to comply with the provisions of CPLR 312-a. Doc. 19.

Both motions are unopposed.

LEGAL CONCLUSIONS:

CPLR 3211(a)(8) allows a matter to be dismissed for lack of personal jurisdiction, including where plaintiff fails to properly serve a defendant with process. It is well-settled that "[i]f plaintiff failed to properly serve defendants, all subsequent proceedings [t]herein are null and void." *Ananda Capital Partners, Inc. v. Stay Elec. Sys. (1994) Ltd.*, 301 A.D.2d 430 (1st Dept 2003). Here, plaintiff attempted to serve Chase with the summons with notice by "USPS First Class-Certified Mail" (Doc. 2). CPLR 312-a(a) provides, in pertinent part, that:

As an alternative to the methods of personal service authorized by section 307, 308, 310, 311 or 312 of this article, a . . . summons with notice . . . may be served by the plaintiff or any other person by mailing to the person or entity to be served, by first class mail, postage prepaid, a copy of the . . . summons with notice . . . together with two copies of a statement of service by mail and acknowledgment of receipt in the form set forth in subdivision (d) of this section, with a return envelope, postage prepaid, addressed to the sender.

The service requirements of CPLR 312-a are strictly construed. *See Strong v Bi-Lo Wholesalers*, 265 AD2d 745 (3d Dept 1999); *Nagy v. John Heuss House Drop In Shelter for the Homeless*, 198 A.D.2d 115 (1st Dept 1993). Where, as here, a plaintiff fails to enclose two copies of the statement of service by mail and acknowledgment of receipt in the format required by CPLR § 312-a(d), service will be deemed defective, meaning that the action was never properly commenced. *See Nagy*, 198 A.D.2d at 115.

The complaint must be dismissed as against Chase and PMC on the basis of lack of personal jurisdiction since plaintiff did not comply with CPLR § 312-a(a) when it served those defendants with the summons with notice. Although plaintiff served Chase and PMC by certified mail, those defendants maintain that plaintiff failed to comply with CPLR 312-a(a). On a motion to dismiss

for lack of jurisdiction pursuant to CPLR 3211(a)(8), the plaintiff is required to submit evidence supporting the exercise of jurisdiction over the defendants. *See Spectra Prods. v Indian River Citrus Specialties*, 144 AD2d 832, 833 (3d Dept 1988) (citations omitted). Since plaintiff does not oppose the motions, he fails to refute the claims by Chase and PMC regarding his failure to comply with CPLR 312-a. Thus, the complaint must be dismissed as against Chase and PMC.

In light of the foregoing, it is hereby:

ORDERED that the motion by JP Morgan Chase Bank, National Association (motion sequence 001) to dismiss the complaint for lack of personal jurisdiction pursuant to CPLR 3211(a)(8) is granted and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further; and it is further

ORDERED that the motion by defendant PennyMac Corp. (motion sequence 002) to dismiss the complaint for lack of personal jurisdiction pursuant to CPLR 3211(a)(8) is granted and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further;

ORDERED that the action is severed and continued against remaining defendant Deborah L. Tully; and it is further

ORDERED that the caption be amended to reflect the dismissal of defendants JP Morgan Chase Bank, National Association and PennyMac Corp. and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the movants shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

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

8/19/19
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE