

Cadles of Grassy Meadows II v Su Casa Realty & Travel Corp.

2021 NY Slip Op 32346(U)

November 15, 2021

Supreme Court, New York County

Docket Number: Index No. 653613/2021

Judge: Louis L. Nock

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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. LOUIS NOCK PART 38M

Justice

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CADLES OF GRASSY MEADOWS II,

Plaintiff,

INDEX NO. 653613/2021

MOTION DATE 06/04/2021

MOTION SEQ. NO. 001

- v -

SU CASA REALTY & TRAVEL CORP. and MACOS
GUZMAN,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 10, 11, 12
were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT.

Upon the foregoing documents, the motion of plaintiff Cades of Grassy Meadows II, LLC ("Plaintiff") for summary judgment in lieu of complaint to renew a judgment pursuant to CPLR 5014 is granted in part, in accord with the following memorandum of law.

On December 18, 2001, a money judgment in the amount of \$254,754.22 (the "Judgment") was entered by the Clerk of this court in favor of non-party Fleet National Bank and against defendants Su Casa Realty & Travel Corp. ("Su Casa") and Marcos Guzman ("Guzman") (NYSCEF Doc No. 4, Shaulis affidavit ¶ 8; NYSCEF Doc No. 5, judgment). The Judgment was later assigned to Plaintiff (NYSCEF Doc No. 4, Shaulis affidavit ¶¶ 9-11; NYSCEF Doc Nos. 6-8). As of May 26, 2021, \$50,804.08 has been collected towards the judgment and \$95,792.53 in interest has accrued (NYSCEF Doc No. 4, Shaulis affidavit ¶¶ 13-14). The \$50,804.08 was applied towards the post-judgment interest, leaving a principal balance owed of \$54,754.22 and interest of \$44,988.45 (*id.* ¶¶ 15-18). On June 4, 2021, Plaintiff commenced this action to renew

the Judgment against Defendants pursuant to CPLR 5014. No opposition has been filed and neither defendant has appeared in the action.

A New York money judgment is enforceable for 20 years (CPLR 211 [b]), and it acts as a lien on the judgment debtor's real property for a period of 10 years (CPLR 5203 [a]). After ten years have elapsed since entry of the judgment, the judgment may be "renewed" pursuant to CPLR 5014 (1), which provides that "an action upon a money judgment entered in a court of the state may only be maintained between the original parties to the judgment where . . . ten years have elapsed since the first docketing of the judgment." An action to renew may be commenced "during the year prior to the expiration of ten years since the first docketing of the judgment" (CPLR 5014). Although the property lien associated with the judgment expires ten years after the judgment is first docketed, the judgment is nonetheless enforceable and may be renewed more than ten years after docketing, provided that an action to renew the judgment is commenced within the statute of limitations (*see Rose v Gulizia*, 104 AD3d 757, 757-758 [2d Dept 2013]). A plaintiff will be entitled to a renewal judgment "by demonstrating the existence of the prior judgment, that the defendant was the judgment debtor, that the judgment was docketed at least nine years prior to the commencement of [the] action, and that the judgment remains . . . unsatisfied" (*id.* at 758).

A motion for summary judgment in lieu of complaint may be made where an action is based upon a judgment (*see Lawrence v Kennedy*, 95 AD3d 955, 957 [2d Dept 2012]), and it is governed by the same standards as a motion for summary judgment brought pursuant to CPLR 3212 (*see Gateway State Bank v Shangri-La Private Club for Women, Inc.*, 113 AD2d 791 (2d Dept 1985)). The proponent of a motion for summary judgment pursuant to CPLR 3212 must establish its entitlement to such relief as a matter of law (*see Zuckerman v City of New York*, 49

NY2d 557 [1980]) by submitting proof in admissible form demonstrating the absence of triable issues of fact (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 (1985)).

Plaintiff has satisfied its *prima facie* burden on the motion with respect to Su Casa by demonstrating the existence of the prior judgment, that the defendant was the judgment debtor, that the judgment was docketed at least nine years prior to the commencement of this action, and that the judgment remains unsatisfied (*see Premier Capital, Inc. v Dehaan*, 122 AD3d 1414 [4th Dept 2014]; *Rose v Gulizia*, 104 AD3d 757 [2d Dept 2013]; *see generally Gletzer v Harris*, 12 NY3d 468 [2009]; *Levine v Bornstein*, 4 NY2d 241 [1958]). Su Casa was timely served with copies of the summons and motion papers by service upon the Secretary of State on July 16, 2021 (NYSCEF Doc No. 10). By failing to appear and oppose the motion, Su Casa has failed to raise any triable issue of fact. The motion is, therefore, granted as to Su Casa.

The motion is denied as to Guzman because Plaintiff has failed to demonstrate timely service upon him. When a party serves a summons and notice of motion for summary judgment in lieu of complaint, the summons “shall require the defendant to submit answering papers on the motion within the time provided in the notice of motion” (CPLR 3213). The “minimum time such motion shall be noticed to be heard shall be as provided by subdivision (a) of rule 320 for making an appearance, depending upon the method of service” (*id.*). The notice of motion filed in this action designates a return date of August 30, 2021 and demands that answering papers, if any, must be served at least ten days prior to that date, or August 20, 2021 (NYSCEF Doc No. 2). An affidavit of service filed by Plaintiff indicates that Guzman was served with copies of the summons and motion papers on July 16, 2021 by “nail-and-mail” service pursuant to CPLR 308 [4] with mailing thereafter (NYSCEF Doc No. 12). The affidavit of service was thereafter filed on July 21, 2021 (*id.*). Service was, therefore, complete on July 31, 2021 (CPLR 308 [2]). Under

CPLR 320(a), the deadline for Guzman to appear in the action and oppose the motion was August 30, 2021. However, the deadline to file opposition papers, as designated in the notice of motion, was August 20, 2021. Guzman was not, therefore, afforded sufficient time to appear and oppose the motion. Where the defendant in an action brought pursuant to CPLR 3213 is not afforded sufficient time to respond to the motion and the defendant neither appears nor answers the motion, the motion must be denied without prejudice and the action dismissed (*National Bank of Canada v Skydell*, 181 AD2d 645, 581 [1st Dept 1992]; *Clinton Capital Corp. v 635 Realty Corp.*, 2015 WL 1779013 [Sup Ct, NY County, 2015]; *Goldstein v Saltzman*, 13 Misc 3d 1023, 1027 [Sup Ct, Nassau County 2006]). Therefore, because neither defendant was timely served, the motion is denied and the action dismissed as against Guzman.

Accordingly, it is

ORDERED that the plaintiff's motion is granted in part, and the Clerk of the Court shall enter a renewal judgment in favor of plaintiff Cades of Grassy Meadows II, LLC and against defendant Su Casa Realty & Travel Corp. in the sum of 99,742.67, with interest on the sum of \$54,754.22 at the statutory rate from May 26, 2021, as calculated by the Clerk, with costs and disbursements as taxed by the Clerk, upon submission of an appropriate bill of costs; and it is further

ORDERED that the motion is denied and the action dismissed as to defendant Marcos

Guzman.

11/15/2021

DATE

Louis J. Nock
LOUIS NOCK, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION OTHER

APPLICATION: GRANTED SETTLE ORDER GRANTED IN PART SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE