

Bayview Loan Servicing LLC v Healey
2021 NY Slip Op 34324(U)
September 22, 2021
Supreme Court, Suffolk County
Docket Number: Index No. 608276/2017
Judge: James Hudson
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Bayview Loan Servicing, LLC v Nancy Healy, et al.

Index No.:608276/2017

Supreme Court of the State of New York
County of Suffolk
IAS- Part XL
Memorandum Decision

PRESENT:**HON. JAMES HUDSON***Acting Justice of the Supreme Court*

X-----X

BAYVIEW LOAN SERVICING LLC,

Plaintiff,

-against-

NANCY HEALEY a/k/a NANCY MINAKAIS
a/k/a NANCY GENOVESE, CLERK OF THE
SUFFOLK COUNTY FIRST DISTRICT COURT
and JOHN DOE NOS. 1 through 10, being and
representing persons who may possess or claim an
interest in the subject property, if said above
named defendants be living, and if the said
defendant be dead, then any and all other persons
who claim as heirs-at-law, next-of-kin, devisees,
distributes, legal representatives and successors in
interest of said defendant, their wives, husbands,
creditors, mortgagees, lienors, assignees, and legal
representatives of them and if any specifically
named defendant or any defendants named as a
class be dead, then their heirs-at-law, next-of-kin,
devisees, grantees, distributes, assignees,
mortgagees, lienors and successors in interest and
generally all parties having or claiming to have an
interest in or lien upon the premises described in
the complaint or any amendment thereto by,
through or under any of said specifically named
defendants herein or by, through or under any of
the other defendants herein named specifically as
a class all of whom and whose places or residences
are unknown to the plaintiff and cannot after
diligent inquiry be ascertained,

Defendant(s).

X-----X

INDEX NO.:608276/2017**MOT. SEQ. NO.:010-MD**

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The motion (seq. no.:010) of the Defendant, Nancy Healey (“Defendant”), for renewal and reargument of the March 4th, 2021 Decision and Order of the Hon. Martha Luft is granted to the limited extent provided herein (**CPLR Rule 2221[d],[e]**).

As indicated in the March 4th, 2021 Decision and Order (“Order”), the underlying case is an action to accept a copy of a Mortgage and Note upon the Defendant’s premises located in the County of Suffolk, which address is 9 Lakewood Avenue, East Quogue for recording. The Court granted a motion by the Plaintiff (seq. no.:001) for, *inter alia*, an Order granting partial Summary Judgment and directing the Suffolk County Clerk to accept a copy of that Mortgage and Note for recording as a first lien upon that Premises. That Order also denied Defendants motions (seq. nos.:002, 003, 004, 005, 006). Defendant’s unsuccessful motions had requested summary judgment against the Plaintiff multiple times (mot. seq. nos.:002, 004, 005, 006). Those denied motions further requested a monetary judgment in Ms. Healey’s favor, an inquest to determine monies due Defendant, and enjoining the Plaintiff from recovering mortgage payments. The Plaintiff has successfully moved (mot. seq. 007) for sanctions upon the Defendant due to her frivolous conduct. The Defendant’s instant motion (seq. no.: 010) for reargument and renewal seeks to have the Court set aside it’s March 4th, 2021 Order and for the fifth (5th) time requests an award of summary judgment.

Although often found in the same motion, reargument and renewal are intrinsically different. A motion for reargument must be “based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion” (**CPLR 2221[d]**). By contrast, a motion for renewal “shall be based upon new facts not offered on the prior motion that would change the prior determination” (*HSBC Bank USA, N.A. v. Halls*, 98 A.D.3d 718, 950 N.Y.S.2d 172, 174 [2nd Dept. 2012]; **CPLR 2221 [e][2]**).

In her motion for reargument the Defendant contends that the Court overlooked or misapprehended facts and the law. We disagree. Indeed, the Court carefully considered, and rejected, each of Defendant’s arguments when deciding the March 4th, 2021 Order.

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“Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided (*Pro Brokerage, Inc. v. Home Insurance Co.*, 99 AD2d 971, 472 NYS2d 661 [1st Dept 1984]) or to present arguments different from those originally asserted (*Foley v. Roche*, 68 AD2d 558, 418 NYS2d 588 [1st Dept 1979])” (*William P. Pahl Equipment Corp. v. Kassis*, 182 AD2d 22, 26, 588 NYS2d 8, 9 [1st Dept 1992]; see *Pryor v. Commonwealth Land Title Ins. Co.*, 17 A.D.3d 434, 793 N.Y.S.2d 452 [2nd Dept. 2005]).

Under the circumstances presented, that portion of the Defendant’s motion which requests Reargument pursuant to **CPLR Rule 2221(d)** is granted. Upon reconsideration of the moving and responding papers, however, the Court adheres to its original determination.

The Court now turns to that aspect of the Defendant’s application which seeks renewal of the motions underlying the March 4th, 2021 Order. A fair reading of the moving papers demonstrates that there is no new law upon which to base her argument (*Dinallo v. DAL Electric*, 60 AD3d 620, 874 NYS2d 246 [2d Dept 2009]). Instead, the Defendant relies upon “newly discovered evidence of defective documents” (Doc. 222). Each of the documents cited by the Defendant in her motion to renew were previously presented and considered by the Court. The Defendant has failed to produce any new evidence/documents.

It is beyond cavil that in a motion to renew, the applicant must present a reasonable justification for not presenting the new facts on the prior motion (*Carmike Holding I, LLC v. Smith*, 180 AD3d 744, 747, 120 NYS3d 141 [2d Dept 2020]; *HSBC Bank USA, N.A. v. Nemorin*, 167 AD3d 855, 90 NYS3d 270 [2d Dept 2018]; *Peebles v. New York City Housing Authority*, 295 AD2d 189, 744 NYS2d 13 [1st Dept 2002]; *Angiolillo, supra.*; *Scinta v. Van Coervig*, 284 AD2d 1000, 726 NYS2d 520 [4th Dept 2001]). It is not sufficient to only demonstrate that the facts are newly discovered (*Mark Davies, New York Practice Series, April of 2018 Update*, 8 N.Y. Prac., Civil Appellate Practice §5:2 [2d ed.]).

In the matter at hand, the Defendant contends that the evidence relied upon was recently discovered. The evidence submitted in support of Defendants motion, however, clearly show that the material was in her possession at the time of the original motion; was previously submitted and considered.

In the case of *Greene v. New York City Housing Authority*, 283 AD2d 458, 459, 724 NYS2d 631, 632 (2d Dept 2001), the learned Court held that in view of the “mandatory language” in **CPLR Rule 2221(e)(3)**, the movant must show reasonable justification for the failure to present such facts on the prior motion. “The Supreme Court lacks discretion to grant renewal where the moving party omits a reasonable justification for failing to present the new facts on the original motion” (*Sobin v. Tylutki*, 59 AD3d 701, 873 NYS2d 743 [2d Dept 2009]; citing *Worrell v. Parkway Estates, LLC*, 43 AD3d 436, 437, 840 NYS2d 817, 818 [2d Dept 2007]). A motion for leave to renew is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation (*Wells Fargo Bank, N.A. v. Mone*, 185 AD3d 626, NYS3d [2d Dept July 1, 2020]; *Lardo v. Rilab Transp. Corp.*, 46 AD3d 759, 848 NYS2d 337 [2d Dept 2007]). “While law office failure can be accepted as a reasonable excuse in the exercise of the court’s sound discretion, the movant must submit supporting facts to explain and justify the default...and mere neglect is not accepted as a reasonable excuse” (*Cole-Hatchard v. Grand Union*, 270 AD2d 447, 705 NYS2d 605, 607 [2d Dept 2000]). The movant must make an affirmative showing of reasonable excuse and the Court must find that proffered excuse to be reasonable.

We find the stated reason for the omission of this information in the earlier motions to be insufficient (**CPLR Rule 2221[3][e][2]**; *Cioffi v. S.M. Foods, Inc.*, 142 AD3d 526, 36 NYS3d 664 [2d Dept 2016]; see also *Rowe v. NYCPD*, 85 AD3d 1001, 926 NYS2d 121 [2d Dept 2011]).

In short, the proof submitted by the Defendants in support of their application to renew is less than compelling. Therefore, that portion of the Defendant’s motion (seq. no.:010) which requests renewal pursuant to **CPLR Rule 2221(e)** is denied.

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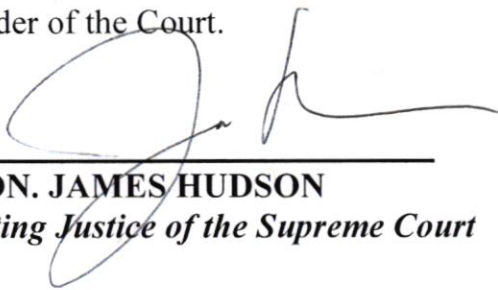
Accordingly, it is

ORDERED, that the motion of the Defendants for reargument of the Court's March 4th, 2021 Order/Judgment is granted (**CPLR 2221[d]**). Upon consideration of the moving and responding papers, the Court adheres to its original determination; and it is further

ORDERED, that the portion of Defendants motion seeking renewal is denied (**CPLR Rule 2221[e]**).

This Memorandum also constitutes the Order of the Court.

DATED:SEPTEMBER 22nd, 2021
RIVERHEAD, NY



HON. JAMES HUDSON
Acting Justice of the Supreme Court