

**Conger v Lawrence**

2022 NY Slip Op 30752(U)

March 29, 2022

Supreme Court, Kings County

Docket Number: Index No. 1585/2013

Judge: Larry D. Martin

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

SHIRLEY RAY CONGER,

Plaintiff,

-against-

ALISTER LAWRENCE, BEVERLY LAWRENCE, and  
ANGELYN JOHNSON,

Defendants.

Index No.: 1585/2013

Hon. Larry D. Martin, J.S.C.,  
Part 41  
Motion Seq. No.: 12

**DECISION AND ORDER**

This action was commenced by January 28, 2013 Verified Complaint, and issue was joined by Defendants Alister and Beverly Lawrence’s September 2, 2013 and Defendant Chase’s October 10, 2013 Verified Answers to the Complaint.

The relevant procedural history of this case begins with this Court’s August 6, 2019 Order granting, on default, Defendant JPMorgan Chase’s (“JPMorgan”) motion for a CPLR 3212 Order dismissing the Complaint as to it, with prejudice (the “Dismissal Order”). Then, by February 27, 2020 short-form Order (Boddie, J.), this Court denied Plaintiff’s motion to vacate the Dismissal Order, solely on the procedural ground that the Order was not attached to Plaintiff’s motion papers, and granted Plaintiff “leave to renew on proper papers.” By April 15, 2020 short-form Order (Boddie, J.), this Court marked Plaintiff’s second motion to vacate the Dismissal Order “withdrawn on the condition movant file papers, including a proper affirmation or affidavit from an attorney with personal knowledge of the default, within twenty days of the lifting of the current court system moratorium on court filings due to the Covid 19 virus.” Said April 15<sup>th</sup> Order further provided that “movant shall not be given any further opportunity to correct any defects in its papers submitted to the court.”

Now, Plaintiff again moves pursuant to CPLR 5015(a) for an Order vacating the Dismissal Order and JPMorgan opposes arguing the motion is again procedurally and substantively defective.

### ANALYSIS

In seeking to vacate a default judgment, a party must show a reasonable excuse for his default in responding to the motion and a meritorious defense or cause of action. CPLR Section 5015(a). *See also, Fidelity and Deposit Co. of Maryland v. Arthur Anderson & Co.*, 60 N.Y.2d 693, 468 NYS2d 464 (1983). Moreover, a motion seeking relief from a judgment or order pursuant to CPLR § 5015(a)(1) “must be made within one year after service of the order or judgment entered upon the default, [and] failure to move within one year bars restoration regardless of the excuse or merits of the case.” *Lopez v. Imperial Delivery Serv.*, 282 A.D.2d 190, 197 (2d Dep’t 2001).

### Excusable Default

In brief, Plaintiff essentially alleges that law office failure resulted in the mishandling of Chase’s initial summary judgment motion, thereby resulting in it being granted on default, and that further law office failure on two to three subsequent appearances, resulted in the default not being vacated, all on purely procedural bases. The motion is supported by the January 28, 2022 and August 13, 2020 affirmations of attorneys Roberto Pagan-Lopez and Ugo Ugeh. This Court notes that there appears to be a discrepancy as to whether said affirmations were properly annexed at the time that the instant third motion was filed. Section 2005 of the CPLR expressly provides, however, that “the court shall not, as a matter of law, be precluded from exercising its discretion in the interest of justice to excuse delay or default resulting from law office failure.”

Thus, while Plaintiff was admonished that she would not be given any further opportunity to correct any defects in her papers, such warning was issued while this Court was still grappling with the unforeseeably crippling effects of the Covid19 Pandemic, and there appears to have been

some confusion on all sides as to compliance with the foregoing one-year requirement vis-à-vis this Court's Covid Pandemic closure. Accordingly, greater leniency is appropriate in the interest of justice and judicial economy with respect to the further law office mishaps where, as here, contrary to *Roussodimou v. Zafiriadis*, 238 A.D.2d 568, 569 (2d Dept. 1997), no evidence of a pattern or intentional disregard of Court orders has been shown. *See also, e.g., Liotti v. Peace*, 15 A. D.3d 452, 790 N.Y.S.2d 512 (2<sup>nd</sup> Dept. 2005); *Braswell v. Schaffler*, 12 A.D.3d 474, 784 N.Y.S.2d 643 (2<sup>nd</sup> Dept. 2004); *Cadavid v. DeLuna*, 235 A.D.2d 385, 653 N.Y.S.2d 552 (2<sup>nd</sup> Dept. 1997); *Searing v. Anand*, 127 A.D.2d 582, 511 N.Y.S.2d 382 (2<sup>nd</sup> Dept. 1987); *In Re Esposito*, 2008 WL 5376573 (2<sup>nd</sup> Dept. Dec. 23, 2008).

#### Meritorious Claim

Substantively, the crux of Plaintiff's claim is that Defendant Chase participated in and/or colluded in a "straw buyer" rescue scam, thus precluding it from being deemed a *bona fide* encumbrancer within the context of the post-foreclosure sale of Plaintiff's former premises. More specifically, Plaintiff appears to argue that she enlisted Lawrence to act as *her* "straw buyer," and that Chase's awareness of her doing so makes it a party to the *her* "scheme," while simultaneously precluding Chase from being a *bona fide* encumbrancer.

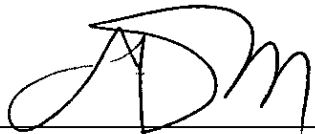
While Plaintiff is not required to prove facts the evidence of which may be within Defendants' exclusive control, she is required to clearly articulate a viable legal theory and set forth evidence currently within her possession supporting it. Defendant alleges that this Court, via the late Justice Schack, twice found that Plaintiff's theory lacked merit, however, that allegation appears to be supported by a hearsay affirmation, rather than a copy of the decisions referenced.

Accordingly, it is hereby

ORDERED Plaintiff's motion is granted to the extent that upon Plaintiff's attorneys' payment to Defendant Chase the sum of \$100 in costs and/or attorney's fees, the issue of a reasonable excuse for defaulting shall be deemed satisfied and/or Plaintiff, in the interest of justice, otherwise relieved therefrom. Upon Plaintiff's so doing, both parties are further granted leave until April 22, 2022 to provide this Court with one final legal brief or affirmation, succinctly arguing for or against Plaintiff having a legally cognizable cause of action and therefore viable complaint. In so doing, the parties are encouraged to avoid reliance upon inadmissible hearsay or miscited caselaw. The parties are further encouraged that this Court is well aware of the doctrines of *res judicata*, law of the case, and collateral estoppel, and may wish to apportion their briefs accordingly.

This constitutes the decision and Order of the Court.

ENTER



J.S.C.

HON. LARRY MARTIN  
JUSTICE OF THE SUPREME COURT

03/29/22