

U.S. Bank N.A. v Singh
2022 NY Slip Op 30789(U)
March 30, 2022
Supreme Court, New York County
Docket Number: Index No. 850162/2020
Judge: Francis A. Kahn III
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. FRANCIS KAHN, III **PART 32**

Justice

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INDEX NO. 850162/2020

U.S. BANK NATIONAL ASSOCIATION AS LEGAL TITLE TRUSTEE FOR TRUMAN 2016 SC6 TITLE TRUST,

MOTION DATE _____

Plaintiff,

MOTION SEQ. NO. 001

- v -

HARJINDER SINGH, PARMINDER KAUR, NEW YORK CITY TRANSIT ADJUDICATION BUREAU, NEW YORK CITY PARKING VIOLATIONS BUREAU, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, BOARD OF MANAGERS SHERWOOD 1600 ASSOCIATES, JOHN DOE

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51

were read on this motion to/for ORDER OF REFERENCE/REFERENCE TO

Upon the foregoing documents, the motion is determined as follows:

In this action to foreclose on residential real property located at 1600 Broadway, Unit 16A, New York, NY, Plaintiff moves for, *inter alia*, a default judgment against all defendants and an order of reference. Defendants Harjinder Singh (“Singh”) and Parminder Jeet Kaur (“Kaur”) cross-move to refer this matter to the Residential Mortgage Foreclosure Settlement Part for a conference pursuant to CPLR §3408 or, in the alternative, to compel Plaintiff to accept a late answer pursuant to CPLR §3012[d].

Plaintiff has established *prima facie* its entitlement to a default judgment against Defendants by submitting proof of the mortgage, the unpaid note, notice of default, proof of service on each Defendant as well as proof of their failure to appear or answer (*see* CPLR §3215[f]; *SRMOF II 2012-I Trust v Tella*, 139 AD3d 599, 600 [1st Dept 2016]). “To defeat a facially adequate CPLR 3215 motion, a defendant must show either that there was no default, or that it has a reasonable excuse for its delay and a potentially meritorious defense” (*US Bank N.A. v Dorestant*, 131 AD3d 467 [2nd Dept 2015]).

Defendants’ opposition to this branch of Plaintiff’s motion is insufficient to defeat the motion or justify granting leave to file a late answer (*see generally US Bank N.A. v Ramos*, 153 AD3d 882 [2nd Dept 2017]; *Bank of N.Y. Mellon v Tedesco*, 174 AD3d 490, 491 [2d Dept 2019]). Singh proffered an affidavit in opposition wherein he does not deny service, establish a reasonable excuse for his default nor demonstrate the existence of a meritorious defense. Kaur failed to submit an affidavit.

Defendants' argument that the failure to conduct a settlement conference pursuant to CPLR §3408 requires denial of Plaintiff's motion is unavailing. "CPLR§ 3408 only mandates a settlement conference in a residential foreclosure action involving a 'home loan' as defined by RPAPL §1304, and when the 'defendant is a resident of the property subject to foreclosure'" (*Richlew Real Estate Venture v Grant* 131 AD3d 1223 [2d Dept 2015]; *see also* CPLR §3408; *JP Morgan Chase Bank, N.A. v Venture*, 148 AD3d 1269 [3d Dept 2017]). "When CPLR §3408 and RPAPL §1304[6] are read together, it appears that a settlement conference is mandated where two 'residency' requirements are met, one considered as of the time of the subject mortgage is given, and one considered as of the time of the foreclosure action is commenced," (*see HSBC Bank United States v. McKenna*, 37 Misc 3d 885 [Sup. Ct. Kings County, 2012]).

While Singh's affidavit may have established that the subject loan was a "home loan" because he avers that the property was Defendants' "home", nothing in the affidavit demonstrates that either Defendant was "a resident of the subject property" when the action was commenced (*see Wells Fargo Bank v Ostiguy*, 119 AD3d 1266 [3rd Dept 2014]; *Brandywine Pavers, LLC v Bombard*, 108 AD3d 1209 [4th Dept 2013]). Indeed, Singh admits they moved to California during the pandemic and the affidavits of service filed by the Plaintiff demonstrated that both Defendants were served in California. Further, it appears a tenant is residing at the mortgaged premises.

Accordingly, it is

ORDERED that the branch of the motion for a default judgment against all Defendants is granted; and it is

ORDERED that the Defendants' cross-motion is denied; and it is further

ORDERED that **Clark Whitsett, Esq., 108-26 Myrtle Avenue, Richmond Hill, NY 11418-1235 (718) 850-0003** is hereby appointed Referee in accordance with RPAPL § 1321 to examine whether the tax parcel can be sold in parcels; and it is further

ORDERED that in the discretion of the Referee, a hearing may be held, and testimony taken; and it is further

ORDERED that by accepting this appointment the Referee certifies that he is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2 (c) ("Disqualifications from appointment"), and §36.2 (d) ("Limitations on appointments based upon compensation"), and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall immediately notify the Appointing Judge; and it is further

ORDERED that, pursuant to CPLR 8003(a), and in the discretion of the court, a fee of \$350 shall be paid to the Referee for the computation of the amount due and upon the filing of his report and the Referee shall not request or accept additional compensation for the computation unless it has been fixed by the court in accordance with CPLR 8003(b); and it is further;

ORDERED that the Referee is prohibited from accepting or retaining any funds for himself or paying funds to himself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED that if the Referee holds a hearing, the Referee may seek additional compensation at the Referee's usual and customary hourly rate; and it is further

ORDERED that plaintiff shall forward all necessary documents to the Referee and to defendants who have appeared in this case within 30 days of the date of this order and shall *promptly* respond to every inquiry made by the referee (promptly means within two business days); and it is further

ORDERED that if defendant(s) have objections, they must submit them to the referee within 14 days of the mailing of plaintiff's submissions; and include these objections to the Court if opposing the motion for a judgment of foreclosure and sale; and it is further

ORDERED the failure by defendants to submit objections to the referee shall be deemed a waiver of objections before the Court on an application for a judgment of foreclosure and sale; and it is further

ORDERED that plaintiff must bring a motion for a judgment of foreclosure and sale within 30 days of receipt of the referee's report; and it is further

ORDERED that if plaintiff fails to meet these deadlines, then the Court may *sua sponte* vacate this order and direct plaintiff to move again for an order of reference and the Court may *sua sponte* toll interest depending on whether the delays are due to plaintiff's failure to move this litigation forward; and it further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being removed pursuant hereto; and it is further

ORDERED that such service upon the County Clerk 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 Plaintiff shall serve a copy of this Order with notice of entry on all parties and persons entitled to notice, including the Referee appointed herein.

All parties are to appear for a virtual conference via Microsoft Teams on **July 6, 2022 at 10:40 a.m.** If a motion for judgment of foreclosure and sale has been filed Plaintiff may contact the Part Clerk Tamika Wright (tswright@nycourt.gov) in writing to request that the conference

be cancelled. If a motion has not been made, then a conference is required to explore the reasons for the delay.

3/30/2022
DATE

F.A.K.
FRANCIS A. KAHN, III, A.J.S.C.
HON. FRANCIS A. KAHN III
NON-FINAL DISPOSITION
J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input checked="" type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE