

JP Morgan v Lukashevskaya

2022 NY Slip Op 31479(U)

April 28, 2022

Supreme Court, Kings County

Docket Number: Index No. 511885/14

Judge: Cenceria P. Edwards

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FRP-1, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 28th day of April 2022.

P R E S E N T:

HON. CENCERIA P. EDWARDS,
A.J.S.C.

Index No.: 511885/14

_____ x

JP MORGAN,

Plaintiff,

DECISION AND ORDER

-against-

BELLA LUKASHEVSKAYA et al,

Defendant,

_____ x

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion:

Papers	Numbered
Motion (MS 3)	<u>1</u>
Opposition	<u>2</u>
Reply	<u>3</u>

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

The instant action was commenced on December 12, 2014. All defendants defaulted in answering. The matter was referred to the Foreclosure Settlement Conference Part. It is undisputed that Defendant Lukasheskaya’s son (propose-defendant Lukashavskiy) and his counsel appeared at the conferences on her behalf until her death in 2017. Conferencing continued thereafter with Plaintiff and Lukasheskiv attempting to work out an assumption and modification. The case was released from conference on September 28, 2018.

On July 2, 2019, Plaintiff moved for an order of reference without seeking to substitute Defendant’s estate in her stead. That motion was withdrawn several months later and Plaintiff moved to amend to add Lukasheskiv in his individual capacity and as heir to Defendant.

Lukashevskiy opposed, arguing that Plaintiff had delayed too long in seeking substitution. By order dated February 18, 2020, Plaintiff's motion was denied without prejudice as the Court noted that "Plaintiff waited two years after the appointment of an administrator for Defendant's estate to seek substitution" and "[n]o explanation of the delay has been offered."

On November 4, 2020, Plaintiff filed the instant motion, again seeking leave to amend the complaint to substitute Bronislav Lukashevskiy as a defendant in place of the deceased named defendant Bella Lukashevskaya. Lukashevskiy opposed, again focussing on Plaintiff's delay in seeking substitution.

"CPLR 1021 requires a motion for substitution to be made within a reasonable time. The determination of reasonableness requires consideration of several factors, including the diligence of the party seeking substitution, prejudice to the other parties, and whether the party to be substituted has shown that the action or the defense has merit" (*McDonnell v Draizin*, 24 AD3d 628, 628-629 [2d Dept 2005]). "Even if the plaintiff's explanation for the delay is not satisfactory, the court may still grant the motion for substitution if there is no showing of prejudice and there is potential merit to the action, in light of the strong public policy in favor of disposing of matters on the merits" (*Navas v NY Hosp Med Ctr of Qns*, 180 AD3d 796, 797, 798 [2d Dept 2020]).

Herein, Plaintiff accurately notes that it was actively conferencing the case with Lukashevskiy in the FSCP until September 2018. The Beideman and Hernandez Affs substantiate Plaintiff's claim that thereafter it implemented two additional loss mitigation holds and barely a month after the holds were lifted moved, due to law office failure, for of reference rather than to substitute. Coupled with the apparent absence of any meaningful prejudice to Lukashevskiy and a potentially meritorious case, substitution rather than dismissal is appropriate.

It is, thus,

ORDERED, that the plaintiffs order to amend the Amended Notice of Pendency, Amend the Amended Complaint and issue Second Supplemental Summons is hereby granted; and it is further

ORDERED, that the Supplemental Summons, Amended Complaint and Amended Notice of Pendency heretofore filed be amended in conformance herewith the documents contained in Exhibit 7 to the Smith Affirmation, to reflect the amended caption, which shall read as follows:

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,
AS SUCCESSOR-IN-INTEREST TO WASHINGTON MUTUAL BANK,

Plaintiff,

-vs-

BRONISLAV LUKASHEVSKIY, INDIVIDUALLY AND AS
ADMINISTRATOR OF THE ESTATE OF BELLA LUKASHEVSKAYA
A/K/A BELLA LIKASHEVSK A/K/A BELLA LURASHEVSKAYA,
DECEASED; ANATOLIY AKKERMANN; JPMORGAN CHASE BANK, N.A.;
BOARD OF MANAGERS OF BRIGHTWATER TOWERS CONDOMINIUM;
VALLEY NATIONAL BANK; VILLAGE DRIVE ASSOCIATES, LLC;
NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE;
"JOHN DOE" AND "JANE DOE" said names being fictitious,
it being the intention of Plaintiff to designate any and
all occupants of premises being foreclosed herein, Defendants.

And it is further ORDERED, that the plaintiff shall file the Second Amended Notice of Pendency, Second Supplemental Summons and Second Amended Complaint within thirty (30) days from the date hereof; and it is further

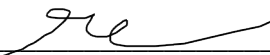
ORDERED, that the first service of the amended papers on one of the defendants shall take place within thirty (30) days of their filing and that the filing of the Second Amended Notice of Pendency shall thereupon be effective in accordance with CPLR 6512; and it is further

ORDERED, that service of all amended pleadings shall be completed within 120 days

from their filing in the Kings County Clerk's Office.

This constitutes the decision and order of the Court.

ENTER:



Hon. Cenceria P. Edwards, A.J.S.C.