

Wilmington Sav. Fund Socy., FSB v Madden

2022 NY Slip Op 34534(U)

August 1, 2022

Supreme Court, Putnam County

Docket Number: Index No. 501454/2019

Judge: Victor G. Grossman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT-STATE OF NEW YORK
IAS PART-PUTNAM COUNTY

Present: HON. VICTOR G. GROSSMAN, J.S.C.

SUPREME COURT : STATE OF NEW YORK
COUNTY OF PUTNAM

-----X
WILMINGTON SAVINGS FUND SOCIETY, FSB, etc.,

Plaintiff,

-against-

KATHRYN C. MADDEN; RONALD MADDEN, et al.,

Defendants.

To commence the statutory time
period for appeals as of right
advised to serve a copy of this
order, with notice of entry,
upon all parties.

Index No. 501454/2019
Mot. Seq. Nos. 2, 3

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The following papers numbered 1 through 7 were read on Plaintiff's motion for a
default judgment, Order of Reference and other relief, and Defendants' cross motion for an
order vacating their default and permitting them to file a late answer:

Notice of Motion - Affirmation / Exhibits - Affidavit 1-3
Notice of Cross Motion - Affirmation / Exhibits 4-5
Affirmation in Opposition and Reply Affirmation / Exhibits - Memorandum 6-7

Upon the foregoing papers it is ORDERED that the motions are disposed of as follows:

This is an action to foreclose a mortgage in the principal sum of \$405,000. Defendants
have defaulted in making payments due under the Note and Mortgage from April 2013 to the
present. The action was commenced on August 29, 2019, and service of process was effected
in September 2019. On October 16, 2019, Defendants appeared by counsel and moved for
dismissal on the ground that as the result of a purported 2012 acceleration of the mortgage debt

in a prior action, the present action was barred by the statute of limitations. Due to bankruptcy and Covid-related delays, the Defendants' motion was not decided until September 14, 2021. The motion was denied on the ground that as the prior action was dismissed for lack of standing, the purported acceleration in 2012 was a nullity and hence the six-year statute of limitation did not begin to run on the entire debt. Notice of entry was given on September 15, 2021. Defendants neither appealed nor moved for reargument / renewal, and did not file an answer to the Plaintiff's complaint within the 10-day window prescribed by CPLR §3211(f) (or at any other time). The parties appeared for CPLR §3408 foreclosure settlement conferences on October 13, 2021, February 9, 2022, and March 2, 2022, and the case was released from the foreclosure settlement conference part when the Defendants did not participate in a trial modification and failed to appear for a scheduled conference on May 11, 2022. Only on July 20, 2022, after Plaintiff had moved for a default judgment and Order of Reference, did the Defendants cross move for an order vacating their default and permitting them to file a late answer.

“A defendant seeking to vacate a default in appearing and answering a complaint must show both a reasonable excuse for the default and the existence of a potentially meritorious defense.” *U.S. Bank, N.A. v. Samuel*, 138 AD3d 1105, 1106 (2d Dept. 2016). *See also, U.S. Bank Nat'l Ass'n v. Cherubin*, 141 AD3d 514, 516 (2d Dept. 2016); *Nationstar Mortgage, LLC v. McLean*, 140 AD3d 1131, 1132 (2d Dept. 2016); *Wells Fargo Bank, N.A. v. Kohn*, 137 AD3d 897, 898 (2d Dept. 2016). “To extend the time to answer the complaint and to compel the plaintiff to accept an untimely answer as timely, a defendant must provide a reasonable excuse

for the delay and demonstrate a potentially meritorious defense.” *OneWest Bank, FSB v. Villafana*, 187 AD3d 1201 (2d Dept. 2020); *Bank of N.Y. Mellon v. Tedesco*, 174 AD3d 490, 491 (2d Dept. 2019).

Defendants have utterly failed to demonstrate the existence of a reasonable excuse for their default or their lengthy delay in seeking leave to file a belated answer. Defendants were at all relevant times represented by legal counsel. While illness of counsel may in some circumstances constitute a reasonable excuse for default or delay, in this case defense counsel’s claim of illness is unavailing because (1) it is conclusory and wholly uncorroborated by medical evidence, and (2) it does not account for Defendant’s default or their delay of nearly 10 months in moving for relief herein. *See, e.g., Ward v. Ward*, 172 AD3d 955, 956 (2d Dept. 2019); *Dimopoulos v. Caposella*, 118 AD3d 739, 740 (2d Dept. 2014); *Rodriguez v. Nevei Bais, Inc.*, 158 AD3d 597, 598 (1st Dept. 2018). *Cf., World O World Corporations v. Anoufrieva*, 163 AD3d 610, 611 (2d Dept. 2018); *Weitzenberg v. Nassau County Dept. of Recreation and Parks*, 29 AD3d 683, 685 (2d Dept. 2006). Furthermore, the Second Department has explicitly held that participation in foreclosure settlement conferences and loan modification negotiations does not constitute a reasonable excuse for a default in answering. *See, OneWest Bank, FSB v. Villafana, supra*, 187 AD3d at 1201; *Bank of N.Y. Mellon v. Daniels*, 180 AD3d 738, 739 (2d Dept. 2020).

Since Defendants failed to establish a reasonable excuse for their default in answering or their delay in moving for relief, it is unnecessary for the Court to consider whether they established the existence of a potentially meritorious defense. *See, e.g., OneWest Bank, FSB v. Villafana, supra; Bank of N.Y. Mellon v. Daniels, supra; In re Stephen Daniel A.*, 122 AD3d 837,

839 (2d Dept. 2014). In any event, Defendants' reliance on *proposed* legislation which at this juncture is not the law of New York is unavailing.

It is therefore

ORDERED, that Defendants' motion for an order vacating their default in answering, permitting them to file a late answer is in all respects denied, and it is further

ORDERED, that Plaintiff's motion for a default judgment, Order of Reference and other relief is granted, and Plaintiff's Proposed Order is issued herewith.

The foregoing constitutes the decision and order of this Court.

Dated: August 1, 2022
Goshen, New York

ENTER


HON. VICTOR G. GROSSMAN, J.S.C.