

HSBC Bank USA, N.A. v Saris
2022 NY Slip Op 35049(U)
August 11, 2022
Supreme Court, Suffolk County
Docket Number: Index No. 066026/2014
Judge: Joseph A. Santorelli
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ORIGINAL

SHORT FORM ORDER

INDEX NO. 066026/2014

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 10 - SUFFOLK COUNTY

PRESENT: Hon. JOSEPH A. SANTORELLI
Justice of the Supreme Court

MOTION DATE: 03/12/2020 (#004)
MOTION DATE: 05/05/2022 (#006)
ADJ. DATE: 06/23/2022 (#004)
ADJ. DATE: 06/23/2022 (#006)
Mot. Seq. #004 - MD
Mot. Seq. #006 - MD

-----X
HSBC BANK USA, NATIONAL ASSOCIATION AS
TRUSTEE FOR WELLS FARGO ASSET
SECURITIES CORPORATION, MORTGAGE
ASSET-BACKED PASS-THROUGH CERTIFICATE
SERIES 2007-AR9,

Plaintiff,

- against -

EMANUEL F. SARIS, STEPHANIE V. SARIS

Defendants.
-----X

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Upon the following papers: Motion (004) by Defendants Emanuel F. Saris and Stephanie V. Saris, brought on by Order to Show Cause, dated February 26, 2020, with supporting papers; Affirmation in Opposition by Plaintiff, dated March 10, 2020, with supporting papers; Supplemental Motion (006) by Defendants, brought on by Order to Show Cause, dated April 29, 2022, with supporting papers; Affirmation in Opposition by Plaintiff, dated June 6, 2022, with supporting papers; and upon due consideration; it is

ORDERED that the motions (004 and 006) by defendants Emanuel F. Saris and Stephanie V. Saris for an order: (1) pursuant to CPLR 3215(g) and CPLR 5015(a)(1) and (4), vacating default judgments, order of reference and judgment of foreclosure and sale, and setting aside the foreclosure sale and transfer of deed to plaintiff, is denied; and it is further

ORDERED that plaintiff is directed to serve a copy of this order with notice of entry upon the moving defendants and all parties who have appeared in this action within thirty (30) days of the date of this order, and to promptly file the affidavits of service with the Clerk of the Court; and it is further

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ORDERED that plaintiff may continue legal proceedings against defendants immediately upon service of this order with notice of entry.

This is an action to foreclose a mortgage on real property situated in Suffolk County, New York, that was commenced on July 30, 2014. The parties' familiarity with the facts in this action is assumed, having been set forth in the Court's prior order of reference, including default judgments, dated October 23, 2015, judgment of foreclosure and sale dated August 3, 2016, and short form order denying post-judgment injunctive relief, dated November 15, 2017. Neither the judgment nor the orders have been appealed, and the time within which to do so has expired. A sale of the subject premises was held on May 9, 2019 and the property was conveyed to plaintiff by referee's deed dated May 15, 2019. It is noted that multiple sale dates prior to May 9, 2019 were delayed due to various legal maneuvers by defendants. First, defendants, acting *pro se*, brought on an emergency order to show cause, dated May 2, 2017, and moved to stay the foreclosure sale because they were attempting to secure reinstatement funds. That motion was denied by this Court's order of November 15, 2017, referenced above. Then, defendants obtained stays of noticed sale dates on three separate occasions by filing for relief under the U.S. Bankruptcy Code in May 2017 (dismissed June 2017), February 2018 (dismissed April 2018), and August 2018 (relief from automatic stay granted February 2019). In November 2019, subsequent to the foreclosure sale, Emanuel F. Saris, acting *pro se*, filed a collateral action against the lender herein in this Court under Index #623031/19. In that action, Mr. Saris alleged, among other things, the lender's lack of ownership of the subject note and mortgage, fraud and misrepresentation, and a violation of RPAPL 1351 for failure to hold a foreclosure sale within 90 days of the judgment of foreclosure and sale. Saris' motion in that action to set aside the sale of the subject premises, enjoin the lender from further conveying the premises and for a stay of eviction was denied.

The plaintiff was in the process of seeking a judgment of possession and warrant of eviction against the defendants in a pending action in East Hampton Justice Court when the defendants moved for relief by order to show cause as set forth above. Defendants move under CPLR 5015(a)(1) for an order, *inter alia*, vacating the judgment of foreclosure and sale on the grounds that defendant Emanuel F. Saris lacked capacity to be sued at the time this action was commenced and through the default stages of the action; and under CPLR 5015(a)(4) on the grounds that the Court lacked jurisdiction over defendants due to plaintiff's failure to serve proper notice of motion for default judgment, pursuant to CPLR 3215(g)(1) and (g)(3)(i).

Under CPLR 5015(a)(1), a party may move for relief from a judgment or order "upon the ground of: excusable default, if such motion is made within one year after service of a copy of the judgment or order ..." A defendant seeking relief under CPLR 5015(a)(1) must demonstrate a reasonable excuse for defaulting and a potentially meritorious defense (*see Nationstar Mtge., LLC v Brignol*, 181 AD3d 881, 119 NYS3d 882 [2d Dept 2020]; *Gray v B.R. Trucking Co.*, 59 NY2d 649, 463 NYS2d 192 [1983]). Here, defendants' motion exceeds the one-year deadline specified in the statute and is therefore untimely. Although the Court in its discretion may overlook the untimeliness and vacate its judgment "for sufficient reason and in the interests of substantial justice" (*Woodson v*

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Mendon Leasing Corp., 100 NY2d 62, 68, 760 NYS2d 727 [2003]), such discretion “is reserved for unique or unusual circumstances that warrant such action” [internal quotation marks omitted] (**Pennymac Corp. v Sellitti**, 193 AD3d 959, 960, 142 NYS3d 842 [2d Dept 2021]). The Court finds no such circumstances here. Defendant Emanuel Saris’ excuse for his default is alleged mental incapacity. There is no claim that Mr. Saris is legally incapacitated, only that he suffers from “severe clinical depression.” The burden of proving incapacity is on the party asserting it (*see e.g. Horrell v Horrell*, 73 AD3d (&, 900 NYS2d 666 [2d Dept 2010]; **Weisman v Weisman**, 42 AD3d 448, 839 NYS2d 798 [2d Dept 2007]). There is insufficient evidentiary proof submitted in support of the present motion to support a claim of incapacity. An affidavit from Emanuel Saris, dated February 25, 2020, includes two wholly redacted paragraphs which purportedly address his alleged incapacity, and refers to a letter from an unnamed doctor, attached as an exhibit to the affidavit. Said exhibit is likewise redacted in its entirety, including the name of the physician. In lieu of disclosing the redacted content, defendants consent to having Mr. Saris’ treating physician testify at a hearing *in camera*.

The plaintiff’s affirmation in opposition, refers to a physician’s letter that was submitted by Mr. Saris in support of his unsuccessful motion in the above-referenced collateral action (Index #623031/19), to wit: a letter, dated May 28, 2019, from treating psychiatrist William J. Chambers, M.D. That letter asserts Dr. Chamber’s conclusion that Mr. Saris has suffered “from a previously undiagnosed and untreated Bipolar Disorder” for 25 years since the death of his mother, and that his reckless and unwise financial decisions in the last 25 years were “most likely” a consequence of the disorder. The Chambers letter is conclusory in nature, without supporting medical detail or analysis. The defendants neither dispute nor amplify the Chambers letter. Also, according to plaintiff’s affirmation in opposition, with supporting documentation, Mr. Saris was admitted to the New York State Bar in 1988, and was actively practicing law and representing litigants in court since at least 2004, including during at least part of the time period at issue here, most notably as an attorney for the Town of Wappinger Falls. That affirmation and documentation is uncontroverted by the defendants. The fact that Mr. Saris has been able to engage in the present and ancillary litigation, and his ability to practice law generally, dispels the allegation of any incapacity which would have prevented him from answering the plaintiff’s complaint (*see Fremming v Niedzialowski*, 93 AD3d 1336, 940 NYS2d 764 [4th Dept 2012]; **Estate of Krasner**, 2015 NYLJ LEXIS 1160 [Sur Ct, Suffolk County 2015]; **Law Offices of Paul Ajlouny & Assoc. P.C.**, 2020 NY Slip Op 34447(U) [Sup Ct, Nassau County 2020]). Under the circumstances present here, the Court finds that the defendants have failed to meet their burden to prove incapacity on the part of Mr. Saris and hence a reasonable excuse for defaulting. The Court finds no grounds for vacating its judgment under CPLR 5015(a)(1), nor for holding an *in camera* hearing (*Id.*; *see Dankenbrink v Dankenbrink*, 154 AD3d 809, 62 NYS3d 194 [2d Dept 2017]; **Pennymac Corp. v Sellitti**, *supra*). As the defendants failed to demonstrate a reasonable excuse for defaulting, it is not necessary to determine whether they demonstrated a meritorious defense to the action (*see Nationstar Mtge., LLC v Brignol*, *supra*).

The defendants’ argument that the judgment of foreclosure and sale should be vacated, under CPLR 5015(a)(4), due to the Court’s alleged lack of jurisdiction to render the judgment is without merit. The defendants argue that the Court lacked jurisdiction because the plaintiff failed to provide

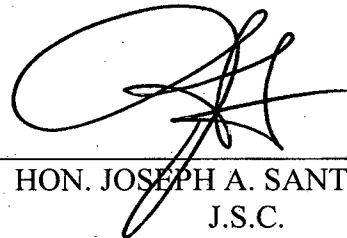
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notice to the defendants of its motion for default judgment and an order of reference as required under CPLR 3215(g)(1). Notice of motion to the defendants under that section is required only for defendants who have appeared in the action, or where the motion is made more than one year since the default of a non-appearing defendant. Such notice was not required here because the defendants did not appear in the action and the plaintiff's motion did not exceed one year from the date of default. Contrary to the defendants' argument, their appearance for a settlement conference on March 6, 2015, scheduled pursuant to CPLR 3408 (marked "not eligible"), did not constitute an appearance in the action (see *Nationstar Mtge., LLC v Stroman*, 202 AD3d 804, 163 NYS3d 189 [2d Dept 2022]; *US Bank N.A. v Kail*, 189 AD3d 1652, 139 NYS3d 318 [2d Dept 2020]). The defendants also make a similar lack-of-jurisdiction argument based upon the plaintiff's alleged failure to provide "additional notice" of its motion for default judgment as required under CPLR 3215(g)(3)(i). However, the record here shows that such notice was in fact provided. The defendants have therefore failed to demonstrate grounds for relief under CPLR 5015(a)(4).

Any remaining arguments included in the defendants' motion papers are barred under the doctrine of res judicata (see *Nationstar Mtge., LLC v Phillip J. Coglietta*, 189 AD3d 1435, 134 NYS3d 749 [2d Dept 2020]; *PNC Bank, N.A. Ramdass*, 187 AD3d 1230, 131 NYS3d 570 [2d Dept 2020]; *Wells Fargo Bank, N.A. v Colace*, 178 AD3d 1117, 112 NYS3d 559 [2d Dept 2019]; *Wells Fargo Bank, N.A. v Coffey*, 177 AD3d 1022, 113 NYS3d 164 [2d Dept 2019]). "A judgment of foreclosure and sale entered against a defendant is final as to all questions at issue between the parties, and concludes all matters of defense which were or might have been litigated in the foreclosure action" (*Long Island Sav. Bank, FSB v Mihalios*, 269 AD2d 502, 503, 704 NYS2d 483 [2d Dept 2000]).

Accordingly, the defendants' motions are denied.

Dated: AUG 11 2022



HON. JOSEPH A. SANTORELLI
J.S.C.