

Bayview Loan Servicing LLC v Healey
2022 NY Slip Op 35202(U)
February 4, 2022
Supreme Court, Suffolk County
Docket Number: Index No. 608276/2017
Judge: James Hudson
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Supreme Court of the State of New York
County of Suffolk
IAS- Part XL
Memorandum Decision

PRESENT:**HON. JAMES HUDSON***Acting Justice of the Supreme Court*

X-----X

BAYVIEW LOAN SERVICING LLC,

Plaintiff,

-against-

NANCY HEALEY a/k/a NANCY MINAKAKIS a/k/a NANCY GENOVESE; CLERK OF THE SUFFOLK COUNTY FIRST DISTRICT COURT and JOHN DOE NOS. 1 THROUGH 10, being and representing persons who may possess or claim an interest in the Subject Property, if said above named defendants be living, and if the said defendant be dead, then any and all other persons who claim as heirs-at-law, next-of-kin, devisees, distributes, legal representatives and successors in interest of said defendant, their wives or husbands, creditors, mortgagees, lienors, assigns and legal representatives of them and if any specifically named defendant or defendants named as a class be dead, then their heirs-at-law, next-of-kin, devisees, grantees, distributors, assigns, mortgagees, lienors and successors in interest and generally all parties having or claiming to have an interest in or lien upon the premises described in the complaint or any amendment thereto by, through or under any of said specifically named defendants herein or by, through or under any of the other defendants herein

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named specifically or as a class, all of whom and whose places of residence are unknown to the plaintiff and cannot after diligent inquiry be ascertained,

Defendant(s).

X-----X

The motion (seq. no.:012) of the Defendant, Nancy Healey a/k/a Nancy Minakakis a/k/a Nancy Genovese ("Defendant"), requests "renewal of Plaintiff's Motion for Summary Judgment and Defendant's Cross Motion."

Neither the Notice of Motion (Doc. 303), nor the Defendant's Affidavit in Support (Doc. 304) of Defendant's instant motion, seq. no.:012, identify, reference, or specify by date, sequence number or otherwise, any Decision upon which renewal is requested. The Defendant fails to cite any Statute in support of her undefined motion.

The Defendant's Affidavit in Support of her motion ("Affidavit") consists of nineteen (19) typewritten pages of allegations and previously pled and denied arguments and theories regarding foreclosure in general and the subject foreclosure action. The Affidavit cites to each and every prior motion sequence, numbers 001 through 011, inclusive. The Defendant asserts that she is requesting renewal based upon newly discovered evidence which consists of an action filed against her during 2011 in which she was named and served as a Defendant. That case is captioned *Capital One Home Loans, LLC v. Nancy Healey, f/k/a Nancy Minakakis a/k/a Nancy Genovese, et al.*, Index No.:14038/2011.

Defendant's Affidavit Paragraphs 3 and 4:

"3. On October 24, 2021, Defendant used the 'Name Search' feature to search Defendant's name to add the current lawsuit to E-watch list to ensure nothing falls through the cracks. See the 'search name' results attached as Exhibit 'C'. Where 'Nancy Healey' is clearly in the search box.

4. The search results came back with multiple lawsuits. This action a 'Other-Real property' case type being one of them. Defendant could not help by to look through all the actions out

of curiosity. One that has *faded from memory* [italics – Defendant], as it was from ten years ago, was a foreclosure action from 2011. With keeping in mind that the Plaintiff has said on multiple occasions that this is not a foreclosure action, Defendant gave it a look anyway...Which lead to question, what is a foreclosure case for non-monetary relief?”

The balance of the Affidavit in Support consists of similar statements and interrogatories. The Court cannot discern what relief the Defendant seeks and declines to speculate. Although often found in the same motion, reargument and renewal are intrinsically different. A motion for reargument must be “based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion” (CPLR 2221[d]). By contrast, a motion for renewal “shall be based upon new facts not offered on the prior motion that would change the prior determination” (*HSBC Bank USA, N.A. v. Halls*, 98 A.D.3d 718, 950 N.Y.S.2d 172, 174 [2nd Dept. 2012]; CPLR 2221 [e] [2]).

A fair reading of the moving papers demonstrates that there is no new law upon which to base their argument (*Dinallo v. DAL Electric*, 60 AD3d 620, 874 NYS2d 246 [2d Dept 2009]). Instead, the Defendants rely upon new proof, namely the allegation that the Defendant performed a search of her name and located an earlier 2011 case in which she was named and served as a Defendant.

The Court must note that the timeliness of the evidence’s presentation in this motion is problematic. It is beyond cavil that in a motion to renew, the applicant must present a reasonable justification for not presenting the new facts on the prior motion (*Carmike Holding I, LLC v. Smith*, 180 AD3d 744, 747, 120 NYS3d 141 [2d Dept 2020]; *HSBC Bank USA, N.A. v. Nemorin*, 167 AD3d 855, 90 NYS3d 270 [2d Dept 2018]; *Peebles v. New York City Housing Authority*, 295 AD2d 189, 744 NYS2d 13 [1d Dept 2002]; *Angiolillo, supra.*; *Scinta v. Van Coervig*, 284 AD2d 1000, 726 NYS2d 520 [4th Dept 2001]). It is not sufficient to only demonstrate that the facts are newly discovered (*Mark*

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Davies, New York Practice Series, April of 2018 Update, 8 N.Y. Prac., Civil Appellate Practice §5:2 [2d ed.].

In the matter at hand, the Defendants contend that the evidence they rely upon was recently discovered. The evidence submitted in support of Defendants motion, however, clearly show that the material was in their possession for eleven (11) years.

In the case of *Greene v. New York City Housing Authority*, 283 AD2d 458, 459, 724 NYS2d 631, 632 (2d Dept 2001), the learned Court held that in view of the “mandatory language” in **CPLR Rule 2221(e)(3)**, the movant must show reasonable justification for the failure to present such facts on the prior motion. “The Supreme Court lacks discretion to grant renewal where the moving party omits a reasonable justification for failing to present the new facts on the original motion” (*Sobin v. Tylutki*, 59 AD3d 701, 873 NYS2d 743 [2d Dept 2009]; citing *Worrell v. Parkway Estates, LLC*, 43 AD3d 436, 437, 840 NYS2d 817, 818 [2d Dept 2007]). A motion for leave to renew is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation (*Wells Fargo Bank, N.A. v. Mone*, 185 AD3d 626, NYS3d [2d Dept July 1, 2020]; *Lardo v. Rilab Transp. Corp.*, 46 AD3d 759, 848 NYS2d 337 [2d Dept 2007]). “While law office failure can be accepted as a reasonable excuse in the exercise of the court’s sound discretion, the movant must submit supporting facts to explain and justify the default...and mere neglect is not accepted as a reasonable excuse” (*Cole-Hatchard v. Grand Union*, 270 AD2d 447, 705 NYS2d 605, 607 [2d Dept 2000]). The movant must make an affirmative showing of reasonable excuse and the Court must find that proffered excuse to be reasonable.

We find the stated reason for the omission of this information in the earlier motion to be insufficient (**CPLR Rule 2221[3][e][2]**; *Cioffi v. S.M. Foods, Inc.*, 142 AD3d 526, 36 NYS3d 664 [2d Dept 2016]; see also *Rowe v. NYCPD*, 85 AD3d 1001, 926 NYS2d 121 [2d Dept 2011]).

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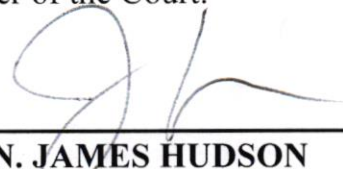
In short, the proof submitted by the Defendants in support of their application is less than compelling and untimely. Therefore, that portion of the Defendants' motion (seq. no.:012) which requests renewal pursuant to **CPLR Rule 2221(e)** is denied.

Accordingly, it is

ORDERED, that the motion by Defendant Nancy Healey a/k/a Nancy Manakakis a/k/a Nancy Genovese seeking renewal is denied (**CPLR Rule 2221[e]**).

This Memorandum also constitutes the Order of the Court.

DATED: FEBRUARY 4th, 2022
RIVERHEAD, NY



HON. JAMES HUDSON
Acting Justice of the Supreme Court