

Morgan Stanley Private Bank, N.A. v Papageorgiou

2023 NY Slip Op 30534(U)

February 17, 2023

Supreme Court, New York County

Docket Number: Index No. 850083/2022

Judge: Francis A. Kahn III

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.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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INDEX NO. 850083/2022

MORGAN STANLEY PRIVATE BANK, NATIONAL ASSOCIATION,

MOTION DATE

Plaintiff,

MOTION SEQ. NO. 002

- v -

CONSTANTINA S. PAPAGEORGIOU, ANTONIA MILONAS, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, AXIA REALTY LLC, BOARD OF MANAGERS OF THE BRIARCLIFFE CONDOMINIUM, UNITED STATES OF AMERICA

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 87, 88, 89, 91, 92

were read on this motion to/for JUDGMENT - FORECLOSURE & SALE

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

This is an action to foreclose on a mortgage encumbering residential real property located at 171 West 57th Street, Apt. 1B, New York, NY given by Spiros Milonas ("Milonas"). The mortgage secures a promissory note which evidences a loan with an original principal amount of \$2,415,000.00. It appears that sometime before this action was commenced, Milonas became incapacitated and that a guardian of his person and property was appointed. As such, the Mortgagor has been sued in a representative capacity as Constantina S. Papageorgiou, Esq. As Guardian of the Property of Spiros Milonas. By deed dated November 12, 2021, the Guardian transferred the property to Defendant Antonia Milonas ("Antonia").

Plaintiff commenced this action wherein it is alleged Milonas default in repayment under the loan. All the Defendants defaulted in answering. Now, Plaintiff moves for a default judgment against all Defendants, an order of reference and to amend the caption. Defendant Antonia opposes the motion.

"An applicant for a default judgment against a defendant must submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting defendant's failure to answer or appear" (Deutsche Bank Natl. Trust Co. v Silverman, 178 AD3d 898, 899 [2d Dept 2019]). A plaintiff needs "only [to] allege enough facts to enable a court to determine that a viable cause of action exists" (Woodson v Mendon Leasing Corp., 100 NY2d 62, 71 [2003]).

Plaintiff established prima facie its entitlement to a default judgment against Milonas and Antonia, as well as the other Defendants, by submitting proof of the mortgage, the unpaid note, 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]; *U.S. Bank Natl. Assn. v Wolnerman*, 135 AD3d 850 [2d Dept 2016]; *see also Deutsche Bank Natl. Trust Co. v Silverman*, 178 AD3d 898 [2d Dept 2019]).

“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” (*Deutsche Bank Natl. Trust Co. v Silverman*, 178 AD3d 898, 901 [2d Dept 2020], *citing US Bank N.A. v Dorestant*, 131 AD3d 467, 470 [2d Dept 2015]).

In opposition, Defendant Antonia claimed that she was not served in this matter and requests the Court permit her six-months to sell the property. Antonia’s claim of lack of personal jurisdiction was waived when her attorney filed a notice of appearance (NYSCEF Doc No 27) on June 6, 2022, and did not raise the defense of service via an answer or motion pursuant to CPLR §3211 (*see eg Residential Credit Solutions, Inc. v Guzman*, 178 AD3d 1109, 1110 [2d Dept 2019]). The request for a stay is denied as unnecessary as prosecution of this matter to judgment and sale, will, as a practical matter, take longer than the requested stay.

Accordingly, Plaintiff’s motion is granted, and it is

ORDERED that Plaintiff is awarded a default judgment against the non-appearing Defendants; and it is further

ORDERED that that **Allison Furman, Esq., 260 Madison Avenue, 15th Floor, New York, New York 10016, 212-684-9400** is hereby appointed Referee in accordance with RPAPL § 1321 to compute the amount due to Plaintiff and examine whether the tax parcel can be sold in parcels; and it is further

ORDERED that if a Defendant appears and contests the amount due, in the discretion of the Referee, a hearing may be held, and testimony taken, otherwise the Referee shall hold no hearing and take no testimony or evidence other than by written submission; 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 or is required to perform other significant services in issuing the report, 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 the names of CONSTANTINA S. PAPAGEORGIU, ESQ. AS GUARDIAN OF SPIROS MILONAS and "John Doe #1" through "John Doe #12" are stricken from the caption; and it is further

ORDERED that the caption of this action is amended to read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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MORGAN STANLEY PRIVATE BANK, NATIONAL
ASSOCIATION

Index No.: 850083/2022

Plaintiff,

-against-

ANTONIA MILONAS, NEW YORK STATE DEPARTMENT
OF TAXATION AND FINANCE, AXIA REALTY LLC,
BOARD OF MANAGERS OF THE BRIARCLIFFE
CONDOMINIUM, UNITED STATES OF AMERICA,

Defendants.
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and it is 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

All parties are to appear for a virtual conference via Microsoft Teams on **June 15, 2023, at 10:40a.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.

2/17/2023

DATE

FRANCIS A. KAHN, III, A.J.S.C.

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

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE