

Pennymac v Volovnik

2023 NY Slip Op 34632(U)

December 21, 2023

Supreme Court, Kings County

Docket Number: Index No. 514573/18

Judge: Larry D. Martin

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 FSMP, 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 21st day of December 2023.

P R E S E N T:

HON. LARRY D MARTIN,
J.S.C.

Index No.: 514573/18

_____ x

PENNYMAC,

Plaintiff,

DECISION AND ORDER

-against-

RIMMA VOLOVNIK 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 5)	<u>1</u>
Opp/Cross (MS 6)	<u>2</u>
Reply/Opp to Cross	<u>3</u>
Cross-Reply	<u>4</u>

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

Plaintiff moves for judgment of foreclosure and sale. Defendant opposes and cross-moves for dismissal or, in the alternative, tolling of interest. Plaintiff opposes.

Defendants argue that the action should be dismissed pursuant to UCTR F, 8 which states that “[w]ithin one year after the signing and entry of an Order of Reference, an application for a Judgment of Foreclosure and Sale must be made ... [and f]ailure to comply will result in an automatic dismissal of the action.” The Appellate Division has treated the dismissal provision of F,8 as being similar to that of CPLR 3215[c] (see, for example, *OneWest Bank, FSB v.*

Rodriguez, 171 AD3d 772, 773 [2d Dept 2019][using 3215[c] case law to address F,8]; *Deutsche Bank v Bakarey*, 198 AD3d 718, 721 [2d Dept 2021][using F,8 case law in the context of 3215[c]]). To that end, a Court has discretion to not dismiss if it finds that the Plaintiff has a reasonable excuse for not timely filing a motion for judgment of foreclosure and sale (*Rodriguez*, 171 AD3d at 773) and “the determination of whether the excuse is reasonable is committed to the sound discretion of the motion court” (*US Bank v Cabrera*, 192 AD3d 1176, 1176 [2d Dept 2021]). Here, an order of reference was granted shortly before the onset of the COVID-related moratoria and, as no referee was named therein, Plaintiff moved for an amended order when foreclosure actions resumed. Following the appointment of a referee, Defendant filed a motion to renew and shortly following the denial of that motion Plaintiff filed the instant motion. As such, Plaintiff’s delay was reasonable and dismissal pursuant to F,8 is unwarranted.

Defendant’s RPL 421 argument is novel – but unavailing. That section explicitly states that it deals with “registered properties” which the property in suit is not.

Tolling for prelitigation delay is inappropriate (*Nationstar Mtge., LLC v Dunn*, 186 A.D.3d 836 [2d Dept 2020]; see, also, *NY State Mortg. Loan Enforcement & Admin. Corp. v N. Town Phase II Houses, Inc.*, 191 AD2d 151 [1st Dept 1993]; *First Fed. Savs. & Loan Ass’n of Rochester v Capalongo*, 152 AD2d 833 [3d Dept 1989]; *OneWest Bank, N.A. v Melina*, 2015 WL 5098635 [EDNY 2015]; *FDIC v Kisosoh Realty Corp.*, 1994 WL 702026 [SDNY 1994]). While the Appellate Division recently did so, therein the panel noted that it was the unexplained delay in prosecuting the prior action that led to the sanction (see, *Deutsche Bank v Armstrong*, 218 AD3d 738 [2d Dept 2023]).

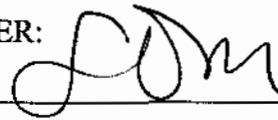
“The report of a referee should be confirmed whenever the findings are substantially supported by the record, and the referee has clearly defined the issues and resolved matters of credibility” (*Citimortgage v Kidd*, 148 AD3d 767, 768 [2d Dept 2017]). Herein, the referee’s report appears to be substantially supported by the record – which includes server records from

2007-2023.

Motion granted (see accompanying order). Cross-motion denied.

This constitutes the decision and order of the Court.

ENTER:



Hon. Larry D Martin JSC

**HON. LARRY MARTIN
JUSTICE OF THE SUPREME COURT**

**KINGS COUNTY CLERK
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INDEX NO. 514573/2018

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RJI | Parties | Attorneys/Firms | Caption | Motions | Case Information | Court Dates | Foreclosure | Communications/Papers

Short Title

Plaintiff: MCLP ASSET COMPANY, INC., Defendant: VOLOVNIK,RIMMA

Captions

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Caption Type	Plaintiff	Defendant	Amend Reason
Primary	MCLP ASSET COMPANY, INC.,	VOLOVNIK,RIMMA ; ELLA SCHVARZ	With Leave-Court Order [CPLR 3025(b)]

Buttons: Save, Add, Delete, Amend

Caption Details

Type: Primary

Plaintiff(s): MCLP ASSET COMPANY, INC.,

Defendant(s): VOLOVNIK,RIMMA ; ELLA SCHVARZMAN; JPMORGAN CHASE BANK NA; NATIONAL COLLEGIATE STUDENT LOAN; USA; & GANDI SHVARZMAN

Amend Information

Reason: With Leave-Court Order [CPLR 3025(b)]

Judge: Martin, Larry D.

Order Date: 12/21/2023

End Date:

Buttons: Apply, Reset

Buttons: Save, Forms..., Case Details Report, View Legacy Data..., Done, Cancel