

SFH Holding Corp. v HSBC Bank USA, N.A.

2024 NY Slip Op 32491(U)

July 17, 2024

Supreme Court, Kings County

Docket Number: Index No. 532449-2021

Judge: Sharon A. Bourne-Clarke

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At **DEFAULT JUDGMENT MOTION PART** of the Supreme Court of the State of New York, held in and for the County of Kings at the Courthouse at 320 Jay Street, Borough of Brooklyn, City and State of New York, on the **17th of July 2024**

PRESENT: HON. SHARON A. BOURNE-CLARKE,

Justice.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X

SFH HOLDING CORP.,

Plaintiff,

-against-

DECISION AND ORDER

Index No.: 532449-2021 (2023)

HSBC BANK USA, NATIONAL ASSOCIATION,
AS TRUSTEE FOR DEUTSCHE ALT-B SECURITIES
MORTGAGE LOAN TRUST, SERIES 2006-AB4
MORTGAGE PASS-THROUGH CERTIFICATES,

Defendant.

-----X

The following e-filed papers read herein:

NYSCEF Nos.:

Summons + Complaint with Exhibits And Answer	1-6; 8-10
Notice of Motion	11
Affidavits (Affirmations) Annexed and Exhibits	12-20
Notice of Cross-Motion	26
Opposing Affidavits (Affirmations) and Exhibits	27-43; 45-51
Affirmation of Service	7; 21; 44; 52; 54

Upon the foregoing papers, Plaintiff SFH Holding Corp. moves for an order to quiet title and to secure the cancellation and discharge of record of the mortgage of Subject Real Property (106 Doscher Street, Brooklyn, NY 11208, Block 4231, Lot 28) against the Defendant, HSBC Bank USA, National Association (“HSBC Bank USA”), as Trustee for Deutsche Alt-B Securities Mortgage Loan Trust, Series 2006-AB4 Mortgage-Pass Through Certificates (“Trust”).

FACTS

Plaintiff SFH Holding Corp. commenced this in rem action to quiet title on the Subject Real Property (106 Doscher Street, Brooklyn, New York, 11208, Block 4231, Lot 28 hereinafter “Doscher Street Property”). Defendant HSBC Bank USA alleges to have a claim to Doscher Street Property from a transaction on February 21, 2018, where they were allegedly assigned the Doscher Street Property’s mortgage¹. Plaintiff contends that they are entitled to a judgment by default against Defendant HSBC Bank USA as the issue in this action was previously litigated and dismissed and Defendant’s answer in this action was both untimely and jurisdictionally defective.

PROCEDURAL HISTORY

On October 15, 2014, the Hon. Justice Laura L. Jacobson dismissed a matter involving Defendant’s predecessors interest in the Doscher Street Property (AMH Servicing Inc., who conveyed an interest in the mortgage to the current Defendant, and Shafi, who conveyed the title of the Doscher Street Property to the current Plaintiff). The Lis Pendens was deemed null and void in that decision.

The Plaintiff initiated this cause of action seeking to quiet title to the Doscher Street Property on December 20, 2021. The Defendants were served on January 11, 2022. Defendant filed an Answer on March 10, 2022, seeking a dismissal of Plaintiff’s Complaint along with costs and disbursements of the action and reasonable attorneys’ fees. On March 17, 2022, Plaintiff filed a Notice of Rejection of Untimely Filed Answer to Defendant’s filing. On January 18, 2023, Plaintiff filed a Notice of Motion for Default Judgment upon their initial Complaint. On June 30, 2023, the Defendant filed a Cross-Motion for an Extension of Time and Stay, seeking to vacate the default.

ARGUMENTS

SFH Holding Corp. argues that they are entitled to a default judgment regarding its claim to the Doscher Street Property. Plaintiff argues that pursuant to CPLR § 3012(c), once a complaint is served with the summons, “service of an answer shall be made within thirty (30) days after service is complete,” unless, pursuant to CPLR § 3012(d), the answering party applies for an extension of time to appear or plead, and a court deems the excuse for the delay or default as reasonable. Pursuant to RPAPL § 1501.4, once the Statute of Limitations for an action to foreclose a mortgage has expired, “any party may maintain an action to secure the cancellation and discharge of record to adjudge the estate or interest of the property.” Under this section it is “immaterial whether the debt upon which the mortgage or lien was paid... and whether the

¹ In 2008, Defendant’s predecessor in interest initiated a foreclosure proceeding which accelerated the mortgage on the Doscher Street Property. On October 15, 2014, Justice Laura Jacobson subsequently dismissed the action, and the Lis Pendens was cancelled. As such, it appears that Defendant HSBC Bank USA was assigned or purchased an unenforceable debt.

mortgage was given to secure a part of the purchase price.” Finally, in default proceedings, the plaintiff’s complaint “need only allege enough facts to enable a court to determine a viable cause of action exists.” (*Woodson v. Mendon Leasing Corp.*, 100 N.Y.2d 62, at 70 (2003)).

HSBC Bank USA argues that it should be granted an extension of time to respond to the Complaint. Defendants argue that pursuant to CPLR §5015 (a)(1), a court may grant relief from previously rendered judgments upon the finding of “an excusable default if such motion is made within a year of the judgment.” Pursuant to CPLR §2004, a court may offer an extension to a party if it is just and “upon good cause shown.” Pursuant to CPLR §2005, the court is not precluded from “exercising its discretion in the interests of justice to excuse delay or default resulting from law office failure.”

OPINION

The issue before this Court is whether to grant Plaintiff’s default judgment regarding the Doscher Street Property or, alternatively, to grant Defendant’s extension of time to respond to the initial Complaint.

The court in *DeStaso v. Bottiglieri*, states, to avoid an entry of default judgment, the defendant must “demonstrate a reasonable excuse and the existence of a potentially meritorious defense.” (*DeStaso v. Bottiglieri*, 52 A.D.3d, 453 (App. Div.)). Additionally, the “determination of what constitutes a reasonable excuse for a default lies within the [court’s sound discretion]”. (*Nan Yang v. Rong Chen*, 2021 NY Slip Op 30754(U) (Sup. Ct.)).

Plaintiff’s Summons and Complaint were served to the Defendant on December 30, 2021. Defendants had until January 30, 2022, to file an answer or request a time extension. However, Defendants failed to do so. Furthermore, Defendant has failed to demonstrate a meritorious defense for their failure to file a timely answer. The Defendant contends that the default is an anomaly, citing its business practices and internal procedures in place to ensure complaints are responded to properly. However, no specific information is provided regarding this particular cause of action. Furthermore, there is no meritorious defense to the underlying cause of action as it was dismissed pursuant to the Statute of Limitations and remains an unenforceable debt. Over six (6) years have elapsed since the dismissal of the related action. There is thus neither a reasonable excuse nor a meritorious defense for the delay in answering. Accordingly, the Defendant’s motion for an extension of time and stay is denied. Defendant’s argument that SFH Holding Corp.’s rejection of its answer was improper pursuant to CPLR §2101(f) is without merit as there does not appear to be a “defect in the form of paper.”

The Court’s Decision is as follows: The Plaintiff’s motion for a default judgment and Declaratory Judgment is **GRANTED** without costs and disbursements and HSBC BANK USA’S motion is **DENIED**.

NOW, on Plaintiff’s motion, it is

ADJUDGED that SFH HOLDING CORP. is the owner of 106 Doscher Street, Brooklyn, New York, 11208, Block 4231, Lot 28; and it is further

ADJUDGED that the mortgage executed by SFH HOLDINGS CORP. regarding said Property is hereby discharged; and it is further

ADJUDGED that the Assignments of such mortgage are hereby canceled; and it is further

ADJUDGED that the Lis Pendency filed by HSBC Bank USA on 12/20/21 is hereby vacated; and it is

ORDERED that the New York City Register, Kings County discharge said mortgage and cancel Assignments of said mortgage of record; and it is further

ORDERED that the New York City Register, Kings County record this Order and Judgment in its land records for 106 Doscher Street, Brooklyn, New York, 11208, Block 4231, Lot 28; and it is further

ORDERED that the Plaintiff to submit a judgment to the Judgment Clerk within 60 days of this Decision.

This constitutes the Decision and Order of the Court.

ENTER:



SHARON A. BOURNE-CLARKE, J.S.C