

Signature Lien Acquisitions III LLC v Silvestri

2025 NY Slip Op 32221(U)

June 12, 2025

Supreme Court, Kings County

Docket Number: Index No. 533757/2022

Judge: Lisa S. Ottley

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
COUNTY OF KINGS – PART 24

-----X
SIGNATURE LIEN ACQUISITIONS III LLC, as Assignee
And Successor in Interest to New York Community
Bank,

Mot. Seq. #s 3 and 4

Plaintiff,

Index # 533757/2022

-against-

DECISION AND ORDER

ROBERT J. SILVESTRI, JAMES PAPPAS, DEMTRIOS
SPIROPOULOS and ROBERT J. SILVESTRI as Successor
Trustee of the LUIGI J. SILVESRI Revocable Trust
Dated October 8, 2008,

Defendants.
-----X

HON. LISA S. OTTLEY

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Order to Show Cause to Vacate Default Judgment and Notice of Cross-Motion submitted on September 30, 2024.

| Papers | Numbered |
|---|-----------------|
| Order to Show Cause and Affirmation | 1&2 [Exh. 1-10] |
| Notice of Cross-Motion and Affirmation..... | 4&5 [Exh. |
| Memoranda of Law..... | 3 and 6 |
| Affidavit in Reply..... | 7[Exh. A-D] |

Defendant, James Pappas, moves pursuant to CPLR 317, 5015 and 6313 for an order vacating the default judgment entered against defendant, James Pappas, and granting his request for a temporary restraining order pending the hearing and determination of the motion to vacate the default judgment. Plaintiff cross-moves for an order dismissing defendant, James Pappas’ Order to Show Cause, issuance of an order entering judgment in its favor after inquest and for a money judgment in the amount of \$1,397,599.09 with interest from March 25, 2024, against the defendant James Pappas.

Procedural History

Plaintiff commenced this action on or about November 17, 2022 by Summons and Notice of Motion pursuant to CPLR 3213 and 5014. Plaintiff is suing under a Guaranty and upon which its CPLR 3213 application is based. On or about December 22, 2022, plaintiff’s attorney sent a letter to the Hon. Karen Rothenberg, the then presiding judge for this case, requesting that the administrative adjournment of the case be reconsidered because the five (5) month delay would be prejudicial to its client. On or about May 1, 2023, a stipulation of

discontinuance with prejudice was entered between the parties, Signature Lien Acquisition III LLC and James Pappas by and through their respective attorneys. On or about March 25, 2024, an inquest was held before this Court, whereby neither James Pappas, the movant seeking to vacate the default judgment, nor any other defendant named herein, appeared before this Court. On or about May 20, 2024, the defendant, James Pappas, sent this court a letter stating that he did not receive notice of this pending action until he received a copy of the proposed Money Judgment against him and that he would like sixty (60) days to retain an attorney to respond. Thereafter the defendant, James Pappas, moved to vacate the default judgment and the plaintiff, Signature Lien Acquisition III LLC, cross-moved for dismissal of defendant's Order to Show Cause and entry of the Money Judgment against James Pappas and in plaintiff's favor.

After careful review of the moving papers, opposition thereto and reply, the court finds as follows:

A defendant may move against a default judgment on alternative grounds, seeking vacatur for lack of jurisdiction [CPLR 5015(a)(4)] or an opening of the default to defend the case pursuant to CPLR 317. In addressing the jurisdictional issue first pursuant to CPLR 5015(a)(4), if the court determines that jurisdiction was not acquired over the party, the default must be vacated. See, Brooklyn Federal Savings Bank v. 140 West Associates, LLC, 29 Misc.2d 1237(A), 958 N.Y.S.2d 644 (Sup. Ct., Kings Co., 2010), citing, Mayers v. Cadman Towers, Inc., 89 A.D.2d 844, 453 N.Y.S.2d 25 (2nd Dept., 1982). CPLR 5015(a)(4) provides for vacatur when jurisdiction is lacking, irrespective of a reason or merit. Here, the defendant moved pursuant to 5015(a)(1), 5015(a)(4) and CPLR 317.

The defendant, James Pappas' affidavit states that he did not receive the summons personally, and that he did not acknowledge receipt of the summons by email which he states is an email used by his father, Steven Pappas. The plaintiff relies on what it deems defendant's acknowledgement that service of the summons and notice for summary judgment was received. "A defendant served by a method other than personal delivery is free to move to open a default judgment under both CPLR 317 and 5015(a)(1), which is exactly what the defendant has opted to do in this case." See, CPLR 317. The plaintiff does not offer, and the record does not support a filing of an affidavit of service on the defendant, James Pappas, as to the summons and notice of motion in lieu of the complaint. See, Fleisher v. Kaba, 78 A.D.3d 1118, 912 N.Y.S.2d 604 (2nd Dept., 2010).

CPLR 317. Defense by person to whom summons not personally delivered states as follows:

A person served with a summons other than by personal to him or to his agent for service designated under rule 318, within or without the state, who does not appear may be allowed to defend the action within one year after he obtains knowledge of entry of the judgment, but in on event more than five years after such entry, upon a finding of the court that he did not personally receive notice of the summons

in time to defendant and has a meritorious defense.

In addition, in support of defendant's order to show cause to vacate the default judgment, he submitted his own sufficiently factually detailed affidavit in which he denied residing at the subject address at the time service allegedly was made, and Mr. Pappas averred that he had not lived there for some time. He further stated that he did not provide the acknowledgement of service of the summons for the within action and learned of the action when he received a letter from the plaintiff's attorney. Under these circumstances, the court finds that defendant's submissions were sufficient to rebut the presumption of proper service. *See, Aikens v. Kouchnerova*, 217 A.D.3d 741, 191 N.Y.S.3d 652 (2nd Dept., 2023).

The court finds that the plaintiff failed to effectuate service of process upon the defendant, James Pappas, a natural person, in strict compliance with the statutory methods of service set forth in CPLR 308. The failure to serve process in an action leaves the court without personal jurisdiction over the defendant, and all subsequent proceedings are thereby rendered null and void. *See, Nationstar Mtge., LLC v. Gayle*, 191 A.D.3d 1002, 143 N.Y.S.3d 371 (2nd Dept., 2021).

Plaintiff's Motion for Entry of the Default Judgment & Money Judgment after Inquest

As indicated above, this court held an inquest on about March 25, 2024, whereby neither James Pappas, nor any other defendant named herein, appeared before this Court. On or about May 20, 2024, the defendant, James Pappas sent this court a letter stating that he did not receive notice of this pending action until he received a letter and a copy of the proposed Money Judgment against him, and he requested sixty (60) days to retain an attorney to respond. Thereafter, the defendant, James Pappas, moved to vacate the default judgment. Motion practice ensued by both parties with the defendant, James Pappas, moving via Order to Show to vacate the default judgment, and plaintiff moving to dismiss the defendant's Order to Show Cause and enter judgment pursuant to the inquest held on March 25, 2024. The court notes, that although the hearing was held, the court has not signed off on any proposed orders submitted by the plaintiff herein. The proposed orders submitted on or about May 21, 2024, are as follows: Order for Entry of a Money Judgment after Inquest (against James Pappas only) and a Proposed Money Judgment against James Pappas.


The plaintiff's action was commenced by Summons and Notice of Motion in Lieu of Complaint pursuant to CPLR 3213. The plaintiff seeks judgment as per a signed guaranty by the defendant, James Pappas. Considering this court's finding that it lacks personal jurisdiction over the defendant, James Pappas, entry of a money judgment in plaintiff's favor after the inquest held on March 24, 2025, would be inappropriate.

Accordingly, this court hereby grants defendant, James Pappas' order to show cause for vacatur of the default judgment after inquest, pursuant to CPLR 5015(a)(4), and it is further

ORDERED that plaintiff's motion for entry of the judgment after the inquest and a money judgment against defendant, James Pappas only, held on March 24, 2024, is hereby denied.

This constitutes the decision and order of this court.

Dated: Brooklyn, New York
June 12, 2025



HON. LISA S. OTTLEY, J.S.C.
HON. LISA S. OTTLEY

KINGS COUNTY CLERK
FILED
2025 JUN 17 A 9:37