

Citibank, N.A. v Noel

2025 NY Slip Op 32547(U)

June 17, 2025

Supreme Court, New York County

Docket Number: Index No. 850243/2024

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. 850243/2024

CITIBANK, N.A. AS OWNER TRUSTEE OF NEW
RESIDENTIAL MORTGAGE LOAN TRUST 2019-RPL3,

MOTION DATE _____

Plaintiff,

MOTION SEQ. NO. 001

- v -

PHREE NOEL, JUDY NOEL, HOMECOMINGS FINANCIAL,
LLC (F/K/A HOMECOMINGS FINANCIAL NETWORK,
INC.), BOARD OF MANAGERS OF THE VAUX
CONDOMINIUM, NEW YORK CITY PARKING
VIOLATIONS BUREAU, JOHN DOE

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55

were read on this motion to/for ORDER OF REFERENCE/REFERENCE TO

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

This is an action is to foreclose on a mortgage encumbering a parcel of real property located at 372 Central Park West, Apartment 4W, New York, New York. The mortgage, given by Defendants Phree T. Noel and Judy H. Noel, secures a loan with an original principal amount of \$440,000.00 which is memorialized by a note dated February 23, 2007. Plaintiff commenced this action alleging Defendant Noel Defendants defaulted in making installment payments under the note. Now, Plaintiff moves for a default judgment against all defendants, an order of reference and to amend the caption. Defendant Judy Noel submits opposition to 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 the Mortgagors and the other Defendants by submitting proof of the mortgage, the unpaid note, notice of default, 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]; see also CPLR §5015[a][1]; *Bear Stern-Asset-Backed Sec. I Trust 2006 v Ceesay*, 180 AD3d 504 [1st Dept 2020]). However, a defendant is not required to meet these requisites if there is a lack of jurisdiction (see CPLR §5015[a][4]; *Avis Rent a Car Sys., LLC v Scaramellino*, 161 AD3d 572 [1st Dept 2018]). Thus, a court is required to resolve any jurisdictional issue before considering whether to grant a discretionary vacatur of the default (see eg *Kondaur Capital Corp. v McAuliffe*, 156 AD3d 778, 779 [2d Dept 2017]; *Caba v Rai*, 63 AD3d 578, 581, n.1 [1st Dept 2009]).

Here, Defendant Judy Noel's answer was served over a month late and was rejected by Plaintiff (see CPLR §320). Similarly, her opposition to this motion was filed nearly two weeks late. Even if considered, Defendant's opposition consisted solely of an attorney's affirmation wherein no personal knowledge regarding the sufficiency of service on Judy Noel or a reasonable excuse for not appearing was established which is insufficient (see *Wilmington Trust, N.A. v Ashe*, 189 AD3d 1130 [2d Dept 2020]). Any assertion that Plaintiff's submissions were insufficient to sustain a default judgment is inapposite. A party seeking a default judgment only need demonstrate "evidence of a viable cause of action" (see *Redbridge Bedford, LLC v 159 N. 3rd St. Realty Holding Corp.*, 175 AD3d 1569, 1570 [2d Dept 2019]), which is customarily met because a defaulting party "admits all traversable allegations in the complaint" (*Rokina Optical Co. v Camera King, Inc.*, 63 NY2d 728, 730 [1984]). Without vacatur of her default, Defendant's non-jurisdictional defenses cannot be entertained (see *Deutsche Bank Natl. Trust Co. v Hall*, 185 AD3d 1006, 1011 [2d Dept 2020]), including a claim of failure to comply with RPAPL §1304 (see *Wells Fargo Bank, N.A. v Cascarano*, 208 AD3d 729 [2d Dept 2022]; *Flagstar Bank, FSB v Jambelli*, 140 AD3d 829 [2d Dept 2016]).

Accordingly, it is

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

ORDERED that that **Sofia Balile, 155 Water Street, Ste. 311, Brooklyn, New York 11201, 646-580-6116** 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 in the discretion of the Referee, a hearing may be held, and testimony taken; 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 that all the "Doe" Defendants are stricken as the New York County Clerk will not accept a judgment for filing with a "Doe" or "Name Refused" defendant in the caption; and it is further

ORDERED that the caption shall read as follows:

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

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CITIBANK, N.A. AS OWNER TRUSTEE OF
NEW RESIDENTIAL MORTGAGE LOAN
TRUST 2019-RPL3

Plaintiff,

-against-

PHREE T. NOEL AKA PHREE NOEL, AKA
PHREE T. NORDE, JUDY H. NOEL,
HOMECOMINGS FINANCIAL, LLC (F/K/A
HOMECOMINGS FINANCIAL NETWORK,
INC.), BOARD OF MANAGERS OF THE
VAUX CONDOMINIUM, NEW YORK CITY

PARKING VIOLATIONS BUREAU

Defendants

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and it is further

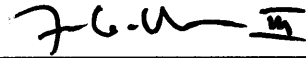
ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the parties being removed pursuant hereto; 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/suptmanh)); and it is further

All parties are to appear for a virtual conference via Microsoft Teams on **October 29, 2025, at 11:40 a.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.

6/17/2025

DATE



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

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: