

Santos v Calderon

2025 NY Slip Op 34070(U)

October 6, 2025

Supreme Court, Kings County

Docket Number: Index No. 525856/2023

Judge: Richard J. Montelione

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 IAS Part 99 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, NY 11201, on the 6th day of October 2025.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 99

**DECISION
and
ORDER**

-----X

SONIA SANTOS,

Plaintiff,

-against-

Action #1

Index No.: 525856/2023
Mot. Seq. 5, 7
Cal. No. 47-48

VICTOR CALDERON JR and NORTH SLOPE 341 CORP.,

Defendants.

-----X

NORTH SLOPE 341 CORP., 341 5TH DRAMA LLC, and
VICTOR CALDERON JR.,

Plaintiffs,

-against-

Action #2

Index No.: 502968/2024
Mot. Seq. 4
Cal. No. 39

SONIA SANTOS,

Defendant.

-----X

After oral argument, the following papers were read on this motion pursuant to CPLR 2219(a):

<u>Papers</u>	NYSCEF DOC. #
Action #1	
Defendants' Notice of Motion to Reargue (MS#5)/Affirmations/Exhibits.....	90-92
Defendants' Notice of Motion to Reargue (MS#7)/Affirmations/Exhibits.....	107-110
Action #2	
Plaintiffs' Notice of Motion to Reargue (MS#4)/Affirmations/Exhibits.....	101-102

MONTELIONE, RICHARD J., J.

Both Action #1 and Action #2 were joined for discovery and trial by order of the court dated October 9, 2024 and entered on October 16, 2024. (Action #1, NYSCEF #73). On

Sonia Santos v Victor Calderon Jr and North Slope 341 Corp., Index No. 525856/2023

September 10, 2025, Counsel for defendants in Action #1 who was also counsel for plaintiffs in Action #2 appeared to argue the motions. Sonia Santos, plaintiff in Action #1 and defendant in Action #2 appeared as a self-represented party but provided no written opposition. This decision and order supersedes any tentative decisions made on the record on September 10, 2025.

Action #1-Sonia Santos v Victor Calderon Jr. and North Slope 341 Corp.
Index No. 525856/2023

Plaintiff Sonia Santos (Santos) commenced the first action by filing the summons and complaint on September 6, 2023, along with a notice of pendency. Defendants Victor Calderon Jr. (Calderon) and North Slope 341 Corp. (North Slope) filed a pre-answer motion to dismiss on November 20, 2023 (NYSCEF #9). Plaintiff Sonia Santos and defendant Victor Calderon, Jr. are sister and brother.

Action #1-The Complaint

The complaint alleges that on or about July 21, 2003, certain property located at 341 5th Avenue, Brooklyn, NY 11215 (“subject property”) was solely owned by 341 5th Drama LLC, an entity wholly owned by plaintiff using her own personal funds to purchase. It is alleged that defendant Calderon asked Santos to transfer the property to North Slope 341 Corp., a corporation that plaintiff’s brother Calderon said would be equally owned by Santos. The complaint alleges that sometime in 2013, defendant Calderon asked Santos to transfer her ownership interest in North Slope 341 Corp., to defendant Calderon, without any consideration, upon the promise that she would remain owner of the premises, that the transfer was being done only for tax purposes, and at any time she asked defendant, he would transfer the property back to her. The complaint alleges that plaintiff Santos continued to run, manage, and pay the expenses of the subject premises, and in all respects acted as the owner. It is alleged that sometime in 2023 defendant

Sonia Santos v Victor Calderon Jr and North Slope 341 Corp., Index No. 525856/2023

Calderon indicated to plaintiff that he was going to sell the real property, and it was only then that plaintiff realized that defendant would not fulfill his promise to return the property to her upon demand.

Prior Proceedings in Action #1

There were several prior motions, inter alia, for the following relief: 1) defendants' pre-answer motion to dismiss (MS#1, NYSCEF #9); and 2) plaintiff's cross-motion for appointment of a temporary receiver (MS#2, NYSCEF #43). Defendants' motion to dismiss was amended on December 14, 2023 (NYSCEF #35). The defendants' motion to dismiss was granted and the plaintiff's motion for appointment of a temporary receiver was denied on default for failure to appear on May 15, 2024. (MS#1,2, NYSCEF #59, 75). Subsequently, plaintiff filed a motion on June 19, 2024, to vacate her default, to deny the defendants' motion to dismiss and to grant plaintiff's application for a temporary receiver (MS#3, NYSCEF #61). The court, by order dated October 9, 2024, granted the plaintiff's motion to the extent that the default order dated May 15, 2024 (NYSCEF #59) was vacated, and scheduled the defendants' pre-answer motion to dismiss (MS#1), and the plaintiff's cross-motion to appoint a receiver (MS#2), for oral argument on January 15, 2025 (NYSCEF #74).

On January 15, 2025, defendants Calderon and North Slope defaulted in appearing, the court denied defendants' pre-answer motion to dismiss, and granted plaintiff's motion for a temporary receiver with the direction that plaintiff was to "settle order and judgment on notice." (NYSCEF #75). Subsequently, defendants moved by order to show cause issued on January 27, 2025, to vacate their default in appearance on January 15, 2025. (NYSCEF #79, 77-78).

Plaintiff did not oppose defendants' motion to vacate the defendants' default and the court heard oral argument on the merits and issued a decision and order dated January 29, 2025

Sonia Santos v Victor Calderon Jr and North Slope 341 Corp., Index No. 525856/2023

(NYSCEF #82) which: 1) vacated the court's default order of January 15, 2025, and entered on January 21, 2025, (MS#4); and, after considering the motions on the merits (MS#1 & 2), 2) denied defendants' pre-answer motion to dismiss the complaint (MS#1); and 3) denied plaintiff's cross-motion for the appointment of a temporary receiver (MS#2).

Action #1-The Answer

Issue was joined by service of an answer by the defendants on February 10, 2025. (NYSCEF #87). Defendants interposed twenty-five affirmative defenses, including, inter alia, plaintiff's own wrongful and inequitable conduct under the doctrines of unclean hands and/or in *pari delicto*, estoppel, and statute of frauds.

Action #1-Motion Sequences #s 5, 6 & 7

By notice of motion filed on February 24, 2025, defendants moved to reargue this court's January 29, 2025, decision and order entered on February 6, 2025. (MS#5, NYSCEF #90).

By order to show cause dated March 21, 2025, plaintiff's counsel moved to be relieved as counsel pursuant to CPLR 321 with a request to stay the proceedings for 60 days. (MS#6, NYSCEF #97).

By order dated May 14, 2025, and entered on May 16, 2025, this court granted plaintiff's counsel's motion, and relieved counsel of representing the plaintiff (NYSCEF #99).

On May 29, 2025, defendants' motion to reargue was denied on default (MS#5, NYSCEF #103), but this default was in error because the proceedings were stayed by order of the court relieving plaintiff's counsel (NYSCEF #97, #99). The court vacated its May 29, 2025 order (NYSCEF #103, MS#5), and restored MS#5 to the calendar for September 10, 2025. Defendants subsequently brought a second motion (MS#7) to reargue defendants' original motion to dismiss and to vacate the notice of pendency (MS#1).

Sonia Santos v Victor Calderon Jr and North Slope 341 Corp., Index No. 525856/2023

Motion Sequence #5-Reargument of Court's denial of Defendants' Motion to Dismiss (MS#3).

Defendants argue that the court misconstrued the law in its decision and order (NYSCEF #82) in applying concepts of judicial admission, when neither party raised this issue, and instead should have considered plaintiff's lack of standing, arguing pursuant to *Dynamics Corp. of Am. v Mar. Midland Bank-New York*, 69 NY2d 191[1987], that the complaint must be dismissed as plaintiff failed to list any claim against the subject property or the LLC in any of her bankruptcy proceedings. However, *Dynamics Corp. of Am.* involved a discharged chapter XI debtor. As far as this court has been informed, there were bankruptcy filings under various chapters of the bankruptcy code but no discharge in bankruptcy. ("The schedules can be amended at any time during the proceeding [see, 1A Collier, Bankruptcy ¶ 7.12, at 996.7-996.8]", *Dynamics Corp. of Am.*, 69 NY2d at 195 [1987]). Moreover, the claims in *Dynamics Corp. of Am.* fundamentally involved commercial claims where there was no question of fact that a loan existed between the parties albeit with allegations of fraud.

The court in *Potruch & Daab, LLC v Abraham*, 97 AD3d 646 [2d Dept 2012], held that where the opposing party shows, prima facie, that at the time of the filing of the bankruptcy petition the debtor failed to list the claim or a property in the bankruptcy petition, the debtor then lacks standing to raise the issue in another forum. Here, it is the alleged failure of the plaintiff to list either the corporation or the subject real property as an asset in Schedule A of the Bankruptcy Petition filed on May 4, 2010, Case No. 1-10-40461¹ (NYSCEF #42), and Schedule A of the Bankruptcy Petition filed on April 23, 2009, Case No. 10943233ess² (NYSCEF #38), and this

¹ The Chapter 13 petition was dismissed pursuant to 11 USC § 1112(b) (NYSCEF #51).

² The Chapter 11 petition was dismissed on November 16, 2009 because "the debtor failed to comply with 11 USC § 521(e)(2)(A)(i) in that the debtor has failed to provide the trustee with a copy of a federal income tax return or transcript for the most recent year 7 days before the first meeting of creditors; and...the debtor failed to comply with

Sonia Santos v Victor Calderon Jr and North Slope 341 Corp., Index No. 525856/2023

failure must now result in dismissal of the complaint as the plaintiff lacks standing to bring the proceedings.

See Potruch & Daab, LLC v Abraham, 97 AD3d 646, 647 [2d Dept 2012]:

The plaintiff showed, prima facie, that at the time of the filing of that petition the defendant knew or should have known of the existence of those causes of action, and the defendant failed to raise a triable issue of fact in opposition to that prima facie showing (*see Wright v Meyers & Spencer, LLP*, 46 AD3d 805 [2007]; *Hansen v Madani*, 263 AD2d 881, 883 [1999]; *see also Whelan v Longo*, 23 AD3d at 460). Further, under the circumstances of this case, the fact that the defendants' bankruptcy petition was later dismissed does not change this result (*see Nationwide Assoc., Inc. v Epstein*, 24 AD3d 738, 739 [2005]; *see also Kunica v St. Jean Fin., Inc.*, 233 BR 46, 53-54 [SD NY 1999]).

In addition to the failure of the plaintiff to list either the claim against the defendants or the interest in the subject property in Schedule A of the bankruptcy petitions, plaintiff signed the minutes of a meeting of the members of 341 5th Drama LLC held "April __, 2009" where plaintiff transferred all her rights to the defendant. This was ostensibly based on the consideration of holding plaintiff "harmless." (NYSCEF #19).

Action #2-North Slope 341 Corp., 341 5th Drama LLC, and Victor Calderon Jr. v Sonia Santos, Index No. 502968/2024

Defendants Calderon and North Slope (Action #1) argue that the court should take judicial notice of the related matter (Action #2) where Santos defaulted in answering and was broadly enjoined from interfering with the management of the subject property. Defendants Calderon and North Slope (Action #1) argue that the explanation offered to excuse the default in the related matter was fabricated. (NYSCEF 69, ¶ 21). By decision and order dated January 29, 2025, the court in Action #2 vacated Santos' default in answering the complaint ("...given the

11 USC § 1325(a)(6) in that the debtor failed to submit timely chapter 13 plan payments to the trustee...the debtor failed to comply with the disclosure requirements of EDNY LBR 2003-1.." (NYSCEF #49).

Sonia Santos v Victor Calderon Jr and North Slope 341 Corp., Index No. 525856/2023

relatively short period of time, the ongoing settlement discussions, the lack of prejudice, and the default of the plaintiff in the related matter (citation of Action #1 omitted), the court will vacate the default and compel the plaintiffs to accept the answer.” Subsequent to this decision and order, by letter dated August 14, 2024, counsel for plaintiff (Action #1), in part, states the following (NYSCEF #72):

I have reviewed the Affirmation in Support of Cross-motion for leave to file a late answer, and in Opposition to Motion for Default Judgment dated August 5, 2024 written by my associate, Michael J.S. Pontone, at NYSCEF Doc. No. 70 wherein it was stated incorrectly that the attorneys for the Plaintiff and I were in settlement negotiations as the basis of my failure to answer the complaint. This falsehood was not intentional and resulted from a lack of communication between myself and my associate. The actual reason for my failure to answer the Complaint was due to the fact that I was occupied with the motion to vacate the default in my prior case and in opposition to the order to show cause in the instant case. There was no intent on my part to not answer the complaint. I mistakenly treated the Order to Show Cause as a pre answer application on the part of the plaintiff. I take full responsibility for the failure to answer and it is respectfully submitted that the plaintiff has not been damaged by the delay and never requested or notified me in advance that they would move for a default judgment.

At least partially, the court’s decision to vacate Santos’s default in answering (Action No. 2, NYSCEF #97), was based on inaccurate information provided by Santos’ counsel.

Plaintiffs North Slope 341 Corp., 341 5th Drama LLC, and Victor Calderon Jr. (Action #2) moved to reargue the court’s order vacating Santos’ default and compelling plaintiff to accept the defendant Santos’ answer by motion filed on February 6, 2025 (MS#4, NYSCEF #101). However, and only after plaintiff’s motion to reargue was filed and before the court heard argument on the motion, did Santos’ counsel seek to be relieved. The court issued a decision and order dated May 14, 2025 and entered on May 16, 2025, relieving counsel from representing Santos and provided for a 60 day stay (NYSCEF #127). Only after Santos’s counsel was

Sonia Santos v Victor Calderon Jr and North Slope 341 Corp., Index No. 525856/2023

relieved did he inform the court of the inaccurate information within counsel's attorney affirmation in support of Santos's motion to vacate her default. Although the court had previously impressed upon her the importance of counsel, on September 10, 2025, the date reargument was scheduled, defendant Santos appeared as a self-represented party without any opposition papers.

Based on the foregoing,

It is,

ORDERED that regarding Action #1-Sonia Santos v Victor Calderon Jr. and North Slope 341 Corp., Index No. 525856/2023, defendants' motion to reargue (MS#5) the court's denial of their motion to dismiss (MS#1) is GRANTED and upon reconsideration the court vacates its order denying dismissal and GRANTS its motion to dismiss and dismisses the complaint with prejudice and the clerk is directed to cancel the notice of pendency for the Real Property located at 341 5th Avenue, Brooklyn, New York 11215, Block 985, Lot 7; and it is further

ORDERED that regarding Action #1-Sonia Santos v Victor Calderon Jr. and North Slope 341 Corp., Index No. 525856/2023, defendants' motion to vacate the court's order dated September 29, 2025 is DENIED as moot given the court previously vacated this order (NYSCEF #111)(MS#7); and it is further

ORDERED that regarding Action #2-North Slope 341 Corp., 341 5th Drama LLC, and Victor Calderon Jr. v Sonia Santos, Index No. 502968/2024, (MS#4), plaintiffs' motion to reargue the court's granting of defendants' motion to vacate her default and accept defendants' answer, which was *sub judice* before the court, is now rescheduled for oral argument on October 15, 2025, Part 99, at the courthouse located at 360 Adams Street, Brooklyn, NY, Courtroom no. 574; and it is further

ORDERED that regarding Action #2-North Slope 341 Corp., 341 5th Drama LLC, and Victor Calderon Jr. v Sonia Santos, Index No. 502968/2024, **David H. Singer, Esq.**, counsel to David H. Singer & Associates, P.C., SHALL SHOW CAUSE on October 15, 2025, in Part 99 of the Kings County Courthouse, located at 360 Adams Street, Brooklyn, NY, Courtroom 574, WHY AN ORDER SHOULD NOT BE ISSUED:

- a. Vacating the court's order dated May 14, 2025, and entered on May 16, 2025, (NYSCEF #127), relieving David H. Singer, Esq., and his firm David H. Singer & Associates, P.C. from representing the defendant, Sonia Santos; and
- b. Sanctioning David H. Singer, Esq., and his firm David H. Singer & Associates, P.C. for providing inaccurate papers in support of defendant Sonia Santos' motion

Sonia Santos v Victor Calderon Jr and North Slope 341 Corp., Index No. 525856/2023

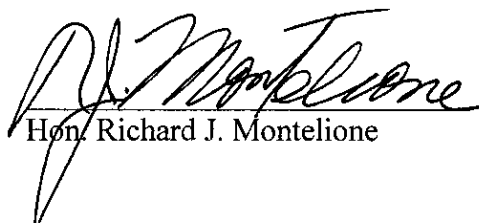
to vacate her default pursuant to 22 NYCRR 130-1, et seq.; and for such other relief as this Court believes is just and proper;

and it is further,

ORDERED that regarding Action #2-North Slope 341 Corp., 341 5th Drama LLC, and Victor Calderon Jr. v Sonia Santos, Index No. 502968/2024, (MS#5), the court's decision and order denying as moot plaintiffs' motion to disqualify defendant's counsel, David H. Singer, Esq., counsel to David H. Singer & Associates, P.C., is restored to the calendar for a determination as to whether the decision and order should be vacated and shall be heard simultaneously with other motions rescheduled for oral argument on **October 15, 2025, at 9:30am** in Part 99, at the courthouse located at 360 Adams Street, Brooklyn, NY, Courtroom No. 574.

Chamber staff is directed to email a copy of this decision and order forthwith to David H. Singer, Esq., counsel to his firm David H. Singer & Associates, P.C., and the electronic filing of this decision and order is deemed proper service.

This constitutes the decision and order of the Court.


Hon. Richard J. Montelione

2025 OCT 21 A 10:09
KINGS COUNTY CLERK