

**NYCTL, 2019-A Trust v Gaylevault Fin. Servs. Co.**

2024 NY Slip Op 32278(U)

July 1, 2024

Supreme Court, Kings County

Docket Number: Index No. 517149/2020

Judge: Derefim B. Neckles

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At an IAS Term, Part FRP-2 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, 11201 on the 1<sup>st</sup> day of July, 2024.

P R E S E N T:

HON. DEREKIM B. NECKLES,  
Acting Justice.

-----X  
NYCTL, 2019-A TRUST AND THE BANK OF NEW  
YORK, MELLON AS COLLATERAL AGENT AND  
CUSTODIAN FOR THE NYCTL

Index No. 517149/2020

Plaintiff,

- against -

GAYLEVAULT FINANCIAL SERVICES COMPANY  
ET AL.

Defendants.  
-----X

Upon the foregoing papers in this proceeding defendant Gaylevault Financial Services Company, moves by motion/order to show cause (under motion seq. 3) seeking an order (1) pursuant to RPAL Sec. §231(6) to set aside the judicial sale of the real property located at 855 Prospect Place, Brooklyn, New York 11216 (property) or in the alternative (2) pursuant to CPLR 317, vacating the judgment and dismissing the answer because defendant did not receive notice of the action in time to defend and (3) for such other and further relief as this court deems just and proper.

***Background***

On or about September 14, 2020, Plaintiff, NYCTL 2019-A Trust and The Bank of New York Mellon, as Collateral Agent and Custodian, commenced an action to foreclose

on a tax lien due to defendant Gaylevault Financial Services Company's default on said lien. The plaintiff served notice by delivering to and leaving a copy of the summons and complaint with an agent in the Office of the Secretary of State of New York. The defendant did not provide an answer, alleging that its CEO, Hugh Gayle, was physically impaired and unable to visit the business's address, and his family was preoccupied with his care and avoiding unnecessary exposure to COVID-19. Plaintiff moved for a default judgment and an order of reference, which the court granted on April 25, 2022, without opposition. Defendant now files this instant motion seeking to set aside the judgment of foreclosure and sale stating an improperly notarized certificate, lack of notice, and having a reasonable excuse.

### *Discussion*

#### **CPLR 231(6) and Notice Requirements**

CPLR 231(6) permits the court, under just terms, to set aside a sale within one year post-sale if a party's substantial rights were prejudiced by defects in notice, timing, or manner of the sale. Case law, such as *Wells Fargo Bank, N.A. v. Ramphal*, 172 A.D.3d 1280, 1281 (N.Y. App. Div. 2019), and *Deutsche Bank Natl. Trust Co. v. Khan*, 189 A.D.3d 1538, 1539 (N.Y. App. Div. 2020), emphasizes that parties who default are generally not entitled to a notice of judicial sale unless they appear in the action and do not waive service. Here, despite the defendant's failure to answer, they were served notice of the sale about four weeks prior to the event, satisfying the legal requirements.

### **Meritorious Defense and Reasonable Excuse**

Under CPLR § 317, for a default judgment vacatur, defendants must demonstrate a reasonable excuse for their default and a potentially meritorious defense. In *Martinez v. Urban Renaissance Collaboration Ltd. P'ship*, 227 A.D.3d 475 (N.Y. App. Div. 2024), the court held that defendants who did not personally receive timely notice might rely solely on a meritorious defense for vacatur. In this case, the defendant cites the CEO's illness and the pandemic as reasons for not receiving notice. However, those reasons do not constitute a reasonable excuse given the multiple notices served over the years and the alternative means available for obtaining such notices. The defendant's lack of engagement with the process does not equate to a valid excuse for failing to respond.

### **Improperly Notarized Certificate**

Defendant moves to set aside the judgment of foreclosure and sale because the notary of the tax lien certificate failed to identify the state and county where he is qualified as a notary. Defendant cites to Executive Law § 137, which states that a notary shall include the name of the any county in which it is licensed, but fails to mention that the section also states that "no official act of such notary shall be held invalid on account of the failure to comply with these provisions." "Technical defects in the jurat...do not invalidate the official act of the notary public." (*Parkhill v. Cleary*, 305 A.D.2d 1088, 1089 (2003)).

Defendant also moves under 19 N.Y.C.R.R § 182.3(a)(5), stating that the notary is disqualified based on his direct involvement in the transaction. Defendant refers to the fact that the notary public signed the certificate as acting corporation counsel of the New

York City Law Department. Section 182.3(a)(5) provides that notaries must “disqualify themselves from performing notarial acts for transactions in which the notary is a party or directly or pecuniarily interested in the transaction.” Here, the New York City Law Department was not a party to the transaction, but rather “approved as to form.” Accordingly, the notary should not be disqualified under § 182.3(a)(5), and is not a basis to set aside the judgment of foreclosure and sale.

### Conclusion

The defendant's argument under CPLR 231(6) lacks substantiation as they were properly served and had ample notice of all proceedings. Additionally, their reasoning under CPLR § 317 fails to meet the threshold of a reasonable excuse or a potentially meritorious defense. Moreover, defendant's arguments under Executive Law § 137 and § 182.3(a)(5) fail to justify a basis to set aside the judgment. The court finds no justification for vacating the default judgment or setting aside the judicial sale based on the records and applicable legal standards.

Accordingly, it is

**ORDERED** that Defendant's motion (mot. seq 3) is denied in its entirety.

This constitutes the decision and order of the court.

E N T E R,



HON. DEREFIM B. NECKLES  
A. J. S. C.

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A.J.S.C.