

Cadles of Grassy Meadows II, LLC v Klein

2024 NY Slip Op 32286(U)

July 1, 2024

Supreme Court, New York County

Docket Number: Index No. 651389/2023

Judge: Nicholas W. Moyne

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. NICHOLAS W. MOYNE PART 41M

Justice

CADLES OF GRASSY MEADOWS II, LLC
Plaintiff,
- v -
DONNA KLEIN,
Defendant.
INDEX NO. 651389/2023
MOTION DATE 03/17/2023
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2
were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT.

Upon the foregoing documents, it is

Plaintiff, Cadles of Grassy Meadows II, L.L.C. ("Cadles"), moves, pursuant to CPLR §
3213, for summary judgment in lieu of a complaint against defendant, Donna Klein ("Klein"),
and seeking a renewal judgment and judgment lien, pursuant to CPLR § 5014 (1).

Plaintiff has submitted proof of the original judgment, entered by the New York County
Clerk's Office on August 4, 2003, in favor of Marine Midland Bank, N.A.¹ and against defendant
as one of the judgment-debtors, in the amount of \$442,557.03 (NYSCEF Doc. No. 4). Plaintiff
has also submitted an assignment of judgment, filed with the New York County Clerk and dated
June 23, 2008, but effective as of November 1, 2007, in which HSBC Bank USA, National
Association assigned to Cadles all rights, title, and interest, if any, to the original judgment
(NYSCEF Doc. No. 6; 7). Plaintiff claims that this judgment has not been satisfied, and that as of
February 14, 2023, defendant owes the principal sum of \$442,557.03, together with statutory

¹ Marine Midland Bank, N.A. merged and was acquired by HSBC Bank USA, National Association in 2004
(NYSCEF Doc. No. 5).

interest at the legal rate of 9% per annum from November 1, 2007, totaling \$779,342.93, for a total sum of \$1,221,899.96 (NYSCEF Doc. No. 8). Based therein, plaintiff argues that pursuant to CPLR § 5014 (1), they are entitled to entry of a renewal judgment against defendant in the amount of original principal owed, plus statutory interest from the original entry date.

CPLR § 3213 states that “[w]hen an action is based upon an instrument for the payment of money only or upon any judgment, the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint. The summons served with such motion papers shall require the defendant to submit answering papers on the motion within the time provided in the notice of motion.” “CPLR § 3213 provides for accelerated judgment where the instrument sued upon is for the payment of money only and where the right to payment can be ascertained from the face of the document without regard to extrinsic evidence, ‘other than simple proof of nonpayment or a similar de minimis deviation from the face of the document’” (*Arbor-Myrtle Beach PE LLC v Frydman*, 2021 NY Slip Op 30223[U], 2 [Sup Ct, NY County 2021], *affd* 2022 NY Slip Op 00806 [1st Dept 2022], quoting *Weissman v Sinorm Deli, Inc.*, 88 NY2d 437, 444 [1996]). The usual standards for summary judgment apply on a CPLR § 3213 motion and the movant must make a prima facie case by submitting the instrument and evidence of the defendant's failure to make payments in accordance with the instrument's terms (*id.*; see also *Matas v Alpargatas, S.A.I.C.*, 274 AD2d 327, 328 [1st Dept 2000]).

A New York money judgment is enforceable for 20 years (*see* CPLR § 211 [b]). CPLR § 5014 permits “renewal” of a money judgment provided, among other things, that an action upon the judgment is commenced between the original parties where: (1) ten years have elapsed since the first docketing of the judgment; or (2) the judgment was entered against the defendant by

default for want of appearance and the summons was served other than by personal delivery to him or to his agent for service designated under rule 318, either within or without the state. To establish prima facie entitlement to a renewal judgment, plaintiff must demonstrate: “(1) the existence of the underlying judgment; (2) that the defendant was a judgment debtor; (3) that the underlying judgment was docketed at least nine years prior to the commencement of this action; and (4) that the underlying judgment remained partially or completely unsatisfied” (*see Lull v Van Tassell*, 171 AD3d 1155, 1156 [2d Dept 2019], citing *Jones Morrison, LLP v Schloss*, 155 AD3d 704, 705 [2d Dept 2017]). An original judgment creditor’s assignee can establish its entitlement to a renewal judgment “by offering evidentiary proof that it was the original judgment creditor’s assignee and that no part of the judgment has ever been assigned” (*see Premier Capital, LLC v Best Traders, Inc.*, 88 AD3d 677 [2nd Dept 2011], citing *Schiff Food Prods., Co., Inc. v M & M Import Export*, 84 AD3d at 1348, 924 NYS2d 158).

Here, plaintiff has met their prima facie burden for entry of summary judgment in lieu of complaint. The original judgment establishes that the underlying debt arises out of an instrument sued upon for the payment of money only and the right of payment can be ascertained from the face of the judgment. Defendant was required to make the payment of \$442,557.03 based upon an entry of judgment by the Clerk of New York County on August 4, 2003. Plaintiff has established that the defendant has failed to satisfy the judgment and, as of February 14, 2023, defendant is indebted to plaintiff the sum of \$1,221,899.96, which is inclusive of the principal amount owed of \$442,557.03, with the accrued statutory interest at the rate of 9% in the amount of \$779,342.93 (NYSCEF Doc. No. 8).

Further, plaintiff has met their prima facie burden under CPLR § 5014, warranting the issuance of a renewal judgment against the defendant. Plaintiff has established the existence of

the underlying judgment by submitting a copy of the original judgment, entered against defendant, by the New York County Clerk's Office on August 4, 2003. Plaintiff has also provided a copy of the assignment of judgment to the plaintiff, entered against defendant by the New York County Clerk's Office on June 23, 2008, but effective as of November 1, 2007, demonstrating that plaintiff may be considered an original party (NYSCEF Doc. No. 4; 7). Second, plaintiff has established that the defendant was a judgment debtor because they are named as a defendant in the original judgment and in the assignment of judgment to the plaintiff (NYSCEF Doc. No. 4; 7). Third, the underlying judgment was docketed at least nine years prior to the commencement of this action; both the original judgment, dated August 4, 2007, and the assignment of judgment, dated November 1, 2007, are docketed more than nine years prior to the start of this action (NYSCEF Doc. No. 4; 7). Lastly, plaintiff has established that the underlying judgment remains completely unsatisfied. Plaintiff has submitted an affidavit by Arlene Foster, an Account Officer at Cadles of Grassy Meadows II L.L.C., and a Payoff Statement, evidencing that the judgment is completely unsatisfied (NYSCEF Doc. No. 3; 8).

However, plaintiff has failed to provide proof of service as required by CPLR § 3213, where when an action is based upon an instrument for the payment of money only or upon any judgment, the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint. The summons served with such motion papers shall require the defendant to submit answering papers on the motion within the time provided in the notice of motion (*see* CPLR § 3213). Service of process upon a natural person must be made in strict compliance with statutory methods of service pursuant to CPLR § 308 (*see Washington Mut. Bank v Murphy*, 127 AD3d 1167, 1174 [2d Dept 2015]; *Estate of Waterman v Jones*, 46 AD3d 63, 65 [2d Dept 2007]). 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 *Deutsche Bank Natl. Trust Co. v Williams*, 215 AD3d 799, 800 [2d Dept 2023]; *Emigrant Mtge. Co., Inc. v Westervelt*, 105 AD3d 896, 897 [2d Dept 2013]). Here, plaintiff has failed to provide any proof of service upon the defendant and thus, there is no evidence that the court has jurisdiction over the defendant.

Accordingly, it is hereby,

ORDERED that the motion by plaintiff, Cadles of Grassy Meadows II, L.L.C., for summary judgment in lieu of complaint and a renewal judgment is denied without prejudice to renew upon proper proof of service of the summons and accompanying motion papers in accordance with the statutory directive of CPLR § 3213.

This constitutes the decision and order of the court.

7/11/2024			NICHOLAS W. MOYNE, J.S.C.
DATE			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> OTHER
			<input type="checkbox"/> REFERENCE