

**Cudjoe v Cudjoe**

2024 NY Slip Op 34180(U)

November 20, 2024

Supreme Court, Kings County

Docket Number: Index No. 510536/2023

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS, PART 73

Index No.: 510536/2023  
Motion Date: 11-4-2024  
Mot. Seq. No.: 2, 3

-----X  
VANESSA LOUISE CUDJOE,

Plaintiff,

-against-

**DECISION/ORDER**

THOMAS KERRY CUDJOE, GLADYS DAVID and  
ROGER DAVID,

Defendants.  
-----X

The following papers, which are e-filed with NYCEF as Document Numbers 18-60, were read on these motions:

Defendants Gladys David and Roger David (“Gladys and Roger”) move for an order pursuant to CPLR 3012(d) compelling the plaintiff, Vanessa Louise Cudjoe (“plaintiff”), to accept their late answer, which was e-filed on May 21, 2024 (**Mot. Seq. No. 2**). By separate Notice of Motion, the plaintiff moves for an order granting plaintiff a default judgement as against defendants Gladys and Roger and for summary judgment as against defendant THOMAS KERRY CUDJOE (“Thomas”).

**Background:**

Plaintiff and Thomas were married on or about February 17, 1995. By deed dated July 10, 2013, during their marriage, the real property located at 386 East 98th Street, Brooklyn, New York (the “Property”), was transferred to Thomas. Plaintiff claims that she was unaware that she was not named on the deed. Plaintiff claims that on or about April 21, 2017, Thomas, without her knowledge or consent, conveyed the Property to defendants Gladys and Roger for no consideration. Gladys is the mother if Thomas and Roger is his brother.

In or about July 2018, plaintiff commenced a divorce action against Thomas in Henry County Superior County , Georgia. Plaintiff claims that after learning of 2017 transfer to Gladys and Roger during the divorce proceedings, she made a claim in those proceedings to vacarte the transfer of the Property to Gladys and Roger as fraudulent. However, the Henry County Superior Court never decided the claim and maintained that it lacked jurisdiction to do so.

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The plaintiff commenced this action on or about April 7, 2023, which sounds in fraud, breach of fiduciary duty, negligence, seeking a declaratory judgment, quiet title to the Property, unjust enrichment, and conversion. The summons and complaint in this action was filed on April 7, 2023. On or about June 23, 2023, the Summons and Complaint were personally served upon defendant Thomas. Thomas interposed an Answer in which he asserted various defenses which plaintiff accepted.

On or about July 28, 2023, the Summons and Complaint were personally served upon defendant Roger in the country of Grenada. On or about July 31, 2023, the Summons and Complaint were served upon defendant Gladys in Grenada. The Affirmations of Service upon Gladys and Roger were e-filed on November 17, 2023. Gladys and Roger interposed a joint answer via NYSCEF dated May 21, 2024. When plaintiff promptly rejected the answer as untimely, on or about May 24, 2024, Gladys and Roger filed a motion to compel the plaintiff to accept heir late answer, which is now before the court. Also before the Court is plaintiff's motion for a default judgment against Gladys and Roger.

**Discussion:**

“Upon the application of a party, the court may extend the time to appear or plead, or compel the acceptance of a pleading untimely served, upon such terms as may be just and upon a showing of reasonable excuse for delay or default” (CPLR 3012[d]). “A defendant seeking to vacate a default in answering a complaint and to compel the plaintiff to accept an untimely answer pursuant to CPLR 3012(d) must provide a reasonable excuse for the default and demonstrate a potentially meritorious defense” (*Pare v. Pare*, 222 A.D.3d 765, 767, 202 N.Y.S.3d 363; *see Gambino v. Deutsche Bank Natl. Trust Co.*, 181 A.D.3d 565, 566, 117 N.Y.S.3d 594; *U.S. Bank N.A. v. Barr*, 139 A.D.3d 937, 937, 30 N.Y.S.3d 576). “The determination of what constitutes a reasonable excuse lies within the sound discretion of the Supreme Court” (*Citimortgage, Inc. v. Kowalski*, 130 A.D.3d 558, 558, 13 N.Y.S.3d 468; *see Goldstein v. Ilaz*, 206 A.D.3d 976, 976, 168 N.Y.S.3d 879).

Here, Gladys and Roger did not establish a reasonable excuse for their default. Neither Gladys or Roger submitted an affidavit or affirmation in support of their

motion stating the reasons for not timely answering the complaint. Nowhere in the record is a statement from Gladys or Roger that they were led to belief by Thomas that he would retain an attorney to represent theme in the action. Indeed, Thomas did not even submit an affidavit or affirmation stating that he was under the mistaken impression that his attorneys would appear for Gladys and Roger in the action and that he informed Gladys and Roger that he would arrange for them to be represented in the action. Indeed, the engagement letter that Mr. Thomas signed retaining Falcon, Rappaport & Berkman to represent him indicates indicates that he would be their only client. The Court must assume Thomas read the engagement letter before signing it.

Since Gladys and Roger have not demonstrated a reasonable excuse for their failure to timely answer the complaint, their motion to compel the plaintiff to accept their late answer must be denied, regardless of whether they established a meritorious defense.

Turning to plaintiff's motion for a default judgment against Gladys and Roger, "[a] plaintiff seeking leave to enter a default judgment under CPLR 3215 must file proof of: (1) service of a copy or copies of the summons and the complaint, (2) the facts constituting the claim, and (3) the defendant's default" (*National Loan Invs., L.P. v. Bruno*, 191 A.D.3d 999, 1001, 142 N.Y.S.3d 595; *see* CPLR 3215[f]). Here, the plaintiff established its entitlement to a default judgment by submitting evidence of service of the summons and complaint, evidence of the facts constituting the cause of action against the defendants, i.e. - plaintiff's verified complaint, and evidence of the defendants' default (*see* CPLR 3215[f]; *Citimortgage, Inc. v. Weaver*, 197 A.D.3d 1087, 1088, 150 N.Y.S.3d 605; *Jacob v. Siberian Ice, LLC*, 170 A.D.3d 1132, 1133, 95 N.Y.S.3d 538). The evidence submitted by the plaintiff was sufficient to satisfy the plaintiff's burden (*see Wilmington Trust, N.A. v. Reed*, 210 A.D.3d 731, 732, 177 N.Y.S.3d 642). Accordingly, that branch of Mot. Seq. No. 3, in which the plaintiff seeks a default judgment against Gladys and Roger is granted solely to the extent that the parties are directed to proceed to an inquest on the issue of damages at the time of trial.

With respect to that branch of Mot. Seq. No. 3 in which plaintiff seeks summary judgment against Thomas, Thomas submitted an affidavit disputing almost all the plaintiff's

material allegations. According to defendant Thomas, the plaintiff knew and consented to the transfer of the Property to Gladys and Roger. That branch of Mot. Seq. No. 3 in which plaintiff seeks an order granting her summary judgment against Thomas is therefore denied.

Accordingly, it is hereby

**ORDRED** that Mot. Seq. No. 2 is denied in its entirety. That branch of Mot. Seq. 3 in which plaintiff seeks to enter a default judgment against Gladys and Roger is granted solely to the extent that an inquest on damages shall take place at the time of trial. That branch of Mot. Seq. No. 3 for an order awarding plaintiff summary judgment against Thomas is denied.

This constitutes the decision and order of the Court.

Dated: November 20, 2024

**PPS**  
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**PETER P. SWEENEY, J.S.C.**

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020

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