

Maynard v Almuradi

2024 NY Slip Op 33944(U)

November 4, 2024

Supreme Court, Kings County

Docket Number: Index No. 507596/2023

Judge: Francois A. Rivera

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At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 4th day of November 2024

HONORABLE FRANCOIS A. RIVERA

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SHAUNDER MAYNARD,

Plaintiff,

- against -

ABDULLA ALMURADI, PATRESHA WALKER, ISKYO ARONOV AKA ISAAC ARONOV, JAMES M CAFFREY, ESQ., US BANK NATIONAL ASSOCIATION, as trustee for Citigroup Mortgage Loan Trust, Inc. 2006-HE3, Asset Backed Pass-Through Certificates Series 2006-H3-3, NEW CENTURY MORTGAGE CORPORATION, FRENKEL LAMBERT WEISS, WEISMAN AND GORDAN, LLP, and JOHN DOE(S) (being fictitious, the names unknown to plaintiff intended to be investors and all other persons, entities, assignees, successors, creditors, trustees, predecessors in interest and/or entities claiming to have an interest in or lien upon the subject premise)

Defendants.

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Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of motion filed on May 4, 2024, under motion sequence number five, by pro se plaintiff Shaunder Maynard for an order vacating the Order of Dismissal, dated April 4, 2024, restoring the matter to the Court's active calendar for a date certain, restoring the notice of pendency, pursuant to CPLR 3215 declaring that all non-appearing and non-answering defendants are in default, compelling the court to accept a late opposition, striking the answer and defenses by defendant US Bank National Association. The motion is opposed.

- Notice of motion
- Affirmation in support
 - Exhibits A-U
 - Exhibit 1
- Affirmation in opposition, by defendant FLW

DECISION & ORDER

Index No.: 507596/2023

Oral Argument: 10/31/2024

Cal. No.: 25

Ms. Seq. No.: 5

-Affirmation in opposition, by defendant US Bank National Association, as Trustee for Citigroup Mortgage Loan Trust, Inc. 2006-HE3, Asset Backed Pass-Through Certificates Series 2006-HE3
-Memorandum of law in opposition
-Affidavit in reply

BACKGROUND

On March 12, 2023, the plaintiff commenced the instant action by filing a summons, verified complaint and notice of pendency with the Kings County Clerk's Office (KCCO). The above-entitled action is for a determination of claims of real property for the premises located at 1170 E. 42nd Street Brooklyn, NY 11210 (hereinafter the subject property), in which plaintiff claims an ownership interest. On August 22, 2023, USBNA interposed and filed an answer with the KCCO. The verified complaint alleges seventy-six allegations of fact in support of six denominated causes of action. The first cause of action seeks injunctive relief. The second cause of action seeks an order quieting title to the subject property. The third cause of action seeks declaratory relief. The fourth cause of action alleges fraud. The fifth cause of action is denominated as slander of title. The sixth cause of action is for violation of the fair debt and collection practices act.

By notice of motion filed on December 1, 2023, under motion sequence number four, defendant US Bank National Association, as Trustee for Citigroup Mortgage Loan Trust, Inc. 2006-HE3, Asset Backed Pass-Through Certificates Series 2006-HE3 (hereinafter USBNA) sought, among other things, an order pursuant to CPLR 3211 (a) and CPLR 6514, dismissing plaintiff's complaint as against USBNA and canceling the notice of pendency.

By decision and order dated April 4, 2024, the Court granted USBNA's motion to dismiss the instant action on the basis that plaintiff abandoned the action by failing to appear for oral argument to oppose the motion.

LAW AND APPLICATION

The above-entitled action is for a determination of claims of real property for the premises located at 1170 E. 42nd Street Brooklyn, NY 11210. By decision and order dated April 4, 2024, the Court dismissed the instant action as abandoned based on the plaintiff's failure to appear for oral argument to oppose the motion for dismissal filed under motion sequence number two and four.

By the instant motion, plaintiff seeks, among other things, to vacate the order dismissing the action as abandoned. A party "seeking to vacate a default in appearing or answering must demonstrate both a reasonable excuse for the default and a potentially meritorious defense to the action" (*see Sussman v Jo-Sta Realty Corp.*, 99 AD3d 787, 788 [2d Dept 2012]).

Plaintiff did file opposition to USBNA's motion under motion sequence four. The proffered excuse for not appearing for oral argument was stated as follows. Plaintiff was forced to retain new counsel because there was a breakdown in communication with her former attorney, Ugo Ugeh, Esq. and because plaintiff was medically incapacitated. Plaintiff claimed that she could not possibly make an appearance along with her newly retained attorney on oral argument day. Plaintiff stated that she reserved the right to medical privacy and did not wish to disclose her medical condition.

The excuse offered is not reasonable. Considering the plaintiff's failure to establish a reasonable excuse for plaintiff's default, it is unnecessary to determine whether plaintiff demonstrated the existence of a potentially meritorious defense (*see Bookman v 816 Belmont Realty, LLC*, 180 AD3d 986, 988 [2d Dept 2020]). Moreover, the plaintiff's action is to quiet title to the subject property, which plaintiff claims an ownership interest in. There is no dispute however that plaintiff's interest in the subject property was extinguished in a separate foreclosure

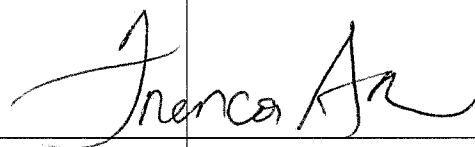
action in which there was a judgment of foreclosure and sale. Plaintiff's instant action in effect seeks to collaterally attack the extinguishing of plaintiff's interest in the subject property by the foreclosure action. Considering the foregoing, the other branches of plaintiff's motion are rendered moot.

CONCLUSION

The motion by plaintiff Shauder Maynard for an order vacating the order of dismissal, dated April 4, 2024, restoring the matter to the Court's active calendar for a date certain, restoring the notice of pendency, pursuant to CPLR 3215 declaring that all non-appearing and non-answering defendants are in default, compelling the court to accept a late opposition, and striking the answer and defenses by defendant US Bank National Association is denied.

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.

HON. FRANCOISA. RIVERA