Onewest Bank, N.A. v. Cole et al Doc. 41

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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ONEWEST BANK, N.A.,

Plaintiff,

-against-

PAUL COLE, et al.,

Defendants.
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MEMORANDUM AND ORDER
14-CV-03078 (FB) (RER)

Appearances:
For the Plaintiff:
KEITH YOUNG, ESQ.
1775 Wehrle Drive, Suite 100
Williamsville, NY 14221

BLOCK, Senior District Judge:

On April 17, 2015, Magistrate Judge Reyes issued a Report and Recommendation ("R&R") recommending that the Court enter default judgment against defendant Paul Cole in the amount of $541,147.56, which consists of: (1) $538,704.56 in unpaid principal, interest accrued through April 1, 2015, pre-acceleration late charges, insurance and tax disbursements, and amounts spent on property inspections and a broker price opinion report/appraisal fee, as well as (2) $2,878.00 in costs and fees. R&R at 5,8. The R&R further recommends that the Court: (1) order the foreclosure and sale of the subject property located at 187-05 Quencer Road, Saint Albans, New York, (2) appoint Stephanie S. Goldstone as a referee to conduct the sale of the property, and (3) deny plaintiffs' request for attorney's fees. *Id.*

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at 5-7. The R&R provided that failure to object within fourteen days of receipt would preclude appellate review. *Id.* at 8. Defendants were served a copy of the R&R by mail on June 11, 2015. To date, no objections have been filed.

If clear notice has been given of the consequences of the failure to object, and there are no objections, the Court may adopt the R&R without *de novo* review. *See Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure to timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."). The Court will excuse the failure to object and conduct *de novo* review if it appears that the magistrate judge may have committed plain error. *See Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000). No such error appears here. However, the interest calculation must be updated to account for the passage of time since the R&R was issued. From the date of the R&R to the date of this Order, the total amount of interest accrued is $2,840.80. Accordingly, the Court adopts the R&R without *de novo* review, and directs the Clerk to enter judgment against defendant Paul Cole in the total amount of $543,988.36.

SO ORDERED.

/S/ Frederic Block
FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
July 17, 2015