

US Bank Trust N.A. v Singh

2023 NY Slip Op 33212(U)

September 15, 2023

Supreme Court, New York County

Docket Number: Index No. 850074/2023

Judge: Francis A. Kahn III

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. FRANCIS A. KAHN, III PART 32

Justice

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US BANK TRUST NATIONAL ASSOCIATION AS TRUSTEE FOR CABANA SERIES V TRUST, <p style="text-align: center;">Plaintiff,</p>	INDEX NO. <u>850074/2023</u> MOTION DATE _____ MOTION SEQ. NO. <u>001</u>
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- v -

VINAYAK SINGH, UNITED STATES OF AMERICA
 (EASTERN DISTRICT), NEW YORK CITY PARKING
 VIOLATIONS BUREAU, THE BOARD OF MANAGERS OF
 THE PROMENADE CONDOMINIUM, JOHN DOE AND
 JANE DOE

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 59, 60

were read on this motion to/for APPOINT - REFEREE.

Upon the foregoing documents, the motion is determined as follows:

This is an action to foreclose on a consolidated, extended and modified mortgage encumbering a parcel of real property located at 530 East 76th Street, Unit 34-35AB, New York, New York. The mortgage consolidated two earlier mortgages and was given by Defendant Vinayak Singh (“Singh”). The mortgage secures a consolidated note which evidences a loan with an original principal amount of \$2,100,000.00. Plaintiff commenced this action wherein it is alleged Defendant Singh defaulted in repayment of the subject note. Now, Plaintiff moves for a default judgment against all defendants, an order of reference and to amend the caption. Defendant Singh opposes the motion.

“An applicant for a default judgment against a defendant must submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting defendant’s failure to answer or appear” (*Deutsche Bank Natl. Trust Co. v Silverman*, 178 AD3d 898, 899 [2d Dept 2019]). Plaintiff has established *prima facie* its entitlement to a default judgment against Defendants by submitting proof of the mortgage, the unpaid note, notice of default, proof of service on each Defendant as well as proof of their failure to appear or answer (*see* CPLR §3215[f]; *SRMOF II 2012-I Trust v Tella*, 139 AD3d 599, 600 [1st Dept 2016]). Accordingly, Plaintiff has demonstrated its entitlement to a default judgment against Singh, as well as the other Defendants.

“To defeat a facially adequate CPLR 3215 motion, a defendant must show either that there was no default, or that it has a reasonable excuse for its delay and a potentially meritorious defense” (*Deutsche Bank Natl. Trust Co. v Silverman*, 178 AD3d 898, 901 [2d Dept 2020], *citing* *US Bank N.A. v Dorestant*, 131 AD3d 467, 470 [2d Dept 2015]). Defendant Singh’s proffered excuse, that he served an answer, is unavailing as that pleading was indisputably late. Service upon Singh, made ostensibly via

CPLR §308[2], was complete on April 6, 2023. Thus, Singh had until May 5, 2023, to appear or answer. Singh did not serve and file his answer until June 19, 2023. Any claims regarding loss mitigation negotiations are only corroborated by emails dated after Singh's default. Defendant also failed to demonstrate lack of personal jurisdiction or a potential meritorious defense to the action since no affidavit from Singh was proffered and the answer filed was verified only by counsel (*see eg Peacock v Kalikow*, 239 AD2d 188, 190 [1st Dept 1997]; *see also Gorman v English*, 137 AD3d 556 [1st Dept 2015]).

The branch of Plaintiff's motion for a default judgment against the non-appearing parties, is granted (*see CPLR §3215; SRMOF II 2012-I Trust v Tella*, 139 AD3d 599, 600 [1st Dept 2016]).

The branch of Plaintiff's motion to amend the caption is granted without opposition (*see generally CPLR §3025; JP Morgan Chase Bank, N.A. v Laszio*, 169 AD3d 885, 887 [2d Dept 2019]).

Accordingly, it is

ORDERED that the branch of the motion for a default judgment against all Defendants is granted; and it is

ORDERED that **Clark Whitsett, Esq., 108-26 Myrtle Avenue, Richmond Hill, NY 11418-1235 (718) 850-0003** is hereby appointed Referee in accordance with RPAPL § 1321 to examine whether the tax parcel can be sold in parcels; and it is further

ORDERED that in the discretion of the Referee, a hearing may be held, and testimony taken; and it is further

ORDERED that by accepting this appointment the Referee certifies that he is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2 (c) ("Disqualifications from appointment"), and §36.2 (d) ("Limitations on appointments based upon compensation"), and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall immediately notify the Appointing Judge; and it is further

ORDERED that, pursuant to CPLR 8003(a), and in the discretion of the court, a fee of \$350 shall be paid to the Referee for the computation of the amount due and upon the filing of his report and the Referee shall not request or accept additional compensation for the computation unless it has been fixed by the court in accordance with CPLR 8003(b); and it is further

ORDERED that the Referee is prohibited from accepting or retaining any funds for himself or paying funds to himself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED that if the Referee holds a hearing, the Referee may seek additional compensation at the Referee's usual and customary hourly rate; and it is further

ORDERED that plaintiff shall forward all necessary documents to the Referee and to defendants who have appeared in this case within 30 days of the date of this order and shall *promptly* respond to every inquiry made by the referee (promptly means within two business days); and it is further

ORDERED that if defendant(s) have objections, they must submit them to the referee within 14 days of the mailing of plaintiff's submissions; and include these objections to the Court if opposing the motion for a judgment of foreclosure and sale; and it is further

ORDERED the failure by defendants to submit objections to the referee shall be deemed a waiver of objections before the Court on an application for a judgment of foreclosure and sale; and it is further

ORDERED that plaintiff must bring a motion for a judgment of foreclosure and sale within 30 days of receipt of the referee's report; and it is further

ORDERED that if plaintiff fails to meet these deadlines, then the Court may *sua sponte* vacate this order and direct plaintiff to move again for an order of reference and the Court may *sua sponte* toll interest depending on whether the delays are due to plaintiff's failure to move this litigation forward; and it further

ORDERED that the caption of this action is amended by removing those parties named herein as "JOHN DOE" and "JANE DOE," and all proceedings heretofore filed herein shall be deemed amended accordingly, and it is further

ORDERED that the amended caption shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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US BANK TRUST NATIONAL ASSOCIATION AS
TRUSTEE FOR CABANA SERIES V TRUST

Plaintiff,
-against-

VINAYAK SINGH; UNITED STATES OF AMERICA
(EASTERN DISTRICT); NEW YORK CITY
PARKING VIOLATIONS BUREAU; THE BOARD OF
MANAGERS OF THE PROMENADE
CONDOMINIUM,

Defendants.

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and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being removed pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County*

Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address (www.nycourts.gov/supctmanh)]; and it is further

ORDERED that Plaintiff shall serve a copy of this Order with notice of entry on all parties and persons entitled to notice, including the Referee appointed herein.

All parties are to appear for a virtual conference via Microsoft Teams on **January 10, 2022 at 10:40 a.m.** If a motion for judgment of foreclosure and sale has been filed Plaintiff may contact the Part Clerk Tamika Wright (tswright@nycourt.gov) in writing to request that the conference be cancelled. If a motion has not been made, then a conference is required to explore the reasons for the delay.

9/15/2022

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

J. C. Kahn III

FRANCIS A. KAHN, III, A.J.S.C.

**HON. FRANCIS A. KAHN III
J.S.C.**