SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT

# Bank of Am., N.A. v. Martin

2020 NY Slip Op 06081 (N.Y. Ct. App. 2020) · No. 2018-07237 · Decided October 28, 2020

## SUMMARY

The Appellate Division, Second Department affirmed the denial of Wilkie Martin's motion to vacate a foreclosure judgment, dismiss the complaint for lack of personal jurisdiction, and enjoin eviction proceedings. The court held that although the defendant was not required to show a reasonable excuse or meritorious defense when challenging jurisdiction, his allegations did not sufficiently rebut the process server's affidavit or warrant a hearing.

## CASE DETAILS

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| COURT | Supreme Court of the State of New York, Appellate Division, Second Judicial Department |
| WRITING FOR THE COURT | Mark C. Dillon, J.P.; Joseph J. Maltese, J.; Betsy Barros, J.; Francesca E. Connolly, J. |
| JURISDICTION | New York |
| DECIDED | October 28, 2020 |
| DOCKET | 2018-07237 |
| DISPOSITION | affirmed |
| PROCEDURAL POSTURE | Defendant appealed from an order denying his motion to vacate a judgment of foreclosure and sale for lack of personal jurisdiction, dismiss the complaint insofar as asserted against him, and enjoin eviction proceedings. |
| STANDARD OF REVIEW | The Appellate Division reviewed the denial of vacatur for lack of personal jurisdiction under CPLR 5015(a)(4) and whether the defendant's submissions warranted a hearing on service of process. |
| PRECEDENTIAL VALUE | Published appellate opinion |
| PARTIES | Wilkie Martin v. Bank of America, N.A. |

## TOPICS

foreclosure · personal jurisdiction · service of process · appellate procedure · civil procedure

## PRACTICE AREAS

Civil procedure | Mortgage foreclosure | Personal jurisdiction | Service of process | Appellate procedure

## QUESTIONS PRESENTED

1. Whether the Supreme Court improperly required Martin to establish a reasonable excuse for his default before addressing his claim that the court lacked personal jurisdiction.
2. Whether Martin's submissions rebutted the process server's affidavit and required a hearing to determine the validity of service.
3. Whether the judgment of foreclosure and sale should be vacated under CPLR 5015(a)(4).

## HOLDINGS

1. A defendant seeking vacatur of a default under CPLR 5015(a)(4) on the ground of lack of personal jurisdiction is relieved of the ordinary requirements of showing a reasonable excuse and a meritorious defense.
2. A hearing is warranted only when the defendant's denial of service is substantiated by specific, detailed facts contradicting the process server's affidavit. Martin's allegations were insufficient to rebut the affidavit or require a hearing.

## KEY QUOTATIONS

> *"Although a party moving to vacate a default must normally demonstrate a reasonable excuse and a meritorious defense[,] the movant is relieved of that obligation when lack of personal jurisdiction is asserted as the ground for vacatur"* (at *1)

> *"In order to warrant a hearing to determine the validity of service of process, the denial of service must be substantiated by specific, detailed facts that contradict the affidavit of service"* (at *2)

## FACTUAL BACKGROUND

Bank of America sought to foreclose a mortgage against Wilkie Martin and others. A process server's affidavit stated that Martin was personally served at an address where he resided. Martin later challenged jurisdiction, but did not expressly deny that he had been served, did not deny residing at the service address, and did not identify another location where he was present at the claimed date and time. Alleged discrepancies between his age and appearance and the process server's description were minor.

## PROCEDURAL HISTORY

Bank of America commenced a mortgage-foreclosure action in September 2011. Martin failed to appear or answer; the Supreme Court granted an order of reference in June 2014 and entered a judgment of foreclosure and sale on September 28, 2015. Martin moved in July 2017 under CPLR 5015(a)(4), but the Supreme Court denied the motion without a hearing. The Appellate Division affirmed.

## DISPOSITION

affirmed

CASES CITED

- Velez v. Forcelli, 125 A.D.3d 643, 644 (N.Y. App. Div. 2015)
- Toyota Motor Credit Corp. v. Hardware Lam, 93 A.D.3d 713, 714 (N.Y. App. Div. 2012)
- Bethpage Fed. Credit Union v. Grant, 178 A.D.3d 997, 998 (N.Y. App. Div. 2019)
- JPMorgan Chase Bank, N.A. v. Daar, 161 A.D.3d 835, 836 (N.Y. App. Div. 2018)
- Wells Fargo Bank, N.A. v. Colace, 178 A.D.3d 1119, 1120 (N.Y. App. Div. 2019)
- JPMorgan Trust Bank, N.A. v. Hoffmann, 154 A.D.3d 699, 700 (N.Y. App. Div. 2017)
- Wells Fargo Bank, NA v. Spaulding, 177 A.D.3d 817, 819 (N.Y. App. Div. 2019)