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

Wells Fargo Bank, National Association v. Singh

2022 NY Slip Op 02306 (App. Div. 2022) · No. 2018-14287 · Decided April 6, 2022

SUMMARY

The Appellate Division, Second Department affirmed an order denying Dindyal Singh's motion to vacate foreclosure-related judgments and sale, dismiss the complaint for lack of personal jurisdiction, or serve a late answer. The court held that the process server's affidavit established prima facie valid service, Singh's submissions did not warrant a jurisdictional hearing, and he failed to show a reasonable excuse for his default. The court also found no basis to set aside the foreclosure sale or vacate the referee's deed.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Betsy Barros, J.P.; Reinaldo E. Rivera, J.; Cheryl E. Chambers, J.; Paul Wooten, J.
JURISDICTION	New York
DECIDED	April 6, 2022
DOCKET	2018-14287
DISPOSITION	affirmed
PROCEDURAL POSTURE	Dindyal Singh appealed from an order denying his motion to vacate a default order of reference and judgment of foreclosure and sale, set aside the foreclosure sale, vacate the referee's deed, obtain leave to serve a late answer, or dismiss the foreclosure complaint for lack of personal jurisdiction.
STANDARD OF REVIEW	The Appellate Division reviewed whether the Supreme Court properly denied relief from the default, dismissal for lack of personal jurisdiction, and relief concerning the foreclosure sale and referee's deed.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Dindyal Singh v. Wells Fargo Bank, National Association

TOPICS

foreclosure | personal jurisdiction | service of process | default judgment | appellate procedure

PRACTICE AREAS

foreclosure | civil procedure | personal jurisdiction | service of process | default judgments

QUESTIONS PRESENTED

1. Whether Singh rebutted the presumption of proper service sufficiently to require a jurisdictional hearing or warrant dismissal for lack of personal jurisdiction.
2. Whether Singh was entitled to vacatur of his default and leave to serve a late answer under CPLR 5015(a)(1) and CPLR 3012(d).
3. Whether the foreclosure sale should be set aside and the referee's deed vacated based on prejudice, fraud, collusion, mistake, or misconduct.

HOLDINGS

1. A process server's affidavit describing service under CPLR 308(2) constituted prima facie evidence of valid service, and Singh's affidavits were insufficiently specific to rebut that presumption or require a hearing. The court therefore upheld denial of dismissal under CPLR 3211(a)(8) and vacatur under CPLR 5015(a)(4).
2. A defendant seeking to vacate a default and obtain leave to serve a late answer must show both a reasonable excuse for the default and a potentially meritorious defense. Because Singh failed to offer a reasonable excuse, the court properly denied relief without deciding whether he had a potentially meritorious defense.
3. Singh was not entitled to set aside the foreclosure sale or vacate the referee's deed because he did not establish that delay of the sale prejudiced a substantial right or that the sale was affected by fraud, collusion, mistake, or misconduct casting suspicion on its fairness.

KEY QUOTATIONS

> *"When a defendant seeking to vacate a default judgment raises a jurisdictional objection pursuant to CPLR 5015(a)(4), the court is required to resolve the jurisdictional question before determining whether it is appropriate to grant a discretionary vacatur of the default under CPLR 5015(a)(1)"* ([*1])

> *"Ordinarily, a process server's affidavit of service constitutes prima facie evidence of proper service and, therefore, gives rise to a presumption of proper service"* ([*2])

> *"A defendant seeking to vacate a default in answering a complaint pursuant to CPLR 5015(a)(1) and to compel the plaintiff to accept an untimely answer pursuant to CPLR 3012(d) must show both a reasonable excuse for the default and the existence of a potentially meritorious defense"* ([*2])

FACTUAL BACKGROUND

Wells Fargo commenced a mortgage foreclosure action against Dindyal Singh. Singh did not appear or answer, resulting in an order of reference and a judgment of foreclosure and sale; the property was subsequently sold. Singh claimed that he had not been served and sought vacatur of the default and sale, leave to serve a late answer, or dismissal for lack of personal jurisdiction, but his affidavits did not specifically rebut the process server's account that service was made on Raghunath Singh at Singh's dwelling.

PROCEDURAL HISTORY

The Supreme Court, Queens County, entered an order of reference after Singh failed to appear or answer and later entered a judgment of foreclosure and sale. The property was sold, and Singh moved to vacate the default judgment and sale or dismiss for lack of personal jurisdiction. The Supreme Court denied the relevant branches of the motion, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- U.S. Bank N.A. v. Giraldo, 192 AD3d 720, 721
- Nationstar Mtge., LLC v. Stroman, 202 AD3d 804, 807
- U.S. Bank N.A. v. Dass, 200 AD3d 1003, 1004-1005
- US Bank N.A. v. Cooper, 191 AD3d 1035, 1036-1037
- Nationstar Mtge., LLC v. Cohen, 185 AD3d 1039, 1041
- US Bank N.A. v. Ramos, 153 AD3d 882, 884
- Nationstar Mtge., LLC v. Kamil, 155 AD3d 966, 967
- Bank of N.Y. Mellon v. Ziangos, 194 AD3d 778, 779
- Deutsche Bank Natl. Trust Co. v. Abrahim, 183 AD3d 698, 699
- Emigrant Mtge. Co., Inc. v. Hartman, 173 AD3d 975, 977
- Associates Fin. Servs. v. Davis, 133 AD2d 601, 602
- Concept 9, LLC v. 614 Realty, LLC, 189 AD3d 992, 993