

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

Wilmington Trust, N.A. v. Pape

2021 NY Slip Op 08278 (N.Y. Ct. App. 2021) · No. 2019-03717 · Decided March 17, 2021

SUMMARY

The Appellate Division, Second Department, reversed an order and judgment of foreclosure and sale involving 134 Eel Pot Alley, LLC. The court held that the defendant provided a reasonable excuse for its four-day delay in answering and demonstrated a potentially meritorious statute-of-limitations defense, warranting leave to interpose a late answer under CPLR 3012(d).

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Sylvia O. Hinds-Radix, J.; Valerie Brathwaite Nelson, J.; Paul Wooten, J.
JURISDICTION	New York
DECIDED	March 17, 2021
DOCKET	2019-03717
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant 134 Eel Pot Alley, LLC, appealed from an order and judgment of foreclosure and sale that denied its motion for leave to interpose a late answer and granted the plaintiff's motion to confirm the referee's report and enter a judgment of foreclosure and sale.
STANDARD OF REVIEW	Abuse of discretion; the determination of what constitutes a reasonable excuse for a late answer lies within the sound discretion of the trial court.
PRECEDENTIAL VALUE	Published intermediate appellate decision
PARTIES	134 Eel Pot Alley, LLC v. Wilmington Trust, National Association

TOPICS

foreclosure

pleadings

statute of limitations

civil procedure

appellate procedure

PRACTICE AREAS

civil procedure

foreclosure

appellate procedure

QUESTIONS PRESENTED

1. Whether the defendant established a reasonable excuse and a potentially meritorious defense warranting leave to interpose a late answer under CPLR 3012(d).
2. Whether the order and judgment of foreclosure and sale should stand after the trial court denied leave to file the late answer.

HOLDINGS

1. A defendant seeking leave to file a late answer must provide a reasonable excuse for the delay and demonstrate a potentially meritorious defense. A credible explanation of law-office failure for a brief four-day delay, together with a potentially meritorious statute-of-limitations defense, lack of willfulness, lack of prejudice, and the public policy favoring resolution on the merits, warranted leave to file the late answer.

KEY QUOTATIONS

"[A] defendant who has failed to timely answer a complaint and who seeks leave to file a late answer must provide a reasonable excuse for the delay and demonstrate a potentially meritorious defense to the action"
(at *2)

"In making that discretionary determination, the court should consider relevant factors, such as the extent of the delay, prejudice or lack of prejudice to the opposing party, whether there has been willfulness, and the strong public policy in favor of resolving cases on the merits" (at *2)

FACTUAL BACKGROUND

Wilmington Trust commenced an action to foreclose a consolidated \$740,000 mortgage on real property owned by 134 Eel Pot Alley, LLC. The defendant's attorney failed to calendar the deadline for filing an answer after the defendant's jurisdictional motion was denied, resulting in a four-day delay. The defendant asserted that it had a potentially meritorious defense based on expiration of the statute of limitations, and the record showed no willfulness or prejudice to the plaintiff from the brief delay.

PROCEDURAL HISTORY

Wilmington Trust commenced a mortgage-foreclosure action in 2015. After initially challenging service for lack of personal jurisdiction, 134 Eel Pot Alley, LLC was properly served through its authorized agent on January 29, 2016. Following denial of its renewed jurisdictional motion, the defendant filed an answer four days late and moved for leave to interpose it under CPLR 3012(d), asserting law-office failure and a potentially meritorious statute-of-limitations defense. The Supreme Court denied leave and entered a judgment of foreclosure and sale; the Appellate Division reversed, granted leave to serve the late answer, and denied the motion to confirm the referee's report and for judgment of foreclosure and sale.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The order and judgment of foreclosure and sale was reversed; the defendant was granted leave to interpose a late answer; the plaintiff's motion to confirm the referee's report and for a judgment of foreclosure and sale was denied; and the March 29, 2019 order was modified accordingly.

CASES CITED

- Green Tree Servicing, LLC v. Weiss, 180 A.D.3d 654, 655 (2d Dep't 2020)
- Bank of Am., N.A. v. Viener, 172 A.D.3d 795, 796 (2d Dep't 2019)
- Green Apple Mgt. Corp. v. Aronis, 55 A.D.3d 669, 669 (2d Dep't 2008)
- Lyubomirsky v. Lubov Arulin, PLLC, 125 A.D.3d 614, 614 (2d Dep't 2015)
- King v. Dobriner, 106 A.D.3d 1053, 1054 (2d Dep't 2013)
- People's United Bank v. Latini Tuxedo Mgt., LLC, 95 A.D.3d 1285, 1286 (2d Dep't 2012)
- Montefiore Med. Ctr. v. Hartford Acc. & Indem. Co., 37 A.D.3d 673, 673 (2d Dep't 2007)
- Westchester Med. Ctr. v. Allstate Ins. Co., 80 A.D.3d 695, 697 (2d Dep't 2011)
- Perez v. Travco Ins. Co., 44 A.D.3d 738, 739 (2d Dep't 2007)