

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

U.S. Bank Trust, N.A. v. Manasia

2022 NY Slip Op 03271 (Appellate Division of the Supreme Court of the State of New York Second Judicial Department 2022) · No. 2019-08443 · Decided May 18, 2022

SUMMARY

The Appellate Division, Second Department, affirmed an order denying Lisa Iannacci Manasia's motion to vacate a judgment of foreclosure and sale and to dismiss the foreclosure complaint for lack of personal jurisdiction. The court held that she failed to rebut the presumption of proper service, lacked entitlement to relief under CPLR 317, and did not establish a potentially meritorious defense.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Judicial Department
WRITING FOR THE COURT	Hector D. LaSalle, P.J.; Mark C. Dillon, J.; Sheri S. Roman, J.; Lara J. Genovesi, J.
JURISDICTION	New York
DECIDED	May 18, 2022
DOCKET	2019-08443
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant Lisa Iannacci Manasia appealed from an order denying her motion to vacate a judgment of foreclosure and sale and to dismiss the foreclosure complaint for lack of personal jurisdiction.
STANDARD OF REVIEW	The Appellate Division reviewed whether the process server's affidavit established a presumption of proper service, whether the defendant rebutted that presumption sufficiently to require an evidentiary hearing, and whether the defendant established entitlement to relief under CPLR 317 and 5015.
PRECEDENTIAL VALUE	Published New York Appellate Division decision
PARTIES	Lisa Iannacci Manasia v. U.S. Bank Trust, N.A.

TOPICS

service of process

personal jurisdiction

foreclosure

civil procedure

appellate procedure

PRACTICE AREAS

Civil procedure

Mortgage foreclosure

Personal jurisdiction

QUESTIONS PRESENTED

1. Whether the defendant rebutted the presumption of proper service created by the process server's affidavit so as to require an evidentiary hearing.
2. Whether the defendant was entitled under CPLR 5015(a)(4) to vacate the judgment of foreclosure and sale for lack of personal jurisdiction.
3. Whether the defendant was entitled under CPLR 3211(a)(8) to dismissal of the complaint for lack of personal jurisdiction.
4. Whether the defendant was entitled to relief under CPLR 317 after admitting that she had actual notice of the summons in time to defend and failing to demonstrate a potentially meritorious defense.

HOLDINGS

1. The defendant failed to rebut the presumption of proper service established by the process server's affidavit, and the alleged discrepancies concerning the description of the person served did not require an evidentiary hearing.
2. Because the defendant failed to rebut the presumption that she was properly served, the Supreme Court properly denied, without a hearing, her requests under CPLR 5015(a)(4) to vacate the judgment and CPLR 3211(a)(8) to dismiss the complaint for lack of personal jurisdiction.
3. The defendant was not entitled to relief under CPLR 317 because she admitted having actual notice of the summons in time to defend and failed to demonstrate a potentially meritorious defense.

FACTUAL BACKGROUND

Anthony and Lisa Iannacci Manasia executed a note secured by a mortgage on residential property. After U.S. Bank Trust commenced foreclosure proceedings, a process server averred that he served Lisa under CPLR 308(2) by delivering the summons and complaint to Anthony, a person of suitable age and discretion at Lisa's residence, and mailing a second copy to that address. Lisa challenged service, but did not substantiate alleged discrepancies between Anthony's appearance and the process server's description, and admitted that she had actual notice of the summons in time to defend.

PROCEDURAL HISTORY

U.S. Bank Trust commenced a mortgage foreclosure action. Anthony Manasia answered, and a judgment of foreclosure and sale was entered. Lisa Iannacci Manasia later moved under CPLR 317 and 5015(a)(3) and (4) to vacate the judgment and under CPLR 3211(a)(8) to dismiss the complaint against her for lack of personal jurisdiction. The Supreme Court, Nassau County, denied the motion, and the Appellate Division affirmed insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Bank of Am., N.A. v. Teodorescu, 187 A.D.3d 831, 832
- Deutsche Bank Natl. Trust Co. v. Yurowitz, 181 A.D.3d 646, 648
- GMAC Mtge., LLC v. Eberle, 172 A.D.3d 822, 824
- US Bank N.A. v. Lawrence, 191 A.D.3d 929
- U.S. Rof III Legal Tit. Trust 2015-1 v. John, 189 A.D.3d 1645, 1650
- Dunn v. Law Offs. of Evans & Al-Shabazz, LLP, 189 A.D.3d 776, 779

OPINION

PER CURIAM.

U.S. Bank Trust, N.A. v Manasia (2022 NY Slip Op 03271) U.S. Bank Trust, N.A. v Manasia 2022 NY Slip Op 03271 Decided on May 18, 2022 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on May 18, 2022 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department HECTOR D. LASALLE, P.J. MARK C. DILLON SHERI S. ROMAN LARA J. GENOVESI, JJ. 2019-08443 (Index No. 605122/17) [*1]U.S.

Bank Trust, N.A., etc., respondent, vAnthony Manasia, etc., et al., defendants, Lisa Iannacci Manasia, appellant. Wenig Saltiel LLP, Brooklyn, NY (Dan M. Blumenthal of counsel), for appellant. Cohn & Roth, LLC, Mineola, NY (Michael Nayar of counsel), for respondent. DECISION & ORDER In an action to foreclose a mortgage, the defendant Lisa Iannacci Manasia appeals from an order of the Supreme Court, Nassau County (Anna R. Anzalone, J.), entered June 5, 2019.

The order, insofar as appealed from, denied those branches of that defendant's motion which were pursuant to CPLR 317 and 5015(a)(3) and (4) to vacate a judgment of foreclosure and sale dated January 29, 2019, and pursuant to CPLR 3211(a)(8) to dismiss the complaint insofar as asserted against her for lack of personal jurisdiction. ORDERED that the order is affirmed insofar as appealed from, with costs.

The defendants Anthony Manasia (hereinafter Anthony) and Lisa Iannacci Manasia (hereinafter Lisa) executed a note that was secured by a mortgage on certain residential property. The plaintiff later commenced this action to foreclose the mortgage. Anthony answered the complaint, and a judgment of foreclosure and sale was issued. Lisa subsequently moved, inter alia, pursuant to

CPLR 317 and 5015(a)(3) and (4) to vacate the judgment of foreclosure and sale, and pursuant to CPLR 3211(a)(8) to dismiss the complaint insofar as asserted against her for lack of personal jurisdiction.

The Supreme Court denied the motion. Lisa appeals. A process server averred that he served Lisa with the summons and complaint pursuant to CPLR 308(2) by delivering a copy to Anthony, a person of suitable age and discretion at Lisa's residence, and mailing a second copy to that address. Contrary to Lisa's contention, she failed to rebut the presumption of proper service established by the process server's affidavit so as to necessitate an evidentiary hearing.

Lisa failed to substantiate the alleged discrepancies between the appearance of Anthony and the description of Anthony provided by the process server (see *Bank of Am., N.A. v Teodorescu*, 187 AD3d 831, 832; *Deutsche Bank Natl. Trust Co. v Yurowitz*, 181 AD3d 646, 648; *GMAC Mtge., LLC v Eberle*, 172 AD3d 822, 824).

Accordingly, the Supreme Court properly denied, without a hearing, those branches of Lisa's motion which were pursuant to CPLR 5015(a)(4) to vacate the judgment of foreclosure and sale and pursuant to CPLR 3211(a)(8) to dismiss the complaint insofar as asserted against her. Also contrary to Lisa's contention, she failed to demonstrate her entitlement to relief [*2]pursuant to CPLR 317, as she admitted that she had actual notice of the summons in time to defend the action (see *US Bank N.A. v Lawrence*, 191 AD3d 929; *U.S. Rof III Legal Tit.*

Trust 2015-1 v John, 189 AD3d 1645, 1650; *Dunn v Law Offs. of Evans & Al-Shabazz, LLP*, 189 AD3d 776, 779), and moreover, she failed to demonstrate a potentially meritorious defense to the action. The parties' remaining contentions either are without merit or need not be reached in light of our determination. LASALLE, P.J., DILLON, ROMAN and GENOVESI, JJ., concur.

ENTER: Maria T. Fasulo Clerk of the Court