

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

**Lehman Bros. Bank v. Hickson**

2020 NY Slip Op 04932 (N.Y. Ct. App. 2020) · No. 2017-05031 · Decided September 16, 2020

**SUMMARY**

The New York Appellate Division, Second Department, modified an order in a mortgage foreclosure action. It affirmed vacatur of the foreclosure judgment against Cassandra Hickson and dismissal of the complaint against her for lack of personal jurisdiction because the plaintiff failed to establish proper service. The court held that the Supreme Court improperly dismissed claims against the remaining defendants sua sponte, as the defense of improper service is personal to the defendant served.

**CASE DETAILS**

|                              |                                                                                                                                                                                                                                                                                                                                                                 |
|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>COURT</b>                 | Supreme Court of the State of New York, Appellate Division, Second Judicial Department                                                                                                                                                                                                                                                                          |
| <b>WRITING FOR THE COURT</b> | William F. Mastro, J.P.; Jeffrey A. Cohen, J.; Linda Christopher, J.; Paul Wooten, J.                                                                                                                                                                                                                                                                           |
| <b>JURISDICTION</b>          | New York                                                                                                                                                                                                                                                                                                                                                        |
| <b>DECIDED</b>               | September 16, 2020                                                                                                                                                                                                                                                                                                                                              |
| <b>DOCKET</b>                | 2017-05031                                                                                                                                                                                                                                                                                                                                                      |
| <b>DISPOSITION</b>           | other                                                                                                                                                                                                                                                                                                                                                           |
| <b>PROCEDURAL POSTURE</b>    | In a mortgage-foreclosure action, the nonparty successor-in-interest to the plaintiff appealed by permission from an order vacating the foreclosure judgment as to Cassandra Hickson, dismissing the complaint against her for lack of personal jurisdiction, and sua sponte vacating the judgment and dismissing the complaint as to the remaining defendants. |
| <b>STANDARD OF REVIEW</b>    | The Appellate Division reviewed the order on the law and considered whether the Supreme Court properly exercised its authority to dismiss sua sponte and whether the plaintiff met its burden to establish personal jurisdiction by a preponderance of the evidence.                                                                                            |
| <b>PRECEDENTIAL VALUE</b>    | published                                                                                                                                                                                                                                                                                                                                                       |
| <b>PARTIES</b>               | VVS1 Corp., nonparty-appellant v. Cassandra Hickson, respondent                                                                                                                                                                                                                                                                                                 |

## TOPICS

service of process

personal jurisdiction

foreclosure

appellate procedure

civil procedure

## PRACTICE AREAS

civil procedure

foreclosure

mortgages

appellate procedure

personal jurisdiction

## QUESTIONS PRESENTED

1. Whether the Supreme Court could sua sponte vacate the foreclosure judgment and dismiss the complaint for lack of personal jurisdiction as to defendants who had not moved for that relief.
2. Whether Hickson was required to testify at the service hearing to establish that the court had obtained personal jurisdiction over her.
3. Whether the plaintiff's successor-in-interest met its burden to establish by a preponderance of the evidence that Hickson was properly served.
4. Whether Hickson's motion to vacate the judgment and dismiss the complaint for lack of personal jurisdiction should be granted.

## HOLDINGS

1. A court's authority to dismiss a complaint sua sponte must be used sparingly and only in extraordinary circumstances; because the defense of lack of jurisdiction based on improper service is personal to the improperly served party, the Supreme Court had no basis to vacate the foreclosure judgment and dismiss the complaint as to defendants other than Hickson.
2. The defendant challenging personal jurisdiction is not required to testify at the service hearing to establish that jurisdiction was obtained by proper service.
3. VVS1 failed to establish by a preponderance of the evidence that Hickson was properly served, so the Supreme Court properly vacated the foreclosure judgment as against Hickson and dismissed the complaint against her for lack of personal jurisdiction.

## KEY QUOTATIONS

*"A court's power to dismiss a complaint, sua sponte, is to be used sparingly and only when extraordinary circumstances exist to warrant dismissal"* ([\*2])

*"[T]he defense of lack of jurisdiction based on improper service is personal in nature and may only be raised by the party improperly served"* ([\*2])

## FACTUAL BACKGROUND

The action concerned foreclosure of a mortgage encumbering real property in Brooklyn. Cassandra Hickson defaulted in answering, and the Supreme Court entered a judgment of foreclosure and sale against all defendants. Hickson later asserted that she had never been served with process; at the ensuing service hearing, VVS1 Corp., the plaintiff's successor-in-interest, failed to produce the process server and presented no evidence or testimony.

## PROCEDURAL HISTORY

The plaintiff commenced the foreclosure action in 2007. After all defendants defaulted, the Supreme Court, Kings County, entered a judgment of foreclosure and sale in 2016. Hickson moved to vacate the judgment as against her and dismiss the complaint for lack of personal jurisdiction, asserting that she had not been served. After ordering a hearing on service, the Supreme Court granted Hickson's motion and also sua sponte granted equivalent relief as to the other defendants. The Appellate Division affirmed the relief granted to Hickson but modified the order by deleting the sua sponte relief concerning the other defendants.

## DISPOSITION

other

## CASES CITED

- JP Morgan Chase Bank, N.A. v. Laszlo, 169 AD3d 885, 887
- Wells Fargo Bank, N.A. v. Bachmann, 145 AD3d 712, 714
- IMC Mtge. Co. v. Vetere, 142 AD3d 954, 955
- Aurora Loan Servs., LLC v. Gaines, 104 AD3d 885, 886
- Zhuoya Luo v. Wensheng Wang, 176 AD3d 1016

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