

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FOURTH DEPARTMENT

McFadden v. Schneiderman

137 A.D.3d 1618, 26 N.Y.S.3d 915 (N.Y. App. Div. 4th Dep't 2016) · Decided March 18, 2016

SUMMARY

The New York Appellate Division, Fourth Department unanimously affirmed an order denying plaintiff's motion for a default judgment and granting defendants' motion to dismiss the complaint. The court held that plaintiff failed to establish proper service and, in any event, did not establish entitlement to declaratory relief based on default alone. The court further concluded that the complaint was vague and conclusory, did not allege a justiciable controversy, and failed to state a valid cause of action.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Department
WRITING FOR THE COURT	Smith, J.P.; Peradotto, J.; Nemoyer, J.; Curran, J.; Scudder, J.
JURISDICTION	New York
DECIDED	March 18, 2016
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from an order denying his motion for a default judgment in an action seeking declaratory relief and granting defendants' cross motion to dismiss the complaint under CPLR 3211(a)(7) for failure to state a cause of action.
STANDARD OF REVIEW	On a CPLR 3211(a)(7) motion, the court assesses whether the pleading states a cause of action, affording the pleading a liberal construction while disregarding bare legal conclusions and rejecting vague and conclusory allegations.
PRECEDENTIAL VALUE	Published appellate opinion
PARTIES	McFadden v. Schneiderman, Defendants

TOPICS

- default judgment
- motions to dismiss
- declaratory judgment
- service of process
- civil procedure

PRACTICE AREAS

Civil procedure

Appellate procedure

Declaratory relief

QUESTIONS PRESENTED

1. Whether Supreme Court erred in denying plaintiff's motion for a default judgment when plaintiff failed to establish proper service.
2. Whether a default judgment could be entered in the declaratory judgment action based solely on the default and pleadings.
3. Whether Supreme Court properly dismissed the complaint under CPLR 3211(a)(7) for failure to state a cause of action.

HOLDINGS

1. The denial of plaintiff's motion for a default judgment was proper because plaintiff failed to establish that he effected service of the summons and complaint as required by CPLR 3215(f).
2. A default judgment in a declaratory judgment action cannot be granted on the default and pleadings alone; the plaintiff must establish a right to the declaration sought.
3. Dismissal under CPLR 3211(a)(7) was proper because the complaint's allegations were vague and conclusory and failed to allege a justiciable controversy or any other valid cause of action for which relief could be granted.

KEY QUOTATIONS

“A default judgment in a declaratory judgment action will not be granted on the default and pleadings alone for it is necessary that plaintiff establish a right to a declaration” (1618-1619)

“In assessing a motion under CPLR 3211 (a) (7), . . . ‘the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one’” (1619)

“Although the pleading is to be afforded a liberal construction on a motion to dismiss pursuant to CPLR 3211 . . . , the allegations in a complaint cannot be vague and conclusory” (1619)

FACTUAL BACKGROUND

Plaintiff sought declaratory relief and moved for a default judgment. He failed to establish that he had served defendants with the summons and complaint in accordance with CPLR 312-a(a) through (d), as required for a default judgment under CPLR 3215(f). The complaint's allegations were vague and conclusory and did not allege a justiciable controversy or another valid cause of action.

PROCEDURAL HISTORY

Supreme Court, Wyoming County, denied plaintiff's motion for a default judgment and granted defendants' cross motion to dismiss. The Appellate Division unanimously affirmed the order without costs.

DISPOSITION

affirmed

CASES CITED

- Klein v. Educational Loan Servicing, LLC, 71 A.D.3d 957, 958 (2010)
- Dole Food Co., Inc. v. Lincoln Gen. Ins. Co., 66 A.D.3d 1493, 1494 (2009)
- Leon v. Martinez, 84 N.Y.2d 83, 88 (1994)
- Rios v. Tiny Giants Daycare, Inc., 135 A.D.3d 845, 845 (2016)
- Williams v. Maddi, 306 A.D.2d 852, 852-853 (2003), leave denied, 100 N.Y.2d 516 (2003), cert. denied, 541 U.S. 960 (2004)
- Rice v. Cayuga-Onondaga Healthcare Plan, 190 A.D.2d 330, 333 (1993)

OPINION

PER CURIAM.

Appeal from an order of the Supreme Court, Wyoming County (Michael M. Mohun, A.J.), entered August 22, 2014. The order, among other things, granted defendants' cross motion to dismiss the complaint. It is hereby ordered that the order so appealed from is unanimously affirmed without costs. Memorandum: Plaintiff appeals from an order that denied his motion seeking a default judgment on his complaint seeking declaratory relief (see CPLR 3215 [a]), and granted defendants' cross motion pursuant to CPLR 3211 (a) (7) seeking to dismiss the complaint for failure to state a cause of action.

Contrary to plaintiff's contention, Supreme Court did not exceed its authority or otherwise err in denying his motion for a default judgment inasmuch as plaintiff failed to establish that he effected service of the summons and complaint on defendants pursuant to CPLR 312-a (a) through (d), as required by CPLR 3215 (f) (see Klein v Educational Loan Servicing, LLC, 71 AD3d 957, 958 [2010]).

In any event, “ ‘[a] default judgment in a declaratory judgment action will not be granted *1619 on the default and pleadings alone for it is necessary that plaintiff!] establish a right to a declaration’ and, here, plaintiff!] did not establish [his] entitlement to the declaration sought” (Dole Food Co., Inc. v Lincoln Gen. Ins. Co., 66 AD3d 1493, 1494 [2009]).

We reject plaintiff's further contention that the court erred in granting defendants' cross motion to dismiss the complaint for failure to state a cause of action. It is well established that, “[i]n assessing a motion under CPLR 3211 (a) (7),... ‘the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one’ ” (Leon v Martinez, 84 NY2d 83, 88 [1994]). “Although the pleading is to be afforded a liberal construction on a motion to dismiss pursuant to CPLR 3211..., the allegations in a complaint cannot be vague and conclusory..., and ‘[b]are legal conclusions’ will not suffice” (Rios v Tiny Giants Daycare, Inc., 135 AD3d 845, 845

[2016]; see *Williams v Maddi*, 306 AD2d 852, 852-853 [2003], lv denied 100 NY2d 516 [2003], cert denied 541 US 960 [2004]).

We conclude that the allegations contained in the complaint are vague and conclusory and do not allege a justiciable controversy, i.e., “a substantial legal controversy between the parties that may be resolved by a declaration of the parties’ legal rights” (*Rice v Cayuga-Onondaga Healthcare Plan*, 190 AD2d 330, 333 [1993]), or any other valid cause of action for which relief may be granted.

Present—Smith, J.P., Peradotto, Nemoyer, Curran and Scudder, JJ.