

Short Form Order

FILED  
SEP - 5 2014

NEW YORK SUPREME COURT - QUEENS COUNTY COUNTY CLERK  
QUEENS COUNTY

Present: HONORABLE AUGUSTUS C. AGATE IAS PART 24  
Justice

FILED

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WELLS FARGO BANK, N.A.,

Index No. 17219/09

SEP - 5 2014

Plaintiff,

Motion

COUNTY CLERK  
QUEENS COUNTY

-against-

Dated: May 12, 2014

m# 2

ORIGINAL

JUSTICE E. OBI; ET AL.,

Defendants.  
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The following papers numbered 1 - 14 read on this motion by the plaintiff for a default judgment, the appointment of a Referee to compute and amendment of the caption; and cross motion by defendants Justice Obi and Blessing Achu Obi for an order dismissing the complaint as abandoned pursuant to CPLR 3215(c).

	Papers Numbered
Notice of Motion - Affidavits - Exhibits .....	1 - 4
Notice of Cross Motion - Affidavits - Exhibits.....	5 - 8
Affirmation In Opposition - Exhibits .....	9 - 10
Replying Affirmations.....	11 - 14

Upon the foregoing papers it is ordered that this motion by the plaintiff and cross motion by the defendants are decided as follows:

Plaintiff commenced the instant residential foreclosure action on June 29, 2009 after defendants defaulted on their monthly mortgage payments beginning on February 1, 2009. The affidavit of service alleges that service of process was effectuated upon the defendant Justice Obi on July 1, 2009 by personal delivery pursuant to CPLR 308(1). In addition, defendant Blessing Achu Obi was allegedly served with process by substituted service pursuant to CPLR 308(2) on July 1, 2009. The court's computer indicates that after several adjournments, a foreclosure settlement conference was held on July 8, 2010. On that date, when the case was unable to be settled, Court Attorney-Referee Leonard N. Florio ordered that the case proceed by Order of Reference/motion. The instant motion by the plaintiff for a default judgment and the appointment of a Referee

to compute was made (CPLR 2211) on January 27, 2014, although an earlier application was withdrawn by prior counsel on November 17, 2010. Defendant argues, in support of the cross motion, that the plaintiff has failed to take any action in this matter since the foreclosure conference, and, thus, the case must be dismissed as abandoned.

CPLR 3215(c) provides that where a plaintiff fails to take proceedings for entry of a default judgment within one year of the default, the court shall not enter judgment but shall dismiss the complaint as abandoned. (see *Giglio v NTIMP, Inc.*, 86 AD3d 301, 306 [2d Dept 2011].) The statute further provides that a plaintiff can avoid dismissal if "sufficient cause is shown why the complaint should not be dismissed." (CPLR 3215(c).) This language has been interpreted by the courts to require a reasonable excuse for the delay in moving for a default judgment and the demonstration of a potentially meritorious cause of action. (*Ryant v Bullock*, 77 AD3d 811, 811 [2d Dept 2010]; *Solano v Castro*, 72 AD3d 932, 932-933 [2d Dept 2010]; *Butindaro v Grinberg*, 57 AD3d 932, 932 [2d Dept 2008].)

In the case at bar, plaintiff contends that it made a motion for a default judgment in 2010 but withdrew it in order to comply with Administrative Order 548/10, which was subsequently replaced by Administrative Order 431/11. The Administrative Order requires a plaintiff's counsel in a residential foreclosure action to file with the court an affirmation confirming the accuracy of plaintiff's pleadings. (*Wells Fargo Bank, N.A. v Hudson*, 98 AD3d 576, 578 [2d Dept 2012].) However, plaintiff does not explain why it took over three years to comply with the Administrative Order or specifically what actions it took to comply with the order. (see *Freedom Mtge. Corp. v Akther*, 40 Misc 3d 1203(A) [Sup Ct, Queens Cty 2013].) Even after a Consent to Change Attorney was executed on November 29, 2011, plaintiff still did not make this motion for more than two years later. Indeed, all plaintiff offers is a vague assertion that it attempted to comply with the order without any supporting facts. Thus, plaintiff has failed to submit a reasonable excuse for the delay herein.

Accordingly, the cross motion by the defendants Justice Obi and Blessing Achu Obi to dismiss the complaint as abandoned is granted, and the complaint is dismissed.

The motion by the plaintiff is denied.

Date: September 2, 2014

  
AUGUSTUS C. AGATE, J.S.C.

**FILED**

SEP - 5 2014

COUNTY CLERK  
QUEENS COUNTY